

ORDINANCE NO. 2024 - 02

AN ORDINANCE OF THE VILLAGE COUNCIL OF THE VILLAGE OF ESTERO, FLORIDA, AMENDING DIVISION 3 OF ARTICLE IV OF CHAPTER 2 OF THE VILLAGE CODE REGARDING VILLAGE PROCUREMENT METHODS AND PROCEDURES; MAKING RELATED FINDINGS; AND PROVIDING FOR SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, Division 3 of Article IV of Chapter 2 of the Village Code addresses the Village’s procurement functions; and

WHEREAS, these procurement rules were adopted by Ordinance 2015-06 and have not been revised since that time; and

WHEREAS, as the Village has grown and developed as a municipality, its procurement activities have become more frequent and complex; and

WHEREAS, the Village Attorney has examined the current procurement code and has recommended the revisions to that code as are set forth in this Ordinance so as to bring the Village’s procurement rules in line with current state law and public procurement best practices; and

WHEREAS, the provisions in this Ordinance are in the best interests of the Village and its residents and business community.

NOW, THEREFORE, be it ordained by the Village Council of the Village of Estero, Florida:

Section 1. Division 3 of Article IV (Finance) of Chapter 2 (Administration) of the

Village Code is hereby amended as follows:

DIVISION 3. – PROCUREMENTPURCHASING

Sec. 2-170. – Title and purpose.

This division shall be known and may be cited as the Estero procurement code. The purpose of this division is to provide for the fair and equitable treatment of all persons involved in public procurement activities of the village, to maximize the purchasing value of public funds in procurement, and to provide safeguards for maintaining a procurement system of quality and integrity.

Sec. 2-171. – Application.

- (a) This division applies to solicitations and contracts entered into for the purchase of goods, services, and construction. Unless otherwise expressly provided, any subsequent amendment to the procurement code shall only apply to solicitations and contracts issued or entered by the village after the effective date of such amendment.
- (b) This division is to be construed in a manner consistent with any applicable provision of the general and special laws of the state and shall not apply to the extent any provision is in conflict therewith, provided, however, the provisions of this division may supersede such general or special law where the general or special law permits such an application or interpretation.
- (c) Except as provided in this division, it shall be unlawful for any employee to order the purchase of, or make a commitment to purchase goods or services other than through the provisions of this division.

Sec. 2-172. – Definitions.

The following words, terms, and phrases shall have the meanings ascribed to them in this division except where the context clearly indicates a different meaning:

Bid means an offer by a bidder to provide materials or to perform specified work under specified conditions for a specified price. Bids may be written or electronic, and may, in the village’s sole discretion, require contemporaneous submission of a bid bond. Bids must not contain any exceptions or conditions which would preclude the village from accepting the bid and forming a contract. Conditional bids shall be deemed non-responsive.

Bidder means any business that offers materials or services to the village for a given price and specified terms. The term shall include offerors and respondents to solicitations or request for quotes.

Business means any sole proprietor, corporation, partnership, joint venture or other entity that is duly licensed, if required, and authorized to transact business in the state.

Change order means any adjustment to the original quantities or scope of work of a solicited material or service.

Emergency means a state of emergency as declared under the provisions of article II of chapter 10 of the village code, or as declared by the Lee County Commission, the Governor of the State of Florida, or the President of the United States.

Materials/goods/commodities means and includes anything that is a tangible product, including but not limited to vehicles, food, computers, computer software, and lumber. The term does not include services.

Purchase order means a document issued by the procurement official that memorializes the village's acceptance of a quote or bid for the provision of goods or services. A purchase order sets forth the descriptions, quantities, prices, discounts, payment terms, date(s) of performance or shipment, and any other other associated terms and conditions, and will identify the vendor. Purchase orders may be in either paper or electronic form, and may contain standard terms and conditions which may be incorporated by reference in village solicitation documents. Businesses submitting bids, quotes, or other offers to the village are deemed to have reviewed the village's standard purchase order terms and conditions. Unless the village elects to contract with a business by way of a stand-alone contract, the purchase order's standard terms and conditions shall be deemed to have been accepted by such businesses as evidenced by the submission of a quote or bid.

Quote means a flat or unit price provided by a business for any service or material being sought by the village where a formal procurement method is not being used. For purposes of this section, it shall also mean a price list, publicly advertised price, web-based price list, or any other means by which the business communicates its prices to potential customers. Quotes may be provided to village staff verbally, in writing or via electronic means. In the event village procurement staff obtain verbal quotes, they shall keep a record of the quotes received.

Responsible vendor means a vendor which is fully capable to meet all of the requirements of the village's solicitation standards and requirements, and the obligations as may be set forth in the village's purchase order terms and conditions or proposed alternative form of contract. A responsible vendor must possess the full capability, including financial, legal, logistical and technical, to perform as contractually required, and be able to fully document the ability to provide good faith performance. The village's assessment of vendor responsibility will include consideration of all relevant information bearing on a vendor's qualifications, including the historical performance record of the vendor and the vendor's named subcontractors or proposed partners, past performance of similar work or provision of similar commodities or services to the village, the vendor's experience on similar projects, the vendor's references, potential conflicts of interest based on existing business or contractual relationships, the vendor's history of having been suspended or debarred by any governmental agency, whether the vendor has been sued for breach of contract or criminally charged for fraud, bribery, collusion, or similar public corruption crimes, within the prior three years. Vendor responsibility shall be determined in the village's sole judgment.

Responsive vendor means a vendor which has submitted a response to a village solicitation which fully conforms in all material respects to all of the solicitation's specifications and requirements, including providing responses to each question or request for information, and the provision of any supplemental documents, forms, bonds, proof of insurance, or other records or materials required by the solicitation to be included in the response.

Sealed competitive bid means a bid, containing the bidder's offered price and terms, submitted to the village in response to an invitation to bid process, whereby all responses remain sealed until a specific date and time, after which no more bids may be received, and the bids received are then opened for tabulation and evaluation for bidder responsibility and bid responsiveness.

Service means intangible labor products including but not limited to accounting, cleaning, consultancy, engineering, and maintenance.

Solicitation means the act of obtaining firm prices for goods or services, and/or proposals or qualifications from businesses to address the operational needs of the village. A solicitation may include informal requests for price quotes, or the formal issuance of an invitation to bid (ITB), request for proposal (RFP), invitation to negotiate (ITN), request for qualifications (RFQ), or any other form of competitive solicitation the village may use when seeking to acquire goods or services.

Specifications means any description of a good's physical or functional characteristics, or the nature of materials or services being solicited. The term may include a description of equipment performance or characteristics, the quality, origin or functionality of goods, the means and methods of the provision of services, engineered drawings or construction plans, warranty requirements, as well as any requirements for inspecting, testing, or preparing a good or service for delivery.

Sec. 2-173. Exemptions.

(a) This division does not govern procurement of the following:

- (1) Inter-governmental agreements entered pursuant to Florida Statutes § 163.01;
- (2) Purchases made with the proceeds from any grant, gift, bequest, or donation to the extent the application of this division would conflict with the requirements, conditions, or limitations attached to the grant, gift, bequest, or donation;
- (3) Payment of dues and memberships in trade or professional organizations, professional licenses, and trade publications;
- (4) Subscriptions to periodicals and newspapers;
- (5) Acquisition of real property by easement, lease, license or purchase;
- (6) Acquisition of legal advertisements, postage, shipping, and courier services;
- (7) Acquisition of the services of law firms or other outside counsel for any reason, nor to expert witnesses, appraisal services, trial consultants or similar persons of firms deemed by the village council as necessary to address the village's legal needs. Such firms or persons shall be selected by the council or, when authorized by council, the village manager or village attorney;
- (8) Water, sewer, gas, electrical, and other utility services;
- (9) Funds expended by the village in the form of grants to non-profit entities performing economic development, social services, or serving similar public purposes;

- (10) Fees and costs incurred in authorized professional development activities including registration, lodging, travel and meal costs to attend trade or professional seminars, trainings and conferences;
- (11) Purchase of insurance brokerage service and related policies to protect the property and other interests of the village;
- (12) Any purchase governed by explicit provisions of general law, village code or other council resolutions unless the solicitation indicates the applicability of this division, and then this division shall apply only to the extent set out in the solicitation;
- (13) Lobbyist services;
- (14) Professional medical services;
- (15) Professional services required for the issuance of village bonds and village investments related thereto;
- (16) Procurement of music ensembles (bands), artists, and other entertainment providers associated with village sponsored events;
- (17) Acquisition of items purchased for resale to the public;
- (18) Certified public accountants (except for auditing services as set forth in Florida Statutes § 218.391);
- (19) Employment agreements for persons to be regular or short-term employees of the village;
- (20) Funds to acquire instructional materials or copyrighted materials being purchased from the owner of the copyright;
- (21) Owner-direct purchases of construction materials included in the scope of an awarded construction contract in order to realize sales tax savings, in accordance with Florida Statutes § 212.08(6) and Florida Administrative Code Rule 12A-1.094.
- (22) Real property appraisal services;
- (23) Abstracts and academic research;
- (24) Expenses related to existing agreements to maintain or service proprietary equipment or software previously acquired by the village;
- (25) Consulting services related to the management of village operations, initiatives or programs;

(26) Consulting services related to financial planning, financial management, or financial policy and program development;

(27) Sale, conveyance or other disposition of real property owned by the village, or disposition of any interest therein including the granting of an easement, lease or license, as well as services for real property title abstracts or title insurance related to such conveyances.

(b) Notwithstanding the foregoing, with the exception of the acquisition of utility services with rates established by the Florida Public Service Commission, a contract for the purchase of goods or services exempted in this section must be approved by the council if the resulting contract is for an amount which requires council approval as provided for in this division.

Sec. 2-174. – Procurement categories.

(a) Purchases of goods or services shall be made in accordance with the following threshold amounts and processes:

(1) Category One (direct purchase): \$0.01 to \$9,999.99.

a. The procurement official is authorized to procure with budgeted funds a good or service with a delivered value less than \$10,000.00 without competition. Notwithstanding this authorization, the procurement official shall act with fiscal responsibility and in the best interest of the village.

b. If a purchase under this subsection is not accomplished through the use of a standard village contract or standard terms set forth in a village-approved purchase order, the procurement official must examine the vendor's contract terms (including contract terms set forth by way of online links incorporated by reference) to ensure such terms are acceptable to the village.

c. While the acquisition of small dollar commodities or services do not usually carry significant risk of loss, to the extent the nature of the commodities or services being acquired under this subsection or subsection (2) below may generate a significant risk of loss, the procurement official must first consult with the appropriate village insurance and risk management providers to ascertain whether there is a need to require the vendor to provide enhanced insurance coverage.

d. Single purchases or contracts shall not be broken down to lesser amounts to avoid the requirements of competitive solicitation set forth in subsections (a)(2) and (3) below.

(2) Category Two (informal purchase): \$10,000.00 to \$74,999.99.

- a. Three quotes must be solicited from vendors prior to a request for purchase order or contract. Such quotes must be solicited by the procurement official or, if by department staff, reviewed by the procurement official.
- b. Purchases shall not be completed prior to a purchase order being issued by the village's procurement official or a separate contract is approved by the parties.
- c. The manager may reduce the minimum number of quotes required if it is shown that the party requesting the purchase made a concerted effort to obtain quotes, but due to lack of market response was not able to obtain the minimum required quotes.
- d. Nothing herein shall preclude the village manager from requiring the use of a formal competitive solicitation process for purchases within this category if the manager determines doing so would be in the village's best interests.

(3) Category Three (formal procurement): \$75,000.00 and greater.

- a. A formal solicitation must be approved by the procurement official and issued for the acquisition of goods or services within this category. Where the selection will be made based on the lowest price submitted by a responsive, responsible vendor, an ITB seeking sealed bids shall be used. Where the selection will be made based on vendor qualifications or experience as well as price, a RFP or similar alternative solicitation method may be used.
- b. The solicitation shall include the detailed specifications and instructions to vendors as to how to respond. The solicitation document shall be approved by the procurement official prior to being issued, and shall state the dates of all relevant solicitation events including pre-submission conferences, deadlines for submission of vendor questions, method of posting responses to vendor questions, process for evaluation of bids, proposals or other submissions, and the expected award date.
- c. Procurements under this subsection shall be accomplished by use of a village approved purchase order form or an alternative form of agreement approved by the village attorney.

(b) The village manager is authorized to approve contracts within categories one and two to be paid from available budgeted funds without further action of the village council. The council must approve all non-emergency category three procurement agreements.

(c) The categories established in this section may be periodically reviewed by the council and revised to address the effects of inflation or the operational needs of the village.

Sec. 2-175. – Emergency procurement.

Subject to requirements of chapter 10 (emergency management) of the code, emergency purchases may be made from any unencumbered funding source as follows:

(a) In the event of a federal, state, or local declaration of emergency, normal procurement procedures and requirements shall be suspended, and the following procedures shall apply:

(1) The village manager shall be authorized to make any purchases she or he finds necessary to the continued operations of the village.

(2) If the cost of any purchase would have normally fallen within Category Five, a report of such purchases shall be made to the council at the earliest available council meeting after the emergency subsides.

(3) Waiver of purchasing procedures shall only pertain to purchases related to the emergency and associated restoration operations. At the time the declaration of emergency is lifted, normal purchasing procedures will resume.

(b) In the event of a situation which does not rise to the level of a declaration of emergency, but which the manager determines is likely to have a detrimental impact on the safety of citizens or the operations of the village if not rectified immediately:

(1) The manager shall be authorized to make purchases he finds necessary to alleviate the safety or operational issue.

(2) If the cost of any purchase would have normally fallen within Category Five, a full report of such purchases shall be made to the council at the earliest available commission meeting after the emergency subsides.

(3) Such purchases are limited to those directly associated with the specific issue or risk.

Sec. 2-1765. — Procurement official~~urchasing agent~~.

~~The Village m~~The Village m~~anager~~anager is hereby designated as the village's procurement official. The manager may designate one or more village employees to perform the functions of procurement official with respect to any village procurement activities or matters. ~~or the Manager's designee shall be the chief purchasing agent of the Village.~~ ~~The procurement official shall be the primary point of contact for all current or prospective village vendors. The procurement official shall, with assistance from the village attorney as needed, be responsible for ensuring the village's solicitation and contract forms and procedures are in compliance with all applicable state and federal laws, village codes, and public procurement best practices.~~ ~~purchasing agent shall contract for, purchase, store and distribute all supplies, materials and equipment required by any office, department or agency of the Village the purchasing agent shall establish and enforce specifications, inspect or supervise the inspection of all deliveries and have full and complete charge of, and be responsible for, all supplies, materials, and equipment purchased for or belonging to the Village.~~

Sec. 2-177. – Minimum solicitation requirements.

Solicitations shall include product specification, service performance requirements, and other information sufficient to allow vendors to successfully respond to such solicitations. Solicitations shall also inform vendors of the non-negotiable contractual terms and conditions the village will require the successful vendor to accept upon award. Such terms and conditions may be set forth in the solicitation or incorporated by reference. Notwithstanding any provision in a solicitation to the contrary, responding vendors shall, upon award, be required to comply with all provisions of this division. Solicitations shall incorporate, directly or by reference to, the standards and conditions upon which the responses will be evaluated and selected, and, in solicitations for other than sealed bids, shall include the manner in which negotiations shall be conducted.

Sec. 2-178. – Cancellation of solicitations.

An invitation for bids, a request for proposals, or other solicitation may be canceled, or any or all bids, proposals or offers may be rejected in whole or in part, when it is for good cause and in the best interests of the village. The reasons therefor shall be made part of the village's files. Each solicitation issued by the village shall state that the solicitation may be canceled and that any bid, proposal, or offer may be rejected in whole or in part when the village determines, in its sole discretion, doing so is in the village's best interests. Notice of cancellation/rejection shall be published or posted in the same manner as notice of the solicitation. The notice shall identify the solicitation, explain the reason for cancellation or rejection and, where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurements of similar items.

Sec. 2-179. - Source selection and waiver of competition.

- (a) The methods and policies governing the selection of sources shall be those established in this division, or by administrative procedures and standards approved by the manager, and may include, but shall not be limited to, competitive sealed bids, proposals, requests for qualifications, invitations to negotiate, proposals submitted for competitive negotiation, proposals for designated professional services, noncompetitive purchases, purchases with limited competition, emergency purchases, sole source purchases, piggyback and cooperative purchases, and any adopted exceptions to the competitive selection procedure.
- (b) Where not otherwise prohibited by law, the manager (council for category 3 contracts) is authorized to provide for the limited or complete waiver of competitive source selection policies and procedures upon a determination that the likely, non-speculative cost of competitive purchasing would exceed any potential savings and benefit to the village, or upon a determination that the acquisition of the goods or services should be provided by a unique source or provider based upon particular skills and expertise. Recommendations by village staff to the manager or council for all such determinations shall be made in writing by the procurement official or relevant department director. In the event emergency conditions prohibit the convening of the council to grant a waiver of competition as to category 5 level purchases, the manager is authorized to approve of such a waiver.

Procurement waivers which otherwise would have required council approval must be ratified by the council at its first regular meeting after the waiver has occurred.

Sec. 2-180. – Construction contracts.

- (a) If a contract for construction of buildings or infrastructure is estimated, in accordance with generally accepted cost accounting principles, to cost more than the threshold amounts set forth in Florida Statutes § 255.20, such contract shall be competitively awarded to a licensed contractor fully legally authorized to conduct business in the state by use of the competitive solicitation rules set forth in that statute.
- (b) The selection procedures shall be consistent with this division and any administrative procurement procedures adopted by the manager. In addition to such other solicitation publication methods used by the village, construction projects projected to cost more than \$200,000 must be advertised in the manner set forth in Florida Statutes § 255.0525(2)-(5).
- (c) Projects shall not be divided so as to evade the threshold amounts listed in Florida Statutes § 255.20. Unless otherwise defined by law, as used in that subsection, the term “project” shall not include those portions of multiyear capital improvement projects not funded beyond the current fiscal year. The term shall also not include any series of construction activities on a new or existing village facility which, if aggregated, would exceed the threshold amounts, but which were not undertaken contemporaneously with each other, were not part of an overall coordinated construction or renovation effort, and which were not performed under the same construction permit.

Sec. 2-181. – Certain professional services.

- (a) Unless prevented from doing so based on a valid public emergency, when the village procures architecture, professional engineering, landscape architecture, or registered surveying and mapping services, it shall, when such services must be procured for a project the basic construction cost of which is estimated by the village to exceed the category five threshold amount, or for a planning or study activity when the fee for professional services exceeds the threshold amount provided in category two, as those categories are set forth in Florida Statutes § 287.017, engage in the competitive solicitation process set forth in Florida Statutes § 287.055.
- (b) Nothing in subsection (a) above shall be construed to prohibit a continuing contract, as defined by Florida Statutes § 287.055(2)(g), between an architecture, professional engineering, landscape architecture, or registered surveying and mapping services firm and the village.

Sec. 2-182. – Design-build procedures.

- (a) *Public announcement.* The village shall publicly advertise in a uniform and consistent manner on each occasion when design-build services are required except in cases of public emergencies. The advertisement shall include a general description of the project and shall

indicate how, and the time within which, interested design-build firms may apply for consideration.

(b) *Legal qualification.* Any firm or individual desiring to provide design-build services to the village must first be determined legally qualified. To be legally qualified:

(1) Firms must be properly certified to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent;

(2) Firms must be properly certified to practice or to offer to practice engineering, architecture, or landscape architecture; and

(3) The firm shall be duly qualified to perform its proposed service under any other applicable law.

(c) *Selection committee.* A selection committee appointed by the village manager which shall be used to evaluate and rank the design-build firms and their responses for recommendation to the manager or council depending on procurement category.

(d) *Solicitation.* The procurement official shall develop a request for proposals to solicit proposals from interested, qualified design-build firms. Except as otherwise provided in Florida Statutes § 287.055(9)(c), with the use of a qualifications-based selection process, the RFP shall contain as a minimum the following:

(1) The design criteria package defined in Florida Statutes § 287.055(2)(j).

(2) The criteria, procedures, and standards for the evaluation of design-build contract proposals, based on price, technical and design aspects of the public construction project, weighted for the subject.

(3) Requirements for determining qualifications of firms proposing, such as license, list of subcontractors, architect and engineer, and references.

(4) Terms and conditions of proposed agreement.

(5) Other items as required by procedures, laws, ordinances, or prevailing circumstances.

(e) *Selection.*

(1) All information required by the RFP shall be submitted in a sealed manner (which may include sealed envelope if the submission is required to be in that form or via an online proposal submission system if the village requires submission in that manner). Except as otherwise provided in Florida Statutes § 287.055(9)(c), with the use of a qualifications-based selection process, all proposed designs and price proposals shall be submitted separately via the same sealed submission process, with the design and

price proposals opened and considered by the selection committee for shortlisted firms only.

(2) The selection committee shall review all proposals (except the separately-submitted proposed designs and price proposals) and shall create a shortlist of no less than three design-build firms as the most qualified, based on the qualifications, availability, and past work of the firms, including the partners or members thereof. In evaluating the proposals and preparing the shortlist, the committee shall consult with the design criteria professional concerning the evaluation of the responses submitted by the design-build firms. Once the committee has shortlisted, except as otherwise provided in Florida Statutes § 287.055(9)(c), with the use of a qualifications-based selection process, the committee shall open the separate envelopes containing the proposed design solutions and the price submitted by the shortlisted firms. The committee shall then rank the shortlisted firms based upon the evaluation criteria and procedures set forth within the request for proposal. The committee may, if necessary, require verbal presentations from all firms in order that the qualifications and/or proposals may be clarified.

(3) After the committee has ranked the shortlisted firms based upon the award criteria set forth within the request for proposal, the ranking shall be presented to the council which may approve, disapprove or request modifications to the recommended rankings be brought back at a subsequent meeting. Following the ranking by the council, the village's procurement official (assisted as needed by relevant village staff and professional consultants) shall attempt to negotiate a contract within the parameters of the design criteria package or the results of the qualifications-based selection process and in accordance with council's ranking.

(f) Contract.

(1) Under the oversight of the village manager, the procurement official (assisted as needed by relevant village staff and professional consultants) shall negotiate a design-build contract at a price which the manager determines is fair, competitive and reasonable. If the village is unable to negotiate a satisfactory contract with the first ranked firm, then it shall formally terminate negotiations with such firm and then undertake negotiations with the second ranked firm and shall continue this process until a satisfactory contract is negotiated.

(2) The contract negotiated by the staff shall be submitted to the council for consideration and approval.

(g) Public emergencies. If a public emergency is declared and a design-build procurement must proceed during such emergency, a negotiating committee may be formed by the manager and authorized to negotiate with the best qualified design-build firm available at that time for the design and construction of a capital project. To the extent practical, the village shall solicit letters of interest in order to determine the best qualified design-build

firm available at the time. The contract negotiated by such committee shall be subject to ratification by the council.

(h) Conflict between procedure and law. In the event Florida Statutes § 287.055 is subsequently amended such that its requirements conflict with the provisions of this procedure, the provisions of the statute shall prevail, and the village manager or village attorney shall make such recommendations for revision to these procedures as to conform them to the law.

Sec. 2-183. – Sole source procurement.

(a) Commodities or contractual services. Commodities or contractual services available only from a single source may be excepted from any otherwise applicable solicitation requirements provided in this division. When the village believes that desired commodities or contractual services are available only from a single source, the procurement official shall electronically post a description of the commodities or contractual services sought for a period of at least five (5) business days. The description must include a request that prospective vendors provide information regarding their ability to supply the commodities or contractual services described. Posting shall not be required for desired commodities or contractual services for category I purchases. If it is determined in writing by the procurement official after reviewing all relevant information, including information received from prospective vendors as a result of a required posting, that the commodities or contractual services are in fact available only from a single source, the village may enter into a sole source agreement.

(b) Construction materials. In any case where the village seeks to purchase materials for the construction, modification, alteration, or repair of any village-owned facility from a sole source, the council must first make the written findings required by Florida Statutes § 255.04.

Sec. 2-184. - Cooperative procurement, piggybacking.

(a) Cooperative procurement. Unless otherwise prohibited by law or grant agreement terms, the procurement official is authorized to negotiate with other public procurement officials for the conduct of a joint procurement on behalf of each participating public agency where, in the judgment of the village manager, doing so would leverage the benefits of volume purchases, create clear delivery and/or supply chain advantages, and/or create a demonstrable and substantial reduction of administrative time and expense. Examples of cooperative procurement events can include joint solicitations or use of a third-party aggregator or broker.

(b) Piggybacking.

(1) In any agreement for the acquisition of goods or services between the village and a vendor which has resulted from a competitive solicitation process, such agreement may be utilized by other public agencies to acquire the same goods or services, on condition

that the contracting vendor consents to enter into a piggyback agreement with such other public agencies. In such instances, the village shall not be a party to such agreements.

(2) The procurement official is authorized to acquire goods or services by use of an existing agreement between a vendor and another public agency where such agreement has resulted from a competitive solicitation process. Purchases made in this manner should not substantially differ in specification, scope, quality or price from the terms of the initial agreement. The piggybacking agreement must be consistent with the parameters, requirements, and restrictions of the initial agreement. In the event the initial agreement provides for options to extend or renew, the village may exercise such rights irrespective of whether the original public agency exercises such rights.

Sec. 2-185. – Public records compliance.

Pursuant to Florida Statutes, Section 119.0701, in any agreement entered into by the village wherein the contractor is acting on behalf of the village, the contractor must:

- (a) Keep and maintain public records that ordinarily and necessarily would be required by the village in order to perform the service.
- (b) Provide the public with access to public records on the same terms and conditions that the village would provide the records and at a cost that does not exceed the cost provided in Florida Statutes, Chapter 119 or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.
- (d) Meet all requirements for retaining public records and transfer, at no cost, to the village all public records in possession of contractor upon termination of the agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the village in a format that is compatible with the village's information technology systems.

Sec. 2-186. – Trade secrets.

- (a) Florida law provides that trade secret information, as defined in Florida Statutes § 812.081(1)(c), is confidential and exempt from public records disclosure.
- (b) Upon receipt of a response to a procurement solicitation, the village will not be aware that a bid, proposal, or other response contains such information. Therefore, bidders, proposers or other persons or entities responding to village solicitations must specifically and clearly identify all portions of their responses which are believed to be a trade secret, as defined by the law, and must, as to each such designation, provide the basis upon which the designated information is a trade secret. The mere designation of an entire submission as

“confidential” will be insufficient to comply with this requirement. Absent some unusual justification, a bidder’s or proposer’s contract price shall not constitute a trade secret.

(c) While the village will, to the extent possible, cooperate in any court action a bidder, proposer or responder may bring against any third-party requesting to inspect and copy portions of a response asserted to be a trade secret, if a bidder, proposer or responder fails, prior to the submission of their materials to the village, to specifically and clearly designate information therein as a trade secret and to provide the supporting explanation for the designation, the right to assert the exemption may be lost, and the information may be subject to inspection and copying as otherwise provided for under Florida’s Public Records Act.

(d) In the event any record designated as a trade secret is requested under the Act, the procurement official will consult with the village attorney and, if the village attorney agrees with the designation, the village will assert the exemption and redact the relevant materials. If the village attorney disagrees with the designation, the bidder, proposer or responder may file an injunctive or declaratory judgment action and seek such emergency orders as desired to protect the information.

Sec. 2-187. Unauthorized purchases, ethical conduct, sanctions.

(a) *Prohibition.* Except as provided in this division, it shall be a violation of this division for any village officer, employee, or other person, to knowingly and willingly order the purchase of any goods, or make any contract for goods or services, sell, trade or dispose of material within the purview of this division in the name of or on behalf of the village, except as provided by policies of the council and any administrative procurement procedures promulgated by the village manager, and the village shall not be bound by any purchase order or contract made contrary to this division.

(b) *Ethical conduct and sanctions.* In addition to any sanctions provided for in the village’s personnel policies or sections of this division, any village employee who violates subsection (a) above, or any statute concerning ethical conduct in procurement may, when found by the village manager to have committed such violation, be required to forfeit all or any part of any accrued leave balances he/she may otherwise have as of the date the violation is confirmed. In determining whether such forfeiture shall be required, the manager shall consider the nature and severity of the offense, the relative financial or legal harm to the village, the employee’s prior disciplinary record, and whether the employee was in a managerial or special trust position.

Sec. 2-188. – Conflicts of interest.

(a) *Prohibiting contracts where conflicts are found to exist.* The village shall not engage in contracts with consultants or professionals whose prior record, work history, and experience indicate ongoing business relationships that may be substantially in conflict with the duties and services that will be required by the village.

(b) Standards and regulations for the determination of potential conflicting contractual obligations. The village manager or designee is authorized to develop standards and regulations for the prospective determination of potential conflicting contractual obligations that may impair the performance of the professionals or consultants solicited by the village. The standards and regulations shall set forth appropriate requirements based upon the nature and scope of the services that are to be procured and shall be narrowly tailored so as to not unduly restrict competition, while assuring the village of undivided loyalty and services of the highest quality. The standards and regulations may require, but shall not be limited to, the inclusion of the following in a request for proposals, invitation for bids, announcement or other solicitation or contract for professional or consulting services:

(1) An affidavit providing that the professional or consultant is not currently engaged or will not become engaged in any obligations, undertakings or contracts that will require the professional to maintain an adversarial role against the village or that will impair or influence the advice or recommendations provided to the village;

(2) The disclosure of all potentially conflicting contractual relationships and the full disclosure of contractual relationships deemed to raise a serious question of conflicts.

(c) Consequences for violation of ethical standards. In addition to any other penalty or consequence provided for in law or this division, any professional or consultant submitting false information to or on behalf of the village, disclosing or releasing information concerning an actual or planned procurement activity which information is deemed confidential, or is otherwise not known to the general public, or otherwise repeatedly failing to comply with the village's ethical standards and regulations, shall be deemed to be in violation of this division and shall be subject to prosecution, state ethics complaints, reporting to professional or licensing authorities, contract cancellation, suspension and/or debarment, as the village deems appropriate.

(d) Professional or consultant defined. Professional or consultant as used in this section shall be deemed to include those contractors who, as individuals or duly organized business entities, have been or will be retained by the village for the purpose of providing recommendations or advice related to planning level or policy level decisions, or who will be engaged in the collection of data or research that will provide the basis for such decisions or future plans and actions of the village, as well as those who will be retained to supervise and monitor the performance of contractors or subcontractors of any nature.

Sec. 2-189. Lobbying limitations.

After the issuance of any solicitation, or during renegotiation of an existing contract, no prospective offerors or their agents, representatives or persons acting at the request of such offerors shall contact, communicate with, or discuss, either in person, by phone, email or text message, any matter relating to the solicitation or the renegotiation with any village officers, agents or employees (including the village council and village manager) other than the purchasing agent designated in the solicitation, unless otherwise provided for in the solicitation or otherwise directed by the

designated purchasing agent or procurement official. This prohibition includes copying such persons on written communications with the purchasing agent, but does not apply to presentations made to evaluation committees or at a council meeting where the council is considering approval of a proposed contract. The prohibition ends upon execution of the final contract or when the solicitation has been canceled or the renegotiation efforts are terminated. Renegotiation will be deemed to have commenced upon vote of the council directing renegotiation or on issuance of a written notice from the procurement official to the existing contractor instituting a renegotiation process. Failure of businesses seeking to conduct business with the village to strictly adhere to this section will result in the offender's bid, proposal or response being disqualified from further consideration, and may also result in the suspension or debarment of the offending business.

Sec. 2-190. – Prohibition against award to certain persons or entities.

No person or business entity shall be awarded a contract by the village for the provision of commodities or services if that person or entity:

- (a) Has been convicted of bribery or attempting to bribe a public officer or employee of the village, or any other public entity, including but not limited to the Government of the United States, any state, or any local government authority in the United States; or
- (b) Has been convicted of a conspiracy or collusion among prospective offerors in restraint of freedom of competition, by agreement to offer a fixed price, or otherwise; or
- (c) Has been convicted of a violation of an environmental law that, in the reasonable opinion of the village manager, establishes reasonable grounds to believe the person or business entity will not conduct business in an environmentally responsible manner; or
- (d) Has made an admission of guilt of such conduct described in subsections (a), (b) or (c) above, which is a matter of record, but has not been prosecuted for such conduct, or has made an admission of guilt of such conduct, which is a matter of record, pursuant to formal prosecution, but which results in adjudication being withheld.

Sec. 2-191. – Protests.

- (a) *Purpose and intent.* The purpose of this section is to provide an expedient administrative remedy for those participating in the village's procurement process. The proceedings under this section are not intended to be, and shall not be interpreted as judicial or quasi-judicial, unless otherwise clearly specified. It is not the intent of the village to provide any rights to protesters not otherwise required by law. Rather, the village's intent in creating a process for administrative review of solicitation award protests is to allow for legal or procedural errors in the solicitation process to be raised for the benefit of the taxpayers. Successful participation in any protest review does not ensure an award of a contract, and the village expressly reserves all rights it has under law.
- (b) *Opportunity to protest.* Any actual bidder, proposer, or solicitation responder (protestor) who is aggrieved in connection with a notice of intent to award a contract, where such

grievance is asserted to be the result of a violation of the requirements of this procurement code or any applicable provision of law by the officers, agents, or employees of the village, or by the successful bidder, proposer or responding business, may file a protest with the procurement official. The protest process may only be used as a result of a formal solicitation. The process may not be used where the method of procurement is informal quote solicitations, or where a non-competitive procurement method such as piggybacking is used.

(c) Protest procedure and requirements.

(1) The protest shall be made in writing and filed with the village clerk by 4:00 p.m. on the fifth business day following the date of the electronic posting of the notice of intent to award or, if no notice of intent is issued, then following the date the protestor is informed of the award. A protest is considered filed when the village clerk is provided a copy of the protest by mail or courier service. A protest may not be sent via text or email. Failure to file a written protest within the time period specified shall constitute a waiver of the opportunity to protest.

(2) The written protest must be signed by an authorized officer of the protestor (sales agents or legal counsel are not authorized to sign protests), and shall identify the protesting party and the solicitation involved. Protests must include a specific detailed factual statement of the grounds on which the protest is based and shall cite the applicable statutes, laws, ordinances or other legal authorities which the protestor deems applicable to the grounds for the protest. Every basis for protest must be set forth in the protest. If a basis for protest is not included in the written protest, the protestor may not subsequently add the omitted basis to the protest. A protest which does not contain all of the content set forth above shall be deemed non-compliant and will not be processed.

(3) The protest shall not include challenges to the procedural solicitation requirements, chosen procurement method, the minimum qualifications, the scope of services sought, the evaluation criteria, the relative weight of the evaluation criteria, the formula specified for assigning points to the evaluation criteria. The protest may not be used as a vehicle to argue the protester's opinion regarding its qualifications or the qualifications of other responding vendors.

(4) The procurement process shall not be stayed during the protest process unless the procurement official, in his or her discretion, deems it to be in the best interests of the village to stay the process.

(d) Authority to resolve protests. The procurement official shall have the authority to settle and resolve a protest concerning the intended award of a contract. The procurement official will promptly investigate a timely, complete, and compliant protest, and issue a written decision within thirty (30) days of the date the protest is received, unless the complexity of the issues raised, or lack of resources require a longer period.

(e) Review of the procurement official's protest decision.

(1) Following the procurement official's written decision on the protest, the protestor may file a request for a review of the procurement agent's decision with the village manager. The request for review shall be made in writing and filed with the village clerk by 4:00 p.m. on the fifth business day following the procurement agent's transmission of the decision to the protestor.

(2) The request for review shall be solely limited to the protestor's argument that the procurement official's decision was not in accord with this division, village code, or applicable state or federal laws. Disagreements over disputed facts or judgment calls made by the procurement official are not proper subjects for a review request.

(3) The village manager will strive to issue a written decision within thirty (30) days of the date the request for review is received.

(f) Final decision. The decision of the village manager shall be final and conclusive as to the protest.

(g) Protest bond or security. The village council may, by separate resolution, establish a requirement for a protest bond. If a protest bond is required, the written protest must be accompanied by a security in the form of a protest bond (in a form and with such terms as approved by the village attorney) or cash in the amount set by the council. If the village manager determines that the protest does not require reversal of the village's initial decision, the village shall be entitled to recover the amount of the protest bond or security.

Sec. 2-192. – Authority to suspend or debar.

(a) After consulting with the village attorney and relevant village department head as needed, and after providing reasonable notice and reasonable opportunity for a person or entity being considered for suspension or debarment to be heard by the procurement official, the procurement official is authorized to suspend or debar a person or entity from consideration for award of contracts for cause. Cause shall include, but not be limited to, the following:

(1) Conviction for commission of a criminal offense relating to the obtaining or attempt to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract, or a civil or criminal final judgment of violation of state or federal whistleblower laws;

(2) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a village contractor;

(3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

- (4) Violation of contract provisions, as set forth below, of a character which is regarded by the procurement official to be so serious as to justify debarment action;
 - (5) Deliberate failure without good cause to perform in accordance with specifications and/or budget or within the time limit provided in the contract; or
 - (6) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
 - (7) A documented history of significant deviation from contract specifications, engineering standards, design or material requirements or safety regulations, where such history has first been presented to the contractor by the village, and who thereafter continues to engage in such deviations;
 - (8) Any other cause the procurement official determines to be so serious and compelling as to affect responsibility as a village contractor, including debarment by another governmental entity for any cause listed in this section or provided for in general law; and
 - (9) For violation of all applicable ethics standards, including the ethical standards set forth in this division, Florida Statutes Chapter 112, or in relevant grant funding requirements.
- (b) Suspensions shall not exceed twelve (12) months per violation. Debarments shall not exceed five (5) years per violation.
- (c) Suspension or debarment may apply to all contracting opportunities, or may be limited to certain types or categories of contracts, and likewise may be directed only to one or more distinct operating divisions or units of the suspended or debarred person or entity, depending on the nature and severity of the underlying facts supporting the action.
- (d) Suspension or debarment also may be applied to any person or entity controlled by or affiliated with any suspended or debarred person or entity if the relationship or affiliation is such that, in the reasonable opinion of the procurement official, the person or entity, by reason of the relationship with the suspended or debarred person or entity, is likely not to conduct business in a responsible or lawful manner, or if the suspended or debarred person or entity is reasonably likely to benefit from contracts with such controlled or affiliated persons or entities. Factors the procurement official may consider in making such decisions include ownership interests, common board members, officers, facilities or employees, and existing family or contractual relationships. The procurement official may, in lieu of suspending or debarring such affiliated persons or entities, develop restrictions or special conditions the affiliated persons or entities must agree to in order to conduct business with the village during the suspension or debarment period. To the extent the procurement official exercises the right to suspend or debar affiliated persons or entities under this

subsection, he/she must provide those separate affiliates with the same notice and opportunity to be heard as is required in subsection (a) above.

Sec. 2-193. – Procedures related to suspension, debarment and reinstatement.

- (a) Notice of intent. When the procurement official is considering imposing a suspension or debarment, he/she shall first provide a written notice setting forth the facts and circumstances supporting the proposed action, and setting a deadline by which the person or entity must submit a response. The response must, at a minimum, include detailed responses to the facts and circumstances set forth in the notice, copies of all relevant documents, and citation to any legal authorities or other cases the person or entity wants to have considered by the procurement official. Failure to timely file a response shall result in the procurement official's notice of intent to become final on the date of the deadline (or any extension thereof) set forth in the notice.
- (b) Opportunity to be heard. In addition to the opportunity to submit a written response, if, after receipt of the response, the procurement official determines that it would be helpful for a meeting on the matter, or if a meeting is requested by the person or entity under consideration for suspension or debarment, then the procurement official shall conduct a meeting to listen to any presentation the person or entity wishes to make. No meeting request may be made by a person or entity under consideration for suspension or debarment unless a timely written response as provided for in subdivision (a) above has first been filed.
- (c) Final determination. After considering the written response, and any presentation made during a subsequent meeting, the procurement official shall make a written decision to either withdraw the notice of intent, or to debar or suspend the person or entity. The final decision shall state the factual and legal reasons for the action taken and the term of the suspension or debarment.
- (d) Review of suspension or debarment. Final notices of suspension or debarment shall be final and binding unless the debarred or suspended person or entity, within ten (10) calendar days of the decision, files with the village clerk a written notice to the village manager requesting review. Upon receipt of a timely review request, the manager may, in her or his discretion, request a written response from relevant village staff or other relevant persons or entities, schedule the matter for an in person or video conference discussion, or refer the matter to the village's special magistrate to consider. In any review of a final determination, the review shall be limited to determining whether there was factual support for the decision taken, that the decision does not violate any statute or ordinance, and that all required notices and process were provided by village staff. Neither side may present any new evidence, issue or legal argument not first presented to the procurement official.
- (e) Reinstatement. The procurement official shall have the authority to reinstate any person or entity under an existing suspension or debarment period. To request reinstatement, the person or entity must submit to the village clerk a written request, which shall, at a minimum, include all relevant facts and documentation which the person or entity contends

supports the early termination of the suspension or debarment. Relevant factors include, but are not limited to, demonstrated rehabilitation, a change in ownership or control to innocent owners, restitution payments, subsequent court rulings, changes in the law, or where, in the procurement official's sole judgment, the village's interests would be adequately protected, and the person or entity to be reinstated is not likely to again engage in similar conduct. The procurement official may also grant limited reinstatement to respond to emergency contracting needs. As a condition of reinstatement, the procurement official may limit the nature and scope of contractual undertakings that must be satisfactorily completed before seeking additional contracts from the village.

- (f) Copies of all suspension, debarment and reinstatement decisions shall be maintained by the procurement official's office and posted in an appropriate area of the procurement page of the village's website.
- (g) The village manager is authorized to develop supplemental administrative procedures and forms not inconsistent with this division to facilitate implementation of the procedures set forth in this section.

~~Sec. 2-176. -- Purchasing limitations; competitive bidding.~~

- ~~(a) Purchases less than \$10,000.00. Purchases of, or contracts for materials, supplies, equipment, improvements or services for which funds are provided in the budget, where the total amount to be expended is not in excess of \$10,000.00 may be made or entered into by the Village Manager without submittal to the Village Council and without competitive bidding. Single purchases or contracts in excess of \$10,000.00 shall not be broken down to amounts less than \$10,000.00 to avoid the requirements of this section.~~
- ~~(b) Purchases more than \$10,000.00 but less than \$50,000.00. Purchases of or contracts for materials, supplies, and equipment, improvements or services for which funds are provided in the budget, where the total amount to be expended is in excess of \$10,000.00, but which do not exceed \$50,000.00, may be made or entered into by the Village Manager without submittal to the Village Council, but shall require compliance with the competitive bidding requirements set forth in Section 2-177. Single purchases or contracts in excess of \$10,000.00 shall not be broken down to amounts less than \$10,000.00 to avoid the requirements of this section.~~
- ~~(c) Purchases in excess of \$50,000.00. The Village Council shall approve all purchases of or contracts for materials, supplies, equipment, public improvements or services where the total amount to be expended is more than \$50,000.00.~~
- ~~(d) The Village Manager may not purchase or contract for any item or service which exceeds any budget appropriation until such a time the Village Council amends the budget to increase the appropriation to the applicable level.~~

~~Sec. 2-177. -- Competitive bidding procedure.~~

- ~~(a) Whenever competitive bidding is required by this division, the Village Manager shall direct that bid proposals which provide specifications for the purchase or contract be prepared.~~
- ~~(b) The Village Manager shall solicit sealed bids from at least three persons or entities engaged in the business of furnishing such materials, supplies, equipment and public improvements or rendering such services.~~
- ~~(c) The Village Manager may publish a public invitation to bid.~~
- ~~(d) Bids shall be awarded to the lowest, most responsive, responsible bidder, as determined by the Village Council and/or the Village Manager, as the case may be, subject to the right of the Village to reject any and all bids, to waive any irregularity in the bids or bidding procedures and subject also to the right of the Village to award bids and contracts to bidders other than the low bidder.~~

~~Sec. 2-178. -- Bid opening procedure; awarding of bids.~~

- ~~(a) Sealed bids shall be opened by the Village Manager or his appointed representative and recorded by the Village Manager or his representative on the date and time specified in the bid proposal.~~
- ~~(b) Whenever required by the bid proposal, all bid bonds, cash, insurance, checks or other security accompanying the bid shall be received and maintained for safekeeping by the Village Manager. The Village Manager shall be responsible for the return of the bid bonds, cash, insurance, checks or other security of unsuccessful bidders.~~
- ~~(c) Upon completion of the bid opening and reading, all bids received will be deposited with the Village Manager for tabulation and/or recommendation to the Village Council.~~
- ~~(d) Upon submission of the bid tabulation and recommendation to the Village Manager or Village Council, as the case may be, the Village Manager or the Village Council shall either accept, reject or refer for additional review the bid tabulation and recommendation.~~

~~Sec. 2-179. -- Waiver of competitive bidding procedures.~~

~~The Village Council may, by majority vote, waive the competitive bidding procedures outlined in this article if the Village Council determines that it is impractical to do so.~~

~~Sec. 2-180. -- Governmental contracts.~~

~~The Village Manager is hereby authorized to enter into bids or contracts entered into by other governmental authorities, provided that the governmental authority has followed a competitive bidding procedure leading to the award of the bid or contract in question which is substantially similar to the competitive bidding procedure outlined in this article.~~

~~Sec. 2-181. -- Exemptions from competitive bidding. -----~~

~~The following shall be exempt from the competitive bidding procedures outlined in this article:~~

~~(1) Transactions described in Section 2-176(a).~~

~~(2) Contracts for professional services.~~

~~(3) Other contracts as provided by State Law.~~

Section 2. For purposes of codification of any existing section of the Estero Village Code herein amended, words **underlined** represent additions to original text, words **~~stricken~~** are deletions from the original text, and words neither underlined nor stricken remain unchanged.

Section 3. If any section, subsection, sentence, clause, provision or word of this Ordinance is held unconstitutional or otherwise legally invalid, same shall be severable and the remainder of this Ordinance shall not be affected by such invalidity, such that any remainder of the Ordinance shall withstand any severed provision, as the Village Council would have adopted the Ordinance and its regulatory scheme even absent the invalid part.

Section 4. The Codifier shall codify the substantive amendments to the Estero Village Code contained in Section 1 of this Ordinance as provided for therein, and shall not codify the exordial clauses nor any other sections not designated for codification.

Section 5. Pursuant to Florida Statutes § 166.041(4)(a), prior to the date the public notice of the public hearing for this Ordinance was published, the Village prepared and posted on its website a business impact estimate which included: a) a summary of the Ordinance, a statement of the public purpose to be served by the Ordinance, b) an estimate of the direct economic impact of the Ordinance on private, for-profit businesses in the Village, c) an estimate of direct compliance costs that businesses may reasonably incur due to the Ordinance, d) identification of any new charge or fee on businesses created by the Ordinance or for which businesses will be financially

responsible, e) an estimate of the Village’s regulatory costs and of revenues from any new charges or fees imposed on businesses to cover such costs, and f) a good faith estimate of the number of businesses likely to be impacted by the Ordinance.

Section 6. Pursuant to Florida Statutes § 166.041(4), this Ordinance shall take effect immediately upon adoption.

ADOPTED ON FIRST READING by the Village Council of the Village of Estero, Florida on the ___ day of _____, 2024.

ADOPTED ON SECOND AND FINAL READING by the Village Council of the Village of Estero, Florida on the ___ day of _____, 2024.

VILLAGE OF ESTERO, FLORIDA

Attest:

By: _____
Jon McLain, Mayor

By: _____
Carol Sacco, Village Clerk