

ORDINANCE NO. 2013-2

**AN ORDINANCE
AMENDING CHAPTER 115 OF THE CODIFIED ORDINANCES
OF THE VILLAGE OF WAITE HILL, OHIO, TO PROVIDE
REGULATIONS FOR VILLAGE CONTRACTS AND THE
ACQUISITION AND DISPOSITION OF VILLAGE PROPERTY.**

WHEREAS, the State of Ohio made significant changes to the general law regarding contracts by public bodies; and

WHEREAS, this Council desires to amend its ordinances related to public contracts to incorporate certain changes in the state law or choose a different procedure than that which is dictated by state law; and

WHEREAS, Council possesses the authority to provide for such procedures pursuant to Article XIII, Section 13.1(c), of the Village Charter which provides:

The Council may make provision by ordinance for:

(c) making, advertising, awarding and execution of contracts and of alterations or modifications of contracts: ***

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF WAITE HILL, LAKE COUNTY, STATE OF OHIO:

SECTION 1. That existing Chapter 115.01, Contract Procedure, of the Codified Ordinances of Waite Hill, Ohio, be and the same hereby is amended to read as follows:

**“CHAPTER 115
CONTRACTS AND PROPERTY**

115.01 CONTRACT PROCEDURES.

(a) Proper Authorization. No contract, or an amendment or a change order to a contract, shall be enforceable against the Village unless it has been duly authorized, as provided for herein, and executed in the name of the Village by the Mayor and bears the signature of the Clerk-Treasurer of the Village, to the extent required by the Ohio Revised Code, certifying the availability and appropriation of funds for the contract or any amendment or change order to the contract.

(b) Authorization to Investigate Costs. The Mayor shall have the authority to investigate costs relative to any proposed public improvement or any proposed purchase or lease of equipment, supplies, services or materials.

(c) Authorization for Design and/or Specifications. In the event the investigation or a good faith estimate by the Mayor indicates that a proposed project, purchase, lease or provision of services will exceed fifty thousand dollars (\$50,000), the approval of Council by a motion and majority vote is necessary to authorize the expenditure of funds for the design and/or specification thereof.

(d) Public Bidding. Except as provided in subsection (e), any contract which: (i) provides for an expenditure in excess of fifty thousand dollars (\$50,000); and, (ii) is for the construction of a public improvement or the purchase or lease of equipment, supplies or materials, or the provision of a service to the Village, shall be authorized only upon a motion, adopted by a majority vote of the members of Council, to award the contract to the lowest and best bidder after advertising for a time and in a manner that the Village determines shall be effective in notifying sufficient number of bidders as determined by the Village in its discretion. By way of example, and not as a limitation, the advertisement may be in a newspaper of general circulation in the Village, or publication on the Village's website, or both.

(e) Exceptions to Public Bidding. Contracts estimated to exceed fifty thousand dollars (\$50,000) and that meet the following conditions are not subject to competitive bidding and may be approved by Council, in its discretion, by motion and a majority vote of its members:

- (1) Personal or Professional Services. Except as provided in Section 115.02, contracts that involve personal services requiring unique and special skills, as determined by Council in its discretion, or professional services;
- (2) Coop Programs. Contracts authorized pursuant to the Ohio Department of Administrative Services Cooperative Purchasing Program, or any other similar program ("cooperative program"), or goods, materials or equipment which are available under a cooperative program but are available to the Village upon equivalent or better conditions and specifications, but at a lower price than is available, under a cooperative program;
- (3) Design Build. The proposed purchase is a Design-Build Construction project let under the procedures established by Council;
- (4) Construction-Manager-at-Risk. The proposed purchase is a Construction-Manager-at-Risk project let under the procedures established by Council;
- (5) Single source. The proposed purchase is for something that, as determined at the sole-discretion of the Council, is only available from a single source;
- (6) No Bids/Rejected Bids. If no bids are received after the advertisements or other solicitations required by this Ordinance, or if all bids are rejected, the Mayor shall either seek new, competitive bids, or seek to obtain the goods and/or services for which funds have been appropriated without re-bidding, whichever is deemed to be in the best interest of the Village;
- (7) Used Equipment. The proposed purchase is for used equipment;
- (8) Utility. The proposed purchase is for utilities such as gas, water, electricity, or telephone service for which funds have been appropriated; notwithstanding other provisions of this section, Council shall authorize such purchases pursuant to an ordinance;
- (9) Intergovernmental Purchases. The proposed purchase is from or with another political subdivision, the Ohio State Government, or the United States Government;
- (10) Reverse Auction. The proposed purchase is obtained through Reverse Auction;
- (11) Best Interest Waiver. Council may, at its sole-discretion, waive the public bidding requirement if it determines that doing so is in the best interest of the Village.

(f) Mayor's Discretionary Spending Authority. The Mayor may expend up to twenty-five thousand dollars (\$25,000), in accordance with the Village's current appropriations, for any public improvement, or the purchase or lease of equipment, materials and supplies, or to obtain professional or personal services or for any other lawful purpose. The Mayor shall notify Council of such expenditure at the next meeting of Council.

(g) Mayor's Conditional Spending Authority. The Mayor may make an expenditure which is between twenty-five thousand dollars (\$25,000) and fifty thousand dollars (\$50,000), upon the prior approval of four members of Council, which approval may be made in writing or by a motion and vote at any regular or special meeting of Council. Authorization provided by Council in writing shall only be effective if not fewer than five members of Council are provided with a written explanation of the amount and purpose of the proposed expenditure, and the reason for the necessity of action prior to the next meeting of Council. Further, all written authorizations for such expenditures shall be announced at the next regular or special meeting of Council by the Mayor, including a report of which members of Council were notified in writing and the reason that immediate action was necessary.

(h) Real Estate. The Mayor may purchase, sell or lease real property valued below twenty-five thousand dollars (\$25,000), provided that a current appropriation supports any such purchase or lease of real estate and provided that Council is notified of such purchase, sale or lease at the time of the next Council meeting (including any work session). The Council may, by ordinance, provide for the purchase, sale or lease of real property, valued at or in excess of twenty-five thousand dollars (\$25,000), with or without public bidding, on such terms and for such value as Council, in the exercise of its discretion, may deem reasonable and in the best interest of the Village.

(i) Time Between Notice of Public Bidding and Bid Opening. There shall be no minimum time requirement between the publishing of the notice of public bidding and the opening of the bids.

(j) Estimate of Cost. The Village shall disclose the estimated cost of the project when it determines that doing so is in its best interest.

(k) Time for Award of Bids. In the notice of public bidding required for the bid solicitation, the Village shall establish the time limit for awarding a contract. Submitted bids may not be withdrawn during this period. The Village's failure to award and execute the contract within this period invalidates the entire bid proceedings and all bids submitted, unless the time for awarding and executing the contract is extended by mutual consent of the Village and the bidder whose bid the Village accepts and with respect to whom the Village subsequently awards and executes a contract. Such an agreed extension shall not entitle the contractor to delay costs.

(l) Withdrawal of Bids. Bidders may withdraw bids pursuant Section 9.31 of the Ohio Revised Code; such a withdrawal shall not modify the Village's right to award to the next lowest and best bidder.

(m) Bids in Excess of Estimate. The Village may award contracts regardless of the value of the bid as compared to the value of the estimated cost.

(n) Notice to Proceed. The contractor is not entitled to a notice to proceed with the work by the Village or its representative upon execution of the contract. The Village shall either issue the notice to proceed at a time that it determines is in its best interest, or it shall terminate the contract for its convenience.

(o) Retainage. Retainage shall be withheld from payments to the contractor at the rate set forth in the Owner/Contractor agreement. Retainage shall not be held in an escrow account. Retainage shall be released at such times and in such amounts as the Village determines to be equitable.

(p) General Contractor Permitted. The Village may advertise and award a single contract for constructing and managing an entire public improvement project.

(q) Extension of Bid Opening. The Village may issue an addendum or addenda modifying the plans and specifications for the project or the time for the bid opening at any time prior to the bid opening. If an addendum is issued within forty-eight hours before the bid opening, the bid opening shall be extended by at least three days.

(r) Combined Statement of Material and Labor. The Village at its discretion may accept a combined statement of labor and materials from bidders.

(s) Bonus and Liquidated Damages for Time. The Village may offer a bonus for completion of a contract prior to a specified date or may exact liquidated damages for each day of delay beyond a specified date, or both. The amounts of the bonus and liquidated damages may be different.

115.02 PROFESSIONAL DESIGN SERVICES; PUBLIC WORKS.

(a) Definitions.

(1) "Professional Design Firm" means any person, firm or corporation legally engaged in rendering professional design services.

(2) "Professional Design Services" means services within the scope of practice of an architect or landscape architect registered under Chapter 4703 of the Revised Code or a professional engineer or surveyor registered under Chapter 4733 of the Revised Code.

(3) "Public Works Contract" means any contract awarded by the Village for the construction, alteration or repair of any public building, public highway or other public work.

(4) "Design-build Services" means services that form an integrated delivery system for which a person is responsible to a public authority for both the design and construction, demolition, alteration, repair or reconstruction of a public improvement.

(b) The Village is hereby exempted from following the procedures set forth in Sections 153.65 through 153.73 of the Ohio Revised Code for contracting for Professional Design Services or Design-build Services.

(c) The Mayor may engage Professional Design Services to design a Public Works Contract, when the amount of the Professional Design Services is less than twenty-five thousand dollars (\$25,000). The Mayor may determine the Professional Design Firm's qualifications and abilities in such manner as the Mayor deems most suitable.

(d) In the event that the Professional Design Services for a Public Works Contract will equal or exceed twenty-five thousand dollars (\$25,000), the Council shall have the authority, by motion passed by majority vote, to authorize the Mayor to sign such Professional Design Services contract. Council may satisfy itself as to the professional design firm's qualifications and abilities in the manner it deems most suitable.

115.03 SURPLUS PROPERTY.

Except for property in the possession of the Police Department, which is subject to other provisions of law, all personal property owned by the Village and not needed for municipal purposes shall be disposed of as follows:


- (a) Council shall, by motion passed by majority vote, declare all or any portion of such property to be surplus and not needed for Village purposes.
- (b) Such property may be sold, donated, recycled or otherwise disposed-of in such manner and under such conditions as Council by motion, passed by majority vote, shall determine.”

SECTION 2. That existing Chapter 115 of the Codified Ordinances of Waite Hill, Ohio, and any ordinances in conflict herewith, be and are hereby repealed.

SECTION 3. That actions of this Council concerning and relating to the passage of this legislation were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were held in compliance with all legal requirements including Chapter 107 of the Codified Ordinances of the Village of Waite Hill.

SECTION 4. That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

PASSED: January 14, 2013



Council President

Submitted to the Mayor
for his approval on this
14 day of January 14, 2013


Approved by the Mayor

ATTEST:

January 14, 2013



Clerk-Treasurer



Mayor