

ORDINANCE NO. 2016-007

AN ORDINANCE OF THE COMMISSION OF NORTH BAY VILLAGE, FLORIDA, AMENDING CHAPTER 36 OF THE VILLAGE CODE ENTITLED “PROCUREMENT REQUIREMENTS” BY AMENDING SECTION 36.25 TO PROHIBIT THE PROCUREMENT OF GOODS OR SERVICES FROM, OR OTHERWISE CONTRACT WITH, A BUSINESS THAT ENGAGES IN THE BOYCOTT OF A NATION OR COUNTRY, OR A BUSINESS THAT BLACKLISTS OR OTHERWISE REFUSES TO DEAL WITH A PERSON OR ENTITY BASED ON RACE, COLOR, RELIGION, GENDER, SEXUAL ORIENTATION, OR NATIONAL ORIGIN; PROVIDING FOR CONFLICT, CODIFICATION, SEVERABILITY; AND AN EFFECTIVE DATE. *(INTRODUCED BY COMMISSIONER RICHARD CHERVONY)*

WHEREAS, the Commission of North Bay Village, Florida, strongly opposes the practice of economic discrimination and boycotts of nations or countries, or of persons and/or entities on the basis of race, color, religion, gender, sexual orientation, or national origin; and

WHEREAS, the Commission of North Bay Village desires to protect the interests of its citizens by ensuring that the Village will not be a party to such discriminatory business practices and boycotts, and that procurement contracts are protected from the practical and legal instability inherent in agreements with parties that support or engage in such discriminatory practices.

NOW, THEREFORE, BE IT ENACTED BY THE COMMISSION OF NORTH BAY VILLAGE, FLORIDA, AS FOLLOWS:

Section 1. Village Code Amended. Section 36.25 of the North Bay Village Code is amended to read as follows¹:

§ 36.25 - Procurement requirements.

(A) *Purpose.* The purpose of this procurement code is to maximize the purchasing value of public funds in the procurement of goods and services, to provide safeguards for maintaining a procurement system of quality and integrity, and to provide for the fair and equitable treatment of all persons involved in purchasing by North Bay Village.

¹ Additions to the text are shown in underline. Deletions to the text are shown in ~~strikethrough~~.
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This Code applies to contracts for the purchase of goods and services, and, to the maximum extent feasible, to the granting of franchises after the effective date of the adopting ordinance. When procurement involves the expenditure of federal, State or county funds, the procurement shall be conducted in accordance with any mandatory applicable law and grant contract terms. Nothing in this code shall prevent the Village from complying with the terms and conditions of any grant, gift, or bequest that is consistent with applicable law.

- (B) *Responsibilities of the Village Manager.* The Village Manager shall act as the Village's purchasing agent and have exclusive control over the purchase of all goods and services, and approve all vouchers for the payment of goods and services.

The Village Manager shall be responsible for the development of procurement specifications, contract administration, inspection of vendor books and records, and inspection and acceptance of goods and services.

The Village Manager shall also be responsible for the management and disposal of surplus property. The Village Manager may delegate responsibility for the administration of this Code as he or she deems necessary.

- (C) *Methods of procurement.* All contracts of the Village shall be awarded by competitive sealed bidding except as provided by paragraph (E) (competitive sealed proposals), paragraph (F) (contracting for designated professional services), paragraph (G) (small purchases), paragraph (H) (sole source procurement), paragraph (I) (emergency procurement) and (J) ("Piggy back" purchases).

- (D) *Competitive sealed bidding.*

- (1) *Invitation to bid.* An invitation to bid shall be issued and shall include specifications and all material contract terms and conditions.
- (2) *Public notice.* Adequate public notice of the invitation to bid shall be given a minimum of 14 calendar days prior to the date set for the opening of bids, or as otherwise provided by law. The notice shall be published in a newspaper of general circulation and posted on the official public notice bulletin board in Village Hall. The invitation to bid and notice shall state the place, date and time of bid opening.
- (3) *Bid opening.* Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The amount of each bid, and such other relevant information as the Village Manager deems appropriate, together with the name of each bidder shall be recorded. The record and each bid shall be open to public inspection.
- (4) *Bid acceptance and bid evaluation.* Bids shall be accepted without alteration or correction, except as authorized in this Code. Bids shall be evaluated based on the requirements set forth in the invitation to bid, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose.

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Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. The invitation to bid shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluations that are not set forth in the invitation for bids.

- (5) *Correction or withdrawal of bids.* Correction or withdrawal of inadvertently erroneous bids before bid opening is permitted. Mistakes discovered before bid opening may be modified or withdrawn by written or electronic notice received in the office designated in the invitation to bid prior to the time set for bid opening. After bid opening, no changes in bid prices or other provisions of bids shall be permitted. A low bidder alleging a clerical mistake may be permitted to withdraw its bid if the mistake is clearly evident on the face of the bid document and the bidder submits convincing evidence that a mistake was made.
- (6) *Award.* The contract shall be awarded with reasonable promptness by appropriate written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation to bid.
- (7) *Bonds.*
 - (a) *Construction contracts greater than \$50,000.00.* For construction contracts exceeding \$50,000.00, contractors shall submit the following with the bid documents:
 1. A bid guarantee equal to five percent of the bid price;
 2. A performance bond for 100 percent of the contract price; and
 3. A payment bond for 100 percent of the contract price.
 - (b) *All other contracts.* The Village Manager may require any or all of the three bonds or guarantees listed above. The bid specification shall include the amount and type of bond(s) or guarantees that are required.

(E) *Competitive sealed proposals.*

- (1) *Conditions for use.* When the Village Manager determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the Village, a contract may be entered into by use of the competitive sealed proposals method. An adequate number of sources shall be solicited.
- (2) *Request for proposals.* Proposals shall be solicited through a request for proposals (RFP) or similar method (RFQ, RFLI, etc.), all of which shall be referred to in this ordinance as RFPs. The intent being that the Village Manager shall choose the most appropriate alternative. The RFP shall clearly identify the relative importance of price and other evaluation factors, and the weight given to each factor. A process for fairly and thoroughly evaluating the proposals shall be established before the solicitation is issued.
- (3) *Public notice.* Adequate public notice of the request for proposals shall be given in the same manner as provided in subparagraph (D)(2) (competitive sealed bidding, public notice) except the period may be longer or shorter if the Village Additions shown by Underlining and deletion shown by ~~strikethrough~~.

Manager so states in the specifications or as otherwise required by law. Except when required by state law, the Village may, in lieu of the newspaper advertisement required by this section, publish the public notice on the Village web site and the official bulletin board in Village Hall.

- (4) *Proposal opening.* Competitive sealed proposals shall be publicly opened by the Village Clerk or designee.
 - (5) *Negotiations.* The request for proposals may provide that negotiations be conducted with responsible offerors who submit proposals determined to be reasonably acceptable for selection for award for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting negotiations, there shall be no disclosure of the identity of competing offerors or of any information derived from proposals submitted by competing offerors until award is finalized.
 - (6) *Award.* Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the Village, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the written basis on which the award is made.
- (F) *Contracting for designated professional services.*
- (1) *Authority.* In procuring architectural, engineering, landscape architectural, surveyor services, or other professional services as defined in F.S. § 287.055(2). The Village Manager shall comply with the requirements of the Consultant's Competitive Negotiation Act, (CCNA), F.S. § 287.055 or other Florida Statutes that require the use of the CCNA requirements.
- (G) *Small purchases.*
- (1) *General.* Any contract not exceeding \$15,000.00 over the life of the contract may be made in accordance with the small purchase procedures authorized in this section. Contract requirements shall not be artificially divided so as to constitute a small purchase under this section.
 - (2) *Small purchases of \$5,000.00 or less.* The Village Manager shall have the discretion to purchase goods and services that do not exceed \$5,000.00 in the manner he or she deems most appropriate.
 - (3) *Small purchases over \$5,000.00.* The Village Manager shall purchase goods and services in excess of \$5,000.00 but that do not exceed \$15,000.00, upon obtaining price quotations from no less than three businesses, or, in the alternative, from a supplier that is on the current approved vendors list of, or who has been selected in a competitive process within the last 24-month period by another governmental entity or public agency in the State of Florida. Award shall be made to the business offering the lowest acceptable quotation.

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The names of the businesses submitting quotations, and the date and amount of each quotation, shall be recorded in writing and maintained as a public record.

- (H) *Sole source procurement.* A contract may be awarded without competition when the Village Manager determines in writing, after conducting a good faith review of available sources, that there is only one source for the required supply, service, or construction item. The Village Manager shall conduct negotiations, as appropriate, as to price, delivery, and terms. A record of sole source procurements shall be maintained as a written public record and shall list each contractor's name, the amount and type of each contract.
- (I) *Emergency procurements.* Notwithstanding any other provisions of this ordinance, the Village Manager may make emergency procurements of goods and services when there exists a threat to public health, welfare, or safety; provided that such emergency procurements shall be made with such competition as is practicable under the circumstances. The Village Manager may also make emergency procurements of design, engineering, construction management and construction services as provided by F.S. § 255.20. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the written contract file. As soon as practicable, a record of each emergency procurement shall be made and shall set forth the contractor's name, the amount and type of the contract, and a listing of the item(s) procured under the contract.
- (J) *"Piggy back" purchases.* A contract may be awarded without sealed bidding upon a determination by the Village Manager that the purchase meets acceptability criteria and the supplier has been selected in a competitive process within the last 36-month period by another governmental entity or public agency. Suppliers or contractors within the State of Florida shall be considered first.
- (K) *Not for profit government related organizations.* The Village may enter into a contract for goods or services from a governmental related professional organization without the requirement for the competitive bidding process. Organizations that the Village can contract for goods or services include (but are not limited to) the Federal, State and County League of Cities, the state and national professional organizations of the City Managers, City Attorneys, City Clerks, City Planners and Finance Officers Associations, and Florida Sheriffs' Association.
- (L) *Best interest of Village.* The Village Commission may award a contract without sealed bidding upon a finding that the process of competitive bidding and competitive proposals is not in the best interest of the Village.
- (M) *Other exceptions.* With the approval of the Village Manager, the following supplies and services may be procured without competition, subject to the requirements of this Code:
 - (1) Servicing or warranty work of equipment by an authorized dealer or representative when work by another party would void a warrantee or guarantee;
 - (2) Renewal of software licenses;
 - (3) Used equipment and machinery;

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- (4) Advertising in newspapers, periodicals and related publications, television, radio and billboards;
- (5) Commodities available only from the federal government, the State of Florida or Florida local governments;
- (6) Fees, including medical fees and physician fees;
- (7) Freight, storage charges, and demurrage;
- (8) Licenses;
- (9) Membership in professional, trade and other similar associations;
- (10) Postage;
- (11) Published books, manuals, maps, periodicals, films, technical pamphlets, CDs, DVDs, and copyrighted educational aids for use in libraries and for other informational and instructional purposes in instances in which other applicable law does not provide a restrictive means for the acquisition of them;
- (12) Real property;
- (13) Services of visiting speakers, lecturers, facilitators, and performing artists;
- (14) Utility services, the rates for which are subject to regulation by a county, state or federal regulatory agency.

(N) *Miscellaneous provisions.*

- (1) If less than three responsive bids or proposals in response to a bid or an RFP or other competitive sealed proposal are received, the Village Manager may either: (a) reject the bids or proposals, change the bid specifications, evaluation criteria, or other material terms and conditions and re-solicit the procurement; or, (b) negotiate the best terms and conditions with the responsive bidders or proposers. The Village Manager shall document the reasons that negotiating with the responsive bidders or proposers is in the best interest of the Village in lieu of re-soliciting competitive sealed bids or proposals.
- (2) The Village Manager may create a selection committee to evaluate proposers' statements of qualifications, responses to RFPs, design-build proposals and franchise proposals. Members of the selection committee may be department heads or employees of departments charged with responsibility relating to the procurement, planning, building and engineering consultants to the Village, and other persons who possess the professional or business expertise to evaluate the qualifications and proposals.

The selection committee will evaluate and rank proposers, and make a written report and recommendation to the Village manager.

- (O) *Cancellation of invitations for bids or requests for proposals.* An invitation for bids, a request for proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part as may be specified in the solicitation, when it is for good cause and in the best interests of the Village. The reasons for

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cancellation shall be made part of the purchasing file. Each solicitation issued by the Village shall state that the solicitation may be cancelled and that any bid or proposal may be rejected in whole or in part for good cause when in the best interests of the Village. Notice of cancellation shall be sent to all businesses solicited. The notice shall identify the solicitation, explain the reason for cancellation and, where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any further procurement of similar items. Reasons for rejection shall be provided upon request to any unsuccessful bidders or offerors.

(P) *Determination of nonresponsibility.* If a bidder or offeror who otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility, setting forth the basis of the finding, shall be prepared by the Village Manager. The unreasonable failure of a bidder or offeror to supply promptly information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility. A copy of the determination shall be sent promptly to the nonresponsible bidder or offeror. The final determination shall be made part of the purchasing file and be made a public record.

(Q) *Contract clauses and their administration.*

(1) *Contract clauses.* All contracts for goods and services shall include provisions necessary to define the responsibilities and rights of the parties to the contract. Contract clauses may address, among others, the following subjects:

- (a) The unilateral right of the Village to order in writing changes in the work within the scope of the contract;
- (b) The unilateral right of the Village to order in writing temporary stopping of the work or delaying performance that does not alter the scope of the contract;
- (c) Variations occurring between estimated quantities of work in contract and actual quantities;
- (d) Defective pricing;
- (e) Liquidated damages;
- (f) No damages for delay by the Village;
- (g) Specified excuses for delay or nonperformance;
- (h) Termination of the contract for default;
- (i) Termination of the contract due to unavailability of funds in succeeding fiscal periods;
- (j) Termination of the contract in whole or in part for the convenience of the Village;
- (k) Suspension of work on a construction project ordered by the Village; and
- (l) Site conditions differing from those indicated in the contract, or ordinarily encountered, except that a differing site conditions clause need not be included in a contract:

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- (i) When the contract is negotiated;
 - (ii) When the contractor provides the site or design; or
 - (iii) When the parties have otherwise agreed with respect to the risk of differing site conditions.
- (2) *Standard clauses and their modification.* The Village Manager, after consultation with the Village Attorney, may establish standard contract clauses for use in Village contracts.
- (R) *Contract administration.* A contract administration system designed to insure that a contractor is performing in accordance with the solicitation under which the contract was awarded, and the terms and conditions of the contract, shall be maintained by the Village Manager.
- (S) *Village procurement records.*
 - (1) *Purchasing file.* All determinations and other written records pertaining to the solicitation, award, or performance of a contract shall be maintained for the Village in a purchasing file by the Village Clerk.
 - (2) *Retention of procurement records.* All procurement records shall be retained and disposed of by the Village in accordance with the records retention guidelines and schedules approved by the Florida Department of State.
- (T) *Bid protests.*
 - (1) *Right to protest.* Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Village Commission. Protestors must seek resolution of their complaints initially with the Village Manager. A protest of a solicitation of an invitation to bid or request for proposals shall be submitted in writing to the Village Manager prior to the opening of bids or the closing date of proposals, unless the aggrieved person did not know and could not have known of the facts giving rise to such protest prior to bid opening or the closing date for proposals. A protest of an award of a contract, or the discovery of facts relating to a claim of irregularity in the solicitation, shall be submitted in writing to the Village Manager within ten days of the award of the contract.
 - (2) *Stay of procurements during protests.* In the event of a timely protest under this paragraph, the Village Manager shall not proceed further with the solicitation or award of the contract until all administrative and judicial remedies have been exhausted or until the Village Commission makes a determination on the record that the award of a contract without delay is necessary to protect substantial interests of the Village.
 - (3) *Protest bond.* A protestor shall post a protest bond, equal to 15 percent of the bid amount, payable to the Village in the event the protest is denied.
- (U) *Contract claims.*

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- (1) *Decision of the Village Manager.* All claims by a contractor against the Village relating to a contract shall be submitted in writing to the Village Manager for a decision. The contractor may request a conference with the Village Manager on the claim. Claims include, without limitation, disputes arising under a contract, and those based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.
- (2) *Notice to the contractor of the Village Manager's decision.* The decision of the Village Manager shall be promptly issued in writing, and shall be immediately mailed or otherwise furnished to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of its appeal right under subparagraph (U)(3).
- (3) *Finality of Village Manager's decision; contractor's right to appeal.* The Village Manager's decision shall be final and conclusive unless, within ten calendar days from the date of receipt of the decision, the contractor files a written appeal with the Village Commission. The contractor must exhaust these administrative remedies before petitioning the circuit court for review of the Village's administrative decision.
- (4) *Failure to render timely decision.* If the Village Manager does not issue a written decision regarding any contract controversy within ten days after written request for a final decision, or within such longer period as may be agreed upon between the parties, then the contractor may proceed as if an adverse decision had been received.

(V) Non-discrimination; contract requirements; waiver.

- (1) Definitions. For the purpose of this section, the term “boycott” means to blacklist, divest from, or otherwise refuse to deal with a nation or country, or to blacklist or otherwise refuse to deal with a person or entity when the action is based on race, color, religion, gender, sexual orientation, or national origin of the person or entity. The term boycott does not include a decision based upon business or economic reasons, or boycotts, embargoes, trade restrictions, or divestments that are specifically authorized or required by federal law or state law.
- (2) Non-discrimination Contract Requirements. The Village shall not enter into a contract with a business unless the contract includes a representation that the business is not currently engaged in, and an agreement that the business will not engage in, a boycott, as defined in this section. The Village Commission may, in its sole discretion, elect to waive the requirements of this section, section 36.25(V)(2), upon a 4/5 affirmative vote when the Village Commission deems the waiver necessary for the health, safety, or welfare of the Village.

Section 3. Conflicts. All ordinances or resolutions or parts of ordinances or resolutions in conflict with the provisions of this Ordinance are hereby repealed.

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Section 4. Codification. This Ordinance shall be codified and become part of the North Bay Village Code. The sections of this Ordinance may be renumbered or re-lettered to accomplish such intentions, and the word “ordinance” may be changed to “section,” “article,” or other appropriate word.

Section 5. Severability. If any section, clause, sentence, or phrase of this Ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, the holding shall not affect the validity of the remaining portions of this Ordinance.

Section 6. Effective Date. This Ordinance shall take effect immediately upon enactment.

A motion to approve the foregoing Ordinance on first reading was offered by Commissioner Richard Chervony; seconded by Vice Mayor Jorge Gonzalez.

The Votes were as follows:

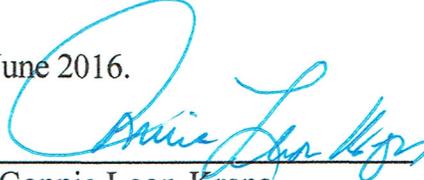
Mayor Connie Leon-Kreps	<u>Yes</u>
Vice Mayor Jorge Gonzalez	<u>Yes</u>
Commissioner Richard Chervony	<u>Yes</u>
Commissioner Andreana Jackson	<u>Yes</u>
Commissioner Eddie Lim	<u>Yes</u>

A motion to enact the foregoing Ordinance was offered by Commissioner Richard Chervony. This motion was seconded by Vice Mayor Jorge Gonzalez and upon being put to a vote, the vote was as follows:

FINAL VOTES AT ADOPTION:

Mayor Connie Leon-Kreps	<u>Yes</u>
Vice Mayor Jorge Gonzalez	<u>Yes</u>
Commissioner Richard Chervony	<u>Yes</u>
Commissioner Andreana Jackson	<u>Yes</u>
Commissioner Eddie Lim	<u>Yes</u>

DULY PASSED AND ADOPTED this 14th day of June 2016.



Connie Leon-Kreps
Mayor

ATTEST:



Yvonne P. Hamilton, CMC
Village Clerk

**APPROVED AS TO FORM FOR THE USE OF
NORTH BAY VILLAGE ONLY:**



Village Attorney
Robert L. Switkes & Associates, P.A.

North Bay Village Ordinance: Non-Discriminatory Practice in Procurement or Equal Rights