

ORDINANCE 10

SERIES 2001

July 17, 2001: Introduced as Council Bill No. 11 Series of 2001 by John Love, seconded by Doug Tisdale, and considered by the title only on first reading. Passed unanimously.

August 7, 2001: Considered in full text on second reading. Passed unanimously. Designated as Ordinance 10, Series 2001.

**AN ORDINANCE OF THE CITY OF CHERRY HILLS VILLAGE AUTHORIZING PROCEDURES FOR CONTRACTING FOR CONSTRUCTION OF PUBLIC WORKS PROJECTS**

WHEREAS, the City of Cherry Hills Village is a home rule municipal corporation organized in accordance with article XX of the Colorado Constitution; and

WHEREAS, section 13.8 of the Charter of the City of Cherry Hills Village provides that the City Council may by ordinance establish procedures for entering into contracts for the construction of public works; and

WHEREAS, there are no specific provisions of state law applicable to the City of Cherry Hills Village that mandate that all locally-funded contracts for the construction of public works be solicited by competitive bid or proposal; and

WHEREAS, the City Council desires to implement the authority of section 13.8 of the Charter of the City of Cherry Hills Village by the adoption of an ordinance providing procedures applicable to soliciting construction contracts for public works.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE, COLORADO, ORDAINS:

Section 1. The City Code for the City of Cherry Hills Village is hereby amended by the addition of a new Chapter 15 of Title 1 to read in full as follows:

**CHAPTER 15  
PUBLIC WORKS CONTRACTING**

- 1-15-1: Definitions
- 1-15-2: Competitive Bidding Required and Exceptions
- 1-15-3: Competitive Bidding Procedures
- 1-15-4: Emergency Contracting
- 1-15-5: Bonding Requirements
- 1-15-6: Construction Management-General Contractor (CMGC) Contracts
- 1-15-7: Applicability

**1-15-1: DEFINITIONS.** When not clearly otherwise indicated by the context, the following words and phrases used in this Chapter shall have the following meanings:

- A. *Competitive bid or bidding* means and includes any process or system requiring the submission of an offer, bid, proposal, statement of qualification, or other information specified by the City to permit a comparative evaluation of goods or services offered to the City.
- B. *Construction* means the process of building, altering, repairing, improving, remodeling, replacing, or demolishing any land, structure, or building, or other physical improvement to real property.
- C. *Public works or public work* means any construction activity directed, undertaken, or otherwise carried out by the City of Cherry Hills Village designed to serve some purpose of public necessity, use, convenience, health, safety, or welfare, such as but not limited to, the grading of public land or the

MNB302

construction of a building, structure, facility, street, trail or other public real property improvement. "Public works" or "public work" does not include maintenance, operation, or repair of a public property or public improvement that is not definable by a stop or start time or by geographical limits.

**1-15-2: COMPETITIVE BIDDING REQUIRED AND EXCEPTIONS.**

- A. Except as otherwise provided by this Chapter, all contracts for the construction of public works shall be subject to a competitive bid process in accordance with this Chapter.
- B. The following contracts are exempted from competitive bidding:
  1. Contracts for public work in an amount of less than twenty five thousand dollars (\$25,000.00).
  2. Contracts for public work made available through or in cooperation with the State of Colorado, its agencies and departments, or other governmental or quasi-governmental agencies, which contract permits the City to obtain goods or services at reasonable cost or under advantageous terms and conditions.
  3. Contracts related to public work for services of individuals or entities possessing a high degree of professional skill including but not limited to architects, engineers, and attorneys.
  4. Contracts related to public work for goods or services that are reasonably obtainable, in the opinion of the City Manager or the City Council, only from a single or sole source due to one or more factors such as but not limited to specialized skills, unique and relevant experience, or exceptional qualifications.
  5. Contracts available to the City by operation of a provision of an existing contract that authorizes one or more terms of renewal or extension, whether such renewal or extension includes the modification, amendment, or re-negotiation of price, terms, or conditions.
- C. Notwithstanding any exemption from competitive bidding stated in (B) above, the City Council may at its discretion establish and impose a process for the submission of bids where the City Council determines that the public work is reasonably capable of satisfactory and timely completion by several prospective contractors and a competitive selection process will best serve the interests of the City of Cherry Hills Village.

**1-15-3: COMPETITIVE BIDDING PROCEDURES.**

- A. Any competitive bid process required by this Chapter shall include, at a minimum, a procedure for the notification or advertisement of the City's request for bids; a detailed description of the public works project subject to competitive bid; the designation of one or more consultants, officials, or employees responsible for coordinating the competitive bid process; procedures to be employed in the submission and the evaluation of bids; deadline(s) for the submission of bids; and criteria to evaluate the submitted bids. The City Manager is authorized to prepare administrative procedures consistent with this Chapter to implement a standardized competitive bidding procedure.
- B. Competitive bidding may include pre-qualification of a product, service, contractor, or bidder based upon stated specifications or experience prior to the submission of a competitive bid. After pre-qualification, only bids offering the pre-qualified product, service, or contractor or submitted by the pre-

qualified bidder will be accepted by the City in response to a request for competitive bidding.

- C. Unless a different standard for the evaluation of competitive bids is expressly stated in the request for bids, the applicable standard for the evaluation for all competitive bids shall be the lowest responsive, responsible, and qualified bidder. Such standard may include, but not be limited to, a comparative evaluation of the completeness and sufficiency of the bid; the qualifications and experience of the bidder and any subcontractors; quality, availability, delivery, warranty, or guarantee of work; and the reasonableness of the price or cost of the offered goods and services. Price or cost alone shall not be the sole criteria for any evaluation of any competitive bid unless specifically stated in the request for bids.
- D. Notwithstanding the provisions of any competitive bid or competitive proposal process, the City may reject any one or more bids as non-responsive; reject all bids for any reason; modify or extend any deadline; revoke, rescind, amend, or modify a request for bids; or terminate the bid process at any time.

**1-15-4: EMERGENCY CONTRACTING.** Notwithstanding any other provision of this Chapter to the contrary, when by reason of emergency or immediate public necessity it is not feasible or practicable to follow the procedures set forth in this Chapter or to obtain City Council approval, the City Manager is authorized on behalf of the City Council to grant authority or contract for the performance of public work made necessary by an emergency or immediate public necessity as declared by the City Manager. As soon as practical after authorizing the performance of such public work, the City Manager shall notify each member of the City Council of the emergency or immediate public necessity and of the public work authorized by the City Manager. The City Manager shall cause any authorization issued or contract made in accordance with this section to be presented to the City Council for ratification at the Council's next available meeting. Wherever possible, the City Manager shall solicit informal bids for public work required by emergency or immediate public necessity and shall endeavor to select the lowest responsive, responsible, and qualified bidder for such public work.

**1-15-5: BONDING REQUIREMENTS.**

- A. When a contract for public work is awarded in excess of twenty five thousand dollars (\$25,000.00) pursuant to the competitive bidding requirements of this Chapter, the following bonds or security shall be delivered to the City and shall become binding on the parties upon execution of the contract:
1. A performance bond satisfactory to the City, executed by a surety company authorized to do business in the State of Colorado or otherwise secured in a manner satisfactory to the City, in an amount not less than one hundred percent of the price specified in the contract; and
  2. A payment bond satisfactory to the City, executed by a surety company authorized to do business in the State of Colorado or otherwise secured in a manner satisfactory to the City, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount not less than one hundred percent of the price specified in the contract.
- B. Nothing in this section shall be construed to limit the authority of the City to require a performance bond or other security in addition to those bonds or in circumstances other than those specified in subsection (A) of this section.

**1-15-6: CONSTRUCTION MANAGEMENT-GENERAL CONTRACTOR (CMGC) CONTRACTS.** Notwithstanding anything in this Chapter to the contrary, the City

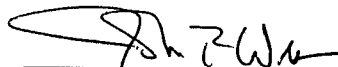
may negotiate Construction Management-General Contractor (CMGC) contracts and Design Build and Construction Management contracts through the following procedure:

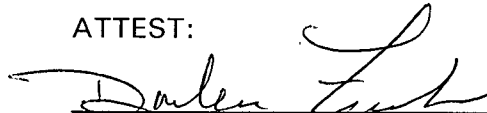
- A. The City shall informally contact and seek, at a minimum, two (2) requests for proposal to complete the contract project from individuals or firms with experience in the construction of public works; and
- B. The contract is awarded to the most qualified, responsible and responsive contractor, considering the purpose and nature of the contract.

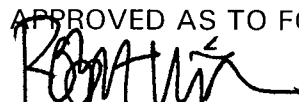
**1-15-7: APPLICABILITY.** This Chapter shall not apply where federal or state law requires a different or specific competitive selection process or procedure prior to the awarding of a contract for public works.

Section 2. Severability. If any provision of this ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this ordinance that can be given effect without the invalid portion, provided that such remaining portions or applications of this ordinance are not determined by the court to be inoperable.

Adopted as Ordinance No.10 Series 2001, by the City Council of the City of Cherry Hills Village, Colorado this 7th day of August, 2001.

  
 \_\_\_\_\_  
 John F. Welborn, Mayor

ATTEST:  
  
 \_\_\_\_\_  
 Darlene French, City Clerk

APPROVED AS TO FORM:  
  
 \_\_\_\_\_  
 Robert C. Widner, City Attorney