

GARIBALDI ORDINANCES
ORDINANCE NO. 281

AN ORDINANCE ESTABLISHING RULES AND PROCEDURES
FOR PUBLIC CONTRACTS AND EXEMPTIONS FROM
SUCH PROCEDURES, DELEGATION OF CERTAIN CONTRACTING
POWERS TO CITY STAFF, REPEALING ORDINANCE NO. 82
AND DECLARING AN EMERGENCY

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THE CITY OF GARIBALDI ORDAINS AS FOLLOWS:

Section 1.0 REPEAL. Garibaldi City Ordinance No. 82 is hereby repealed in its entirety.

Section 2.0 PURPOSE. The purpose of this ordinance is to foster competition to obtain the best possible product for the best price with the

understanding that there are a number of different procedures to obtain these results.

Section 3.0 CONTRACT REVIEW BOARD. The City Council of Garibaldi is hereby designated as the Local Contract Review Board and, relative to contract concerns of this City of Garibaldi, shall have all the powers granted to the State Public Contract Review Board.

Section 4.0 OREGON MODEL RULES. The City of Garibaldi rejects the Oregon Public Contracting Rules to the extent that the rules conflict with the rules set forth in this ordinance, which the City expressly authorizes to take precedence over the Oregon Model Rules.

Section 5.0 DELEGATION OF POWERS. The City delegates contracting power to the City Administrator and the Public Works Director for procurement of budgeted equipment, supplies and services, subject to the Council's prior approval for items in excess of \$5,000.00.

Section 6.0 DEFINITIONS. The following words and phrases shall mean:

6.1 Competitive Bidding. The solicitation by the City of competitive offers which follow the formal process for advertising, bid and bid opening required by this ordinance, and by applicable rules of the City.

6.2 Competitive Quotes. The solicitation of offers by the City from competing vendors. The solicitation may be by advertisement or by the City initiating a request to vendors to make an offer. The solicitation and the offer may be written or oral.

6.3 Contractor. The person with whom the City enters into a contract.

6.4 Electronic Advertisement. The City's request for bids, quote, RFPs or other information available over the internet.

6.5 Model Rules. The Oregon Attorney General's Model Rules of Procedure for Public Contracting.

6.6 Person. An individual, corporation, business trust estate, trust, partnership, limited liability company, association, joint venture,

governmental agency, public corporation or any other legal or commercial entity.

6.7 Personal Services. A contract with a person described in Section 9.7.1 herein.

6.8 Public Contract. Any purchase, lease, disposal or sale by the City of personal property, public improvements, services and public works including minor alterations and repairs or maintenance necessary to preserve a public improvement.

6.9 Public Contracting Agency. City of Garibaldi (“City”).

6.10 Local Contract Review Board. City Council of the City of Garibaldi (“Council”).

6.11 Procurement. The act of purchasing, leasing, renting or otherwise acquiring goods or services.

6.12 Public Improvement. Projects for construction, reconstruction or major renovation on real property by or for the City. “Public Improvement” does not include emergency work, minor alterations, ordinary repair or maintenance necessary in order to preserve a public improvement.

6.13 Public Works Project. Public works project includes, but is not limited to, roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by the City to serve the public interest, but does not include the reconstruction or renovation of privately owned property which is leased by the City.

6.14 Specification. Specification means any description of the physical or functional characteristics, or of the nature of a supply, service or construction item, including any requirement for inspecting, testing or preparing a supply, service or construction item for delivery and the quantities or qualities of materials to be furnished under a Contract. Specifications generally will state the result to be obtained and may, on occasion, describe the method and manner of doing the work to be performed.

6.15 Written or Writing. Written or writing means conventional paper documents, whether handwritten, typewritten or printed, in contrast to spoken words. It also includes electronic transmissions or facsimile documents when required by applicable law or permitted by a Solicitation Document or Contract.

6.16 Work. Work is the furnishing of all materials, equipment, labor and incidentals necessary to successfully complete any individual item in a Contract and successful completion of all duties and obligations imposed by the Contract.

Section 7.0 FACSIMILE AND ELECTRONIC SUBMISSIONS.

Facsimile or electronic submissions to the City shall only be allowed if in conformance with the City's ordinance governing facsimile and electronic submissions then in effect.

Section 8.0 PUBLIC CONTRACTS; FEDERAL FUNDS.

Notwithstanding any provision of this policy, the applicable federal laws, rules and regulations shall govern in any case where federal funds are involved and the federal laws, rules and regulations conflict with any of the provisions of this policy or require additional conditions in public contracts not authorized by this policy.

Section 9.0 EXEMPTIONS. All public contracts shall be based upon competitive bidding except:

9.1 Public Agencies. Contracts made with, or the cost of which is provided by, other public agencies or the federal government, provided the item can be obtained at a lower total cost than if it were procured from a private entity.

9.2 Nonprofit Agencies. Contracts made with qualified nonprofit agencies providing employment opportunities for disabled persons.

9.3 Contracts for Supplies. Contracts for products, services or supplies if the value of the contract is less than \$5,000.00. Said contracts may be procured by direct solicitation.

9.4 Insurance. Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145.

9.5 Existing Contracts with other Public Agencies. Contracts between public agencies utilizing an existing solicitation or current requirements contract of one of the public agencies that is party to the contract for which:

9.5.1 The original contract met the requirements of this ordinance;

9.5.2 The contract allows other public agency usage of the contract;
and

9.5.3 The original contracting public agency concurs.

9.6 Emergency. Contracts requiring prompt execution due to any emergency. The Council shall adopt a resolution indicating the existence of the emergency that could not have been reasonably foreseen, which creates a substantial risk of loss, damage, interruption of services, threat to the public health or safety or other circumstances and requires prompt execution of a contract to remedy the condition. The resolution shall state with specificity the emergency conditions necessitating the prompt execution of the contract.

9.6.1 The Mayor may act in place of the Council, should conditions dictate immediate action and the Mayor shall notify the Council as soon as reasonably possible for their ratification of his/her actions.

9.6.2 Any contract award under this exemption shall be awarded within sixty (60) days following declaration of the emergency conditions necessitating prompt execution of the contract.

9.7 Personal Services Contracts. The following are personal services contracts and may be exempt from competitive bidding by the Council:

9.7.1 Contracts for services performed as an independent contractor in a professional capacity, including but not limited to the services of an accountant, attorney, architectural or land use planning consultant, consultant, physician or dentist, registered professional engineer, fire chief, information technology consultant, forester, appraiser, surveyor, passenger aircraft pilot, photographer, timber cruiser, data processing consultant, broadcaster or other person with specialized skills, knowledge, education and resources.

9.7.2 Contracts for services as an artist in the performing of fine arts, including but not limited to persons identified as photographer, filmmaker, painter, weaver or sculptor.

9.7.3 Contracts for services of a specialized, creative, research-oriented or of a non-commercial nature.

9.7.4 Contracts for services as a consultant.

9.7.5 Contracts for educational services.

9.7.6 Such other contracts or classes of service contracts as the Council by resolution designates.

9.7.7 The Council may solicit personal services by requesting Requests for Proposals or Requests for Qualifications, sent to persons identified by the Council as persons with the requisite knowledge, experience and/or expertise desired by the City. Any Request for Proposal shall describe a summary of the services sought and the deadline for submitting a proposal. The City may, at any time, reject any or all Proposals or cancel the solicitation without liability for any reason. All Proposals submitted shall be solely at the expense of the proposer.

9.7.8 The City may continue or extend existing personal services contracts, including changes in scope of work and payment, thereto, without requesting other bids, qualifications or proposals.

9.7.9 The City may procure personal services directly through negotiation if the contract price is not more than \$5,000.00.

9.7.10 Any personal services contract required due to emergency circumstances may be obtained without a formal or informal solicitation process.

9.7.11 Any person hired under a personal services contract shall not result in an employee relationship. If the nature of the services or project is such that an employee/employer relationship will exist, then the City must hire the person through the normal personnel hiring procedures. The person shall be solely responsible for their own social

security, state and federal taxes, any unemployment compensation and any other payment required.

Section 10.0 SPECIFIC EXEMPTIONS. The following classes of public contracts are exempt from competitive bidding in that the Council hereby finds that the awarding of such contracts without competitive bidding is unlikely to encourage favoritism or substantially diminish competition for public contracts, and the awarding of such contracts will result in substantial cost savings to the City. An exemption under this subsection shall be granted only by resolution of the Council adopted in a public meeting, with specific findings which may consider the type, cost, amount of contract, number of persons available to bid and such other factors as the Council deems appropriate to support the exemption.

10.1 Contracts Under \$5,000. Contacts for any purchase, the amount of which at time of purchase is less than \$5,000.

10.2 Contracts from \$5,000 to \$150,000. When the amount of the contract for goods, materials, supplies and services is more than \$5,000 but less than \$150,000, the City must obtain a minimum of three informally solicited competitive quotes. A written record of the three quotes shall be kept. If three quotes are not available, a lesser number will suffice so long as a written record is made of the effort to obtain the quotes.

10.3 Equipment maintenance, repair and overhaul contracts that meet the following conditions:

10.3.1 The service and/or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or

10.3.2 The service and/or parts required are for sophisticated equipment for which specially-trained personnel are required and such personnel are available from only one source.

10.3.3 If the contract exceeds \$150,000, the public contracting agency shall document in its procurement file the reason why competitive bids or quotes were deemed to be impractical.

10.4 Public Improvements. When the contract is for a “public improvement” and the contract price exceeds \$5,000, but is less than

\$150,000, the City must obtain a minimum of three informally solicited competitive quotes. A written record of the three quotes shall be kept. If three quotes are not available, a lesser number will suffice so long as a written record is made of the effort to obtain the quotes.

10.5 Public Works. When the contract is for a “public works project” and the contract price exceeds \$5,000 but is less than \$150,000 contract shall comply with, 1) the prevailing rate of wage for an hour’s work in the same trade or occupation in Tillamook County, if such rate can be determined; 2) a performance bond; and 3) contractor registration requirements.

10.6 Contracts for price-regulated items. Contracts for the purchase of goods or services where the rate or price for the goods or services being purchased is established by federal, state or local regulatory authority.

10.7 Gasoline, diesel fuel, lubricants and asphalts. Contracts for the purchase of gasoline, diesel fuel, lubricants and asphalts if City seeks competitive quotes from a majority of the vendors in the area, makes its purchase from the least expensive source, and retains written justification for the purchase made.

10.8 Trade Related Projects. Construction, maintenance repair or similar labor and materials contracts when the amount is more than \$5,000 but less than \$150,000, the City must obtain a minimum of three informally solicited competitive quotes. A written record of the three quotes shall be kept. If three quotes are not available, a lesser number will suffice so long as a written record is made of the effort to obtain the quotes.

10.9 Fire Suppression Equipment. Contracts made between regularly organized fire departments as defined by ORS 652.050, for fire protection equipment, as defined in ORS 476.005, provided that:

10.9.1 The purchaser makes a written request to the Seller for the equipment; and

10.9.2 The fire protection equipment is surplus or unusable by the Seller; and

10.9.3 The value of the equipment transferred does not exceed \$50,000 per calendar year; and

10.9.4 The seller/transferor holds a public hearing on the equipment transfer and finds that the transfer is in the public's interest.

10.10 **Copyrighted materials.** Contracts for the purchase of copyrighted materials if there is only one known supplier available for such goods.

10.11 **Periodicals.** Contracts for the purchase of subscriptions for periodicals, including journals, magazines and similar publications.

10.12 **Used personal property.** Contracts for the purchase of used personal property for \$150,000 or less. To secure used personal property costing less than \$150,000 the City shall, where feasible, obtain three informally solicited competitive quotes unless the City has determined and finds that a purchase without obtaining competitive quotes will result in cost savings to the City and will not diminish competition or encourage favoritism. For purchase of used personal property over \$150,000, three informally solicited competitive quotes shall be obtained, but if three quotes are not available, a written record must be made of the attempt to obtain quotes.

10.13 **Advertising contracts.** Contracts for the purchase of advertising.

10.14 **Investment contracts.** Contracts for the purpose of investment of public funds or the borrowing of funds.

10.15 **Requirement contracts.** Purchases of goods or services from a supplier when the price of the goods or services has been established under a previously competitive bid requirements contracts.

10.15.1 "Requirements contract" means a contract whereby the Council has agreed to purchase requirements for an anticipated need at a pre-determined price.

10.15.2 Council may use the requirements contract entered into by another public contracting agency when a formal inter-agency agreement exists between the two agencies relating to the subject matter of the contract.

10.16 **Single seller or price.** Contracts for purchase where there is only one seller or only one price among more than one seller of a product of the

quality required or if the efficient utilization of existing equipment or supplies require specification of a compatible product for which there is only one seller, available within a reasonable purchase area.

10.17 Insurance.

10.17.1 Contracts for insurance where either the annual or aggregate premium is lower than \$20,000.

10.17.2 Employee benefit insurance.

10.17.3 Insurance through City County Insurance Services.

10.18 Affirmative action contracts. Contracts let pursuant to a specific affirmative action plan.

10.18.1 “Affirmative action plan” means any plan designed to insure equal opportunity in employment and business for persons otherwise disadvantaged by reason of race, color, religion, sex, national origin, age, or physical or mental handicap.

10.18.2 Prior to awarding any contracts pursuant to this exemption, the City shall submit to the Council in writing:

10.18.2.1 A description of the affirmative action plan, with emphasis on the goal or goals to be accomplished.

10.18.2.2 A description of the contract to be awarded, including the amount therefore, name of contractor and type of work, product or service purchased.

10.19 Data processing contracts. Contracts for the purchase or acquisition or word processing or data processing hardware or software, if prior to selection of a contractor, the City has solicited three proposals and, if the amount of the contract exceeds \$15,000, the City has also solicited a proposal in an appropriate trade publication of general circulation.

10.20 Telecommunications Systems. Contracts for the purchase or acquisition of telecommunications system hardware and software if, prior to the selection of a contractor, the City has solicited three competitive quotes

and, if the amount exceeds \$15,000, the City may use the request for proposal process set forth in Oregon Administrative Rule 125-310-025 and the City shall solicit written proposals.

10.21 Office Copier. Requirements contracts for either the purchase or lease of office copying equipment.

10.22 Personal Property Disposition for Cash. Surplus personal property may be disposed of without competitive bidding, under any of the following conditions:

10.22.1 There are specific statutory procedures for the sale of the type of property involved and the property is disposed of according to those procedures.

10.22.2 The property involved has a value of \$10,000 or less.

10.22.3 When the property has a value greater than \$10,000, the property must be offered for competitive bid or be offered for sale at a public auction. A public auction may be in person, or posted at an internet auction site, including any auction site of the State. If no bids are received, or the received bids do not meet the minimum bid requirements, the City may reject the bids and the City may negotiate a sale if:

10.22.3.1 The negotiated sales price exceeds the market value of the property, or

10.22.3.2 The negotiated sale amount exceeds the highest bid received through the bidding or auction process.

10.23 Donated Personal Property. The City may donate surplus personal property to other public agencies or to recognized non-profit social or health service entities subject to the following conditions:

10.23.1 The property is not needed for other public purposes.

10.23.2 If the property has a value greater than \$250, the Council shall approve the donation and there is documentation by the City that such a donation is in the public interest.

10.23.3 The City determines that a donation is the most efficient and cost effective method for disposing of the property.

10.23.4 Records of all transfers or donations are kept by the City for a period of three years after the transfer.

Section 11.0 MAYOR/COUNCIL EXEMPTIONS. The Mayor or Council may exempt any other contract through the following procedure:

11.1 The Mayor or Councilor may request a ruling from the Council exempting a particular contract or contracts from the bidding requirements of ORS 279.015(2) which are not otherwise exempt from these rules. The request shall contain the following:

11.1.1 The nature of the project;

11.1.2 Estimated cost of the project;

11.1.3 A narrative description of the cost savings and other benefits anticipated by the exemption from competitive bidding and the reasons competitive bidding would be inappropriate;

11.1.4 Proposed alternative contracting and purchasing practice be employed; and

11.1.5 The estimated date by which it would be necessary to let the contract.

11.2 The Council may, by resolution, exempt the contract or contracts presented by the Mayor under 11.1 above, or, or its own motion, any other contract or contracts from the requirement of competitive bidding if it finds that:

11.2.1 The lack of bids will not result in favoritism or substantially diminish competition for public contracts;

11.2.2 The exemption will result in substantial cost savings to the City. In making such finding, the Council may consider the type, cost, amount of the contract, number of persons available to bid and such other factors as the Council may deem appropriate.

11.2.3 In granting the exemption, the Council may, where appropriate, direct the use of alternate contracting and purchasing practice that take into account market realities and modern and innovative purchasing methods, which are also consistent with the public policy of encouraging competition.

Section 12.0 BRAND NAME SPECIFICATIONS IN CONTRACTS.

12.1 Contracts for goods and services procurement may specify brand names. Public Improvement Contract shall not require any product by any brand name or make, nor the product of any particular manufacturer or seller, unless the product is exempted from the requirement by the Council under subsection 12.2, 12.3 or 12.4. However, this section shall not be construed to prevent reference in the specifications to a particular product as a description of the type of item required, suffixed by “or equal”, “or approved equal”, “or equivalent”, “or approved equivalent”, or similar language if there is no other practical specification.

12.2 The Council may, by resolution, exempt certain products or classes of products upon any of the following findings:

12.2.1 It is unlikely that such exemption will encourage favoritism in the awarding of the contract or substantially diminish competition.

12.2.2 The specification of a product by brand name or mark, or the product of a particular manufacturer or seller, would result in substantial cost savings.

12.2.3 There is only one manufacturer or seller of the product of the quality required, (but see 12.3.4 below), or

12.2.4 Efficient utilization of existing equipment or supplies require the acquisition of compatible equipment and supplies.

12.3 Specific exemptions. The City hereby finds that the conditions for granting an exemption under Section 12.2 exist for the following items:

12.3.1 Products part of a contract exempt under Section 12.4 of this policy;

12.3.2 Copyrighted material;

12.3.3 Data processing hardware or software;

12.3.4 Single Manufacturer or Compatible Products: If there is only one manufacturer or seller of a product of the quality required, or if the efficient utilization of the existing equipment or supplied requires a compatible product of a particular manufacturer or sell, City may specify such particular product subject to the following conditions:

12.3.4.1 The product is selected on the basis of the most competitive offer, considering quality and cost; and

12.3.4.2 Prior to awarding the contract, the City has made reasonable effort to notify all locally known vendors of competing or comparable products of the intended specifications and invited such vendors to submit competing proposals. If the purchase does not exceed \$15,000, such notice and invitation may be informal. If the amount of the purchase exceeds \$15,000, such notice shall include advertisement in at least one newspaper of general circulation in the area where the contract is to be performed and shall be timely to allow competing vendors a reasonable opportunity to make proposals.

12.4 Product Prequalification.

12.4.1 When it is impractical to separate specific design or performance specification for a type of product to be purchased, City may specify a list of approved products by reference to particular manufacturers or sellers in accordance with the following product prequalification procedure:

12.4.1.1 The City has made reasonable efforts to notify all known manufacturers or vendors of competitive products of its intention to accept applications for inclusion in its list of prequalified products. Notification shall include advertisement in a trade journal of state-wide distribution when possible. In lieu of advertising, City may notify vendors and manufacturers appearing on the appropriate list maintained by the Department of General Services of the State of Oregon.

12.4.1.2 The City permits application for prequalification of similar products up to 15 days prior to advertisement for bids on the product.

12.4.2 If an application for inclusion in a list of prequalified products is denied, or an existing prequalification revoked, City shall notify the applicant. The applicant may appeal to the Council for a review of the denial or revocation in the same manner as an appeal of disqualification or denial as provided for by law and these rules.

Section 13.0 PREQUALIFICATION.

13.1 The following categories or classes of work may be, in the discretion of the City, subject to prequalification, should the contract be a public improvement contract exceeding \$150,000:

- Highway, road and street improvement
- Concrete paving and flatwork
- Rock crushing
- Bituminous oiling
- Bituminous paving
- Reinforced concrete construction
- Bridge and overcrossing construction
- Dredging and piledriving
- Excavation and grading
- Sewer construction
- Sewage treatment plants
- Sewage pumping stations
- Water lines
- Water reservoirs
- Water tanks - steel

Water tanks - concrete
Electrical wiring
Traffic signalization
Outdoor illumination
Building construction
Building alterations and repair
Demolition and related excavation and clearing
Painting and decorating
Plumbing
Heating
Roofing
Air conditioning
Irrigation and sprinkling systems
Drainage
Landscape

13.2 Bidder Prequalification Procedures.

13.2.1 Any contract requiring prequalification shall be advertised as such a contract by publication at least once in a newspaper of general circulation with the area in which the contract is to be performed, or designated as such a contract as part of the advertisement procedure under Section 13.3.

13.2.2 Applications for prequalification shall be submitted on the forms provided by the City at the times designated by the Council for such prequalification.

13.2.3 Upon establishment of the applicant's qualification, but in no case not to exceed thirty (30) days from receipt of application, the City shall issue a qualification statement, if appropriate. The statement shall inform the applicant of any conditions which may be imposed on the qualification, the time period for which the qualification is valid and advise the applicant to notify the City promptly if there is any substantial change of conditions or circumstances which would make any statement contained in the prequalification application no longer applicable or untrue.

13.2.4 If an applicant does not qualify, the City shall give the applicant, within thirty (30) days of receipt of the application, notice

of the denial and the basis for the denial.

13.2.5 Should the City discover that a person prequalified is no longer qualified, the City may revoke the prequalification, after giving notice to the newly-disqualified person. The notice shall specify the reason for the revocation and inform the person of their right to a hearing on the disqualification and inform the person that the revocation will be effective ten (10) days from the date of the notice unless evidence showing that the deficiency has been corrected has been received and approved by the City. Any request for hearing must be received at the City Hall before the close of business the 5th business day after notice of disqualification is mailed or faxed to the person.

Section 14.0 REQUEST FOR PROPOSAL - CONSTRUCTION MANAGER/GENERAL CONTRACTOR. The City may, at its discretion, use request-for-proposal procedures for the selection of construction manager/general contractor (CM/GC) firms who will be required to establish guaranteed maximum prices for constructing public improvements, subject to the following conditions:

14.1 Contractual requirements are stated clearly in the solicitation document. The contract shall describe the methods by which the CM/GC shall competitively select other contractors and subcontractors to perform the work of the improvement. Further, the contract shall describe completely the methods by which the CM/GC and its affiliated or subsidiary entities, if any, may compete to perform the work of the improvement; such methods shall include, at a minimum, public opening of sealed bids at a pre-announced time and place.

14.2 Evaluation criteria to be applied in selecting the CM/GC firm are stated clearly in the solicitation document. Criteria used to identify the CM/GC firm which best meets the public contracting needs may include but are not limited to cost, quality, experience relevant to the improvement to be constructed, and time required to commence and complete the improvement.

14.3 The City adopts findings to support the use of the CM/GC contracting method, which findings may include the following:

14.3.1 The City has competitively bid a public improvement project and failed to receive a responsive, responsible bid within the cost estimate established by the agency or its consultant. There are de facto cost savings from not redesigning and rebidding the project;

14.3.2 There are expected substantial savings on direct construction costs;

14.3.3 The City needs to have use of the project within the stated project schedule and there will be program and cost consequences if the required use is delayed;

14.3.4 The technical complexity or unique character of the project requires the coordination of multiple disciplines;

14.3.5 The use of value engineering through cooperation among the architect/engineer, contractor and the City is important to the project's delivery on time and within budget;

14.3.6 There are other factors which demonstrably affect cost.

Section 15.0 REQUESTS FOR PROPOSALS. The City, at its discretion, may use request-for-proposal competitive procurement methods subject to the following conditions:

15.1 The procurement is advertised and a written solicitation document is issued that invites the submission of sealed, written offers to be opened publicly at a designated time and place; and

15.2 Contractual requirements are stated clearly in the solicitation document; and

15.3 Evaluation criteria to be applied in awarding the contract and the role of an evaluation committee are stated clearly in the solicitation document. Criteria used to identify the proposal that best meets the City's needs may include but are not limited to cost, quality, service, compatibility, product reliability, operating efficiency and expansion potential, proposer qualifications and experience; and

15.4 The solicitation document clearly states all complaint processes and remedies available; and

15.5 The solicitation document states the provisions for proposers to comment on any specifications that they feel limit competition.

15.6 Any expense incurred in generating the proposal shall be solely that of the proposer.

Section 16.0 ADVERTISEMENT FOR COMPETITIVE BIDS.

16.1 Generally. Advertisement for competitive bids shall be published at least once in at least one newspaper of general circulation in the area where the contract is being performed. Advertisements, requests for proposals and solicitations by the City may be made electronically over the internet and/or by facsimile transmission in addition to publication set forth herein.

16.2 Public improvements in excess of \$150,000. In addition to the advertisements for bids as provided above, the advertisement for bids for public improvements in excess of \$150,000 shall be published in at least one trade newspaper of general statewide circulation.

16.3 All advertisements for bids shall state:

16.3.1 If the contract is for a public work, that no bid will be received or considered by the City unless the bid contains a statement by the bidder as part of its bid that it shall comply with prevailing wage statutes and rules.

16.3.2 The date after which bids will not be received, which date shall be not less than five (5) days after the date of the last publication of the advertisement.

16.3.3 The date that prequalification applications must be filed under Section 10.2 of these rules and the class or classes of work for which bidders must be prequalified if prequalification is a requirement.

16.3.4 The character of the work to be done or the material or supplies to be purchased.

16.3.5 The office where the specifications for the work, material or supplies may be seen.

16.3.6 The City Hall is the proper place to submit the bids.

16.3.7 The date, time and place that the City will publicly open the bids.

16.3.8 That all expenses and costs associated with making the offer are solely those of the offeror.

Section 17.0 COMPETITIVE BIDDING PROCEDURES.

17.1 Requirements for Bids. Competitive bids shall:

17.1.1 Be in writing and sealed;

17.1.2 Be filed with the City Recorder of the City;

17.1.3 Be at the sole cost of the Bidder;

17.1.4 Opened publicly by the City at the time designated in the advertisement, which date shall be not less than five (5) days after the date of the last publication of the advertisement.

17.1.5 Bids shall not be examined or opened by anyone until the time of the public opening as provided in the advertisement and such bids are not public record until the bid opening. After having been opened, the bids shall be filed for public inspection.

17.1.6 If required by the City for a particular contract or class or contracts, a surety bond, cashier's check or certified check of the bidder shall be attached to all bids as bid security unless exempted from this requirement. Such security shall not exceed ten (10%) percent of the amount bid for the contract.

17.1.7 The City may accept facsimile or electronically transmitted bids subject to the City's facsimile and electronic submission ordinance requirements. If the City determines that it will accept facsimile bids, the notices and advertisements shall state this. Any bids accepted by

facsimile must have the bid security, delivered to the City Hall by the closing date and time.

17.1.8 The bidder's offer is a firm offer, irrevocable, valid and binding on the offeree for a period of not less than 30 days from closing unless otherwise specified in the bid document or solicitation.

17.2 Award to the lowest responsible bidder. After bids are opened and after a determination is made by the Council that a contract is to be awarded, the Council may award the contract to the "lowest responsible bidder."

17.2.1 "Lowest responsible bidder" means the lowest bidder who has substantially complied with all prescribed public bidding procedures and requirements and who the City finds:

17.2.1.1 Has the financial, equipment, personnel and expertise sufficient to perform the contract; and

17.2.1.2 Can acquire a surety bond in the amount and type required, should the City determine that such bond be required to insure performance; and

17.2.1.3 Has equipment available to perform the contract; and

17.2.1.4 Has key personnel available of sufficient experience to perform the contract; and

17.2.1.5 Has a satisfactory record or contract performance obligations to the City and on other public and private contracts; and

17.2.1.6 Has a satisfactory record of integrity. If the offeror has demonstrated a lack of business ethics, such as a violation of state environmental laws, false certification or convictions of its owners, officers or directors for any criminal offense for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, anti-trust violations or any other offense indicating a lack of business integrity or honesty, the City may, on its discretion, omit the

bid from consideration. The City may require a credit report, at the bidder's sole expense, on any person involved in the business, as part of the City's determination in the bid award.

17.2.2 The City may make such investigation as is necessary to determine whether a person is qualified, including inquiries to the Oregon Contractor's Board. If the business entity is a form of business entity, the City's investigation may include the entity's owners, officers, directors, affiliates or any other entity acquiring an ownership interest. Lack of integrity defined in paragraph 17.2.1.6 as to any person listed herein is sufficient to disqualify the bid, in the City's sole discretion.

17.3 Successful Bidder. The successful bidder shall:

17.3.1 Promptly execute a formal contract produced or approved by the City;

17.3.2 Promptly execute and deliver to the City a good and sufficient performance bond, furnished by a surety company authorized to do business in Oregon, approved by the City Council, in a sum equal to the contract price for the faithful performance of the contract, or in lieu of a surety bond, a cashier's check or certified check payable to the City in an amount not less than a sum equal to one hundred percent (100%) of the contract price, unless such requirement is waived or modified by the Council.

17.3.2.1 This subsection shall not apply to contracts for less than \$25,000, unless special circumstances, in the discretion of the City Council, so require.

17.3.2.2 This subsection shall not apply in cases of emergency, or where the interest or property of the City probably would suffer material injury by delay or other cause, such emergency or probable material injury made by unanimous declaration of the Council.

17.3.3 In the event that the successful bidder fails to execute the contract provided by the City and post the required bond, within 30

days of the award date, the City may reject the offer and award the contract to the responsive bidder with the next lowest responsible bid.

17.3.4 The successful bidder may offer a substitute contract at any time during the contract performance upon approval by the City, provided that the contract terms and the bond requirements remain unchanged. Such substitute performance does not involve the award of a new contract and is not subject to competitive bidding requirements.

17.4 Return or retention of bid security.

17.4.1 Successful bidder. Upon execution of the contract and bond, the bid security of the successful bidder shall be returned to him/her. Should the bidder, however, fail to promptly or properly execute the contract or bond, he/she shall forfeit his/her bid security, which shall be kept by the City as liquidated damages for such failure and not as a penalty of failure of the successful bidder to execute the contract or bond.

17.4.2 Unsuccessful bidder. The bid security of the unsuccessful bidders shall be returned to them when the bids have been opened, the contract has been awarded, and the contract has been duly signed and the bond delivered to the City.

17.5 Rejection of bids. The City may reject:

17.5.1 Any bids not in compliance with all prescribed public bidding procedures and bid requirements; **17.5.2** Bids made contingent upon the City's acceptance of terms and conditions that differ from the bid specifications or solicitation document.

17.5.3 All bids if, in the City's judgment, it is in the public interest to do so. In the event that the City cancels the solicitation prior to the bid opening, the City shall return all offers it has received unopened to the offerors.

Section 18.0 APPEALS.

18.1 A contractor or bidder may appeal to the City Council any of the following:

18.1.1 Notice of denial of qualification.

18.1.2 Notice of conditions varying from application for prequalification.

18.1.3 Notice of revocation of prequalification.

18.1.4 Notice of product disqualification.

18.1.5 Awarding of contract. An offeror may only protest the awarding of the contract if the offeror can show that the offeror is next in line behind the award recipient for award of the contract.

18.2 The appeal must be in writing and filed with the City. At the time of submitting the appeal, the appellant must pay to the City an amount of money deemed sufficient to cover the City's advertisement and postage costs for the appeal. The person appealing must notify the City within five (5) business days after receipt of the notice referred to above of his intention to appeal. The notice of intention to appeal need not be in any particular form so long as it is in writing addressed to the City and received at the Garibaldi City Hall at 107 6th Street, P.O. Box 708, Garibaldi, Oregon 97118 within the five (5) day period.

18.3 Upon receipt of the notice of appeal, the City Recorder shall forward to the Council the notice appealed from and the record of investigation by the City upon which the City based its refusal or revocation, together with the notice of appeal.

18.4 For purpose of appeals, four (4) members of the Council shall constitute a quorum. Meetings for appeal purposes may be held on five (5) days notice to the Council.

18.5 At any time prior to the meeting of the Council, the City may reconsider its revocation or disqualification.

18.6 Promptly upon receipt of notice of appeal from the City Recorder of the City, the Council shall notify the person appealing and the City Recorder of the time and place of the hearing.

18.7 The Council shall conduct the hearing and decide the appeal within ten (10) business days after receiving the notification from the City Recorder of the City.

18.8 The Council shall set forth in writing the reason for its decision.

18.9 In the hearing the Council shall consider de novo (anew) the notice of disqualification, the record of the investigation made by the City and any evidence provided by the parties.

18.10 In all other matters, the hearing shall be conducted in the same manner as a contested case under rules of procedure determined by the Council.

18.11 All City's out of pocket costs shall be paid by the appellant, if the appeal is not successful. Costs include publication costs, mailing costs and other costs deemed necessary by the City. In the event the appellant is successful, the City shall pay said costs.

Section 19.0 CONTRACT AMENDMENTS. Any contract amendment for additional work or product which is reasonably related to the scope of work under the original contract, including change orders, extra work, field orders or other changes in the specifications which increases the original contract price, may be made with the contractor, without competitive bidding, if:

19.1 The amended contract does not substantially alter the scope or nature of the original contract; or

19.2 If the amendment does substantially alter the scope or nature of the project, the amount of the aggregate cost change from all amendments creating new or changed obligations shall not exceed 25% of the initial contract, or

19.3 The original contract was let by (i) competitive bidding or alternative procurement process; (ii) unit prices or additive alternates were provided that established the cost basis for the additional work or product; and (iii) binding obligations exist on the parties covering the terms and conditions of the additional work; or

19.4 The original contract was let pursuant to a declaration of emergency and the amendment is necessary to address the continuing emergency.

Section 20.0 ADDITIONAL AUTHORITY OF THE COUNCIL.

20.1 In addition to the power and duties established by this Ordinance, the Council shall have such additional powers as authorized by state law.

20.2 For any set of circumstances not covered by the provisions of this ordinance, and any other relevant ordinance of the City of Garibaldi, the City Charter and the City's Rules of Procedures, the state statutes and Oregon Administrative Rules shall govern to the extent that such rules and statutes are not in conflict with the City's provisions.

Section 21.0 SEVERABILITY. The invalidity of a section or subsection of this ordinance shall not affect the validity of the remaining sections or subsections.

Section 22.0 EFFECTIVE DATE. The City Council declares an emergency to exist due to the passage of legislation which requires affirmative action by the City and therefore finds that immediate adoption of the ordinance is necessary to protect the health, safety and welfare of its residents. This ordinance shall become effective immediately after its adoption by the City Council and approval by the Mayor.

PASSED and ADOPTED by the City Council this 16th day of MAY, 2005 and APPROVED by the Mayor this 20th day of MAY, 2005.


EVERETT BROWN, MAYOR

ATTEST:



KEVIN GREENWOOD, CITY RECORDER
JOHN O'LEARY