

RESOLUTION NO. 2012-10

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GARIBALDI ACTING AS CONTRACT REVIEW BOARD APPROVING AN EXEMPTION TO COMPETITIVE BID REQUIREMENTS UNDER GARIBALDI MUNICIPAL CODE §3.10, PUBLIC CONTRACTS, AND USE OF THE CONSTRUCTION MANAGER/GENERAL CONTRACTOR METHOD OF PROCUREMENT FOR THE CITY OF GARIBALDI FIRE STATION SEISMIC REHABILITATION**

**WHEREAS**, Garibaldi Municipal Code (GMC) §3.10.130, Public Contracts, provides for the Contract Review Board, at its discretion, to 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; and,

**WHEREAS**, under GMC §3.10.130C, approval of an alternate contracting method by which the City will select a CM/GC by request for proposal requires the Garibaldi Contract Review Board to adopt findings in support of the exemption; and,

**WHEREAS**, GMC §3.10.130 authorizes the Garibaldi Contract Review Board to approve the use of the CM/GC procurement method if the solicitation document clearly states both the contractual requirements and evaluation criteria to be applied in selecting the CM/GC firm; and,

**WHEREAS**, The City of Garibaldi has run a notice in the May 10<sup>th</sup> edition of the Daily Journal of Commerce and the May 16<sup>th</sup> edition of Tillamook Headlight Herald that noticing a special hearing and meeting of the Garibaldi City Council acting as the Local (Garibaldi) Contract Review Board considering an exemption to the competitive bid requirements and the use of the CM/GC process,

**NOW, THEREFORE, THE COMMON COUNCIL OF THE CITY OF GARIBALDI RESOLVES AS FOLLOWS:**

**Section 1.** The Garibaldi Contract Review Board adopts the findings set forth in *Exhibit A*, attached hereto and incorporated by reference herein as if fully set forth. These findings provide the facts required to explain and support this approval of exemption under Garibaldi Municipal Code §3.10.130.

**Section 2.** The Garibaldi Contract Review Board approves the use of the procurement method of request for proposals for selection of a construction manager/ general contractor, pursuant to Garibaldi Municipal Code §3.10.130.

**Section 3.** The Garibaldi Contract Review Board authorizes the City Manager to negotiate a contract with the selected contractor. The City Manager will bring the negotiated contract to the City Council for consideration at a public meeting of the City Council by placing the matter on the agenda.

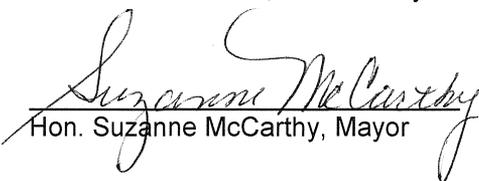
**Section 4.** The Garibaldi Contract Review Board finds that all required notices have been provided and that this resolution has been duly advertised; that the City has provided an opportunity for public comment on the proposed findings in support of the procurement method, as advertised.

**Section 5.** Any public comments received to the City in writing by 6:30 p.m., Thursday, May 24, 2012, or stated during a public hearing held on the same date and time, have been addressed by the City during a special meeting of the Garibaldi Contract Review Board following the public hearing on this matter, and have been included in the record of this meeting.

**PASSED BY THE COMMON COUNCIL AND APPROVED BY THE MAYOR**, this 24<sup>th</sup> day of May, 2012.

ATTEST:

  
\_\_\_\_\_  
John O'Leary, City Manager

  
\_\_\_\_\_  
Hon. Suzanne McCarthy, Mayor

Attached – **Exhibit A**

EXHIBIT A TO RESOLUTION NO. 2012-\_\_\_\_

Supporting Public Contract Exemption	)	
for Use of Construction Management/	)	FINDINGS OF FACT
General Contractor for City of Garibaldi	)	
Fire Station Seismic Rehabilitation	)	

Garibaldi Municipal Code (“GMC”) §3.10.130, duly adopted pursuant to ORS Chapter 279A, provides that public improvement contracts be based on competitive bids and awarded to the lowest responsive and responsible bidder. The GMC also provides that the City may approve exemptions from the requirement for competitive bidding with the approval of specified findings. Specifically, GMC §3.10.130 provides as a class exemption for the Garibaldi Contract Review Board to approve the selection of a construction manager/general contractor (“CM/GC”) as a method of procuring and constructing a public improvement.

Under GMC §3.10.030, the City of Garibaldi rejects the Oregon Model Rules (Public Contracts) to the extent they conflict with the GMC and provides for the GMC to take precedence over the Oregon Model Rules. The specific discretionary findings the Garibaldi Contract Review Board may adopt under GMC §3.10.130, and the findings under Oregon Model Rules guidance in OAR 137-049-0600 to 137-049-0690, harmonize and are not in conflict.

The hearing for review of these findings will be held at 6:30 PM on May 24, 2012 at the City of Garibaldi, 107 6th Street, Garibaldi, OR 97118, as published in the Daily Journal of Commerce on May 10, 2012 and the Headlight Herald on May 16, 2012.

I. BACKGROUND

The City of Garibaldi received a grant through Oregon’s Seismic Rehabilitation Grant program for a total value of \$270,000. The purpose of the grant is to seismically retrofit the building to meet or exceed the code requirements outlined in ACSE41-06 “Seismic Rehabilitation of Existing Buildings”.

This project is limited to the funding outlined in the grant package, additional funding is not available. The current budget does not reflect a contingency typically allotted for a project of this size and scope. The City is proposing to pursue the project using the Construction Manager/General Contractor (“CM/GC”) contracting methodology. The CM/GC contract allows the City to bring the General Contractor on board during the initial design phase providing value engineering services and a Guaranteed Maximum Price during the design phase in lieu of during the bid phase after full design documents have been established.

The City proposes utilizing the CM/GC contract delivery methodology to obtain proposals for the Fire Station Seismic Rehabilitation.

The exempted procurement process for this project includes a Request for Proposals (RFP) process pursuant to GMC §§ 3.10.130 and 3.10.140 (OAR 137-049-0640) which provides for selecting a contractor under the CM/GC method.

## II. FINDINGS REGARDING REQUIRED CRITERIA

GMC §3.10.130 provides for the Contract Review Board to adopt findings including but not limited to the following: savings on direct construction costs; time constraints if the use is delayed; technical complexity or unique character of the project requiring the coordination of multiple disciplines; the use of value engineering through cooperation among the architect/engineer, the contractor and the city is important to the project's delivery on time and within budget; and other factors which demonstrably affect cost.

ORS 279C.330 provides that: “[F]indings’ means the justification for a contracting agency conclusion that includes, but is not limited to, information regarding: (a) Operational, budget and financial data; (b) Public benefits; (c) Value Engineering; (d) Specialized expertise required; (e) Public safety; (f) Market conditions; (g) Technical complexity; and (h) Funding sources.” The City finds that many of these criteria support the decision to use the CM/GC contracting method for the Fire Station Seismic Rehabilitation. This finding is supported by the following:

- 1) Operational, Budget and Financial Data: Limited or no additional funding is available for the Fire Station Seismic Rehabilitation above and beyond the awarded grant funding source.
- 2) Public Benefits: The CM/GC contract delivery process will allow the City to deliver the most comprehensive project for the allotted funding.
- 3) Value Engineering: The contract for the CM/GC delivery process will require the CM/GC selected contractor to provide value engineering services as part of their responsibilities. This will provide the best value for the City.
- 4) Specialized Expertise Required: Specialized expertise will be required to coordinate, procure and install the various components required during the rehabilitation project. A seismic rehabilitation of this nature requires the coordination effort of all trades to deliver a completed and successful project.
- 5) Public Safety: There are currently concerns with public safety during the scheduled work as the Fire Station may remain functional during the proposed work. The CM/GC will assist with the development of a safety plan.
- 6) Market Conditions: The specialty products, services and supplies needed under this contract are not particularly impacted by market conditions.
- 7) Technical Complexity: Implementation of this project involves a number of issues of technical complexity. Special skills and expertise are needed for optimizing the related foundation strengthening and the seismic strengthening and element installation.

## III. FINDING REGARDING COMPETITION

GMC 3.10.130(C) requires the Contract Review Board to make certain findings in requesting approval of the exemption of a certain public improvement contract or class of public improvement contracts from competitive bidding. Where the Contract Review Board is exempting a specific contract from competitive bidding, it is authorized to do so by resolution if it finds that “the lack of bids will not result in favoritism or substantially diminish competition for public contracts”; GMC 3.10.100(B)(1).

This ordinance requirement reflects ORS 279C.335(2), which provides for a contracting agency to make certain findings as part of exempting public improvement contracts or classes of public improvement contracts from competitive bidding. ORS 279C.335(2)(a) requires an agency to find that: “It is unlikely that the exemption will encourage favoritism in the awarding of public improvement contracts or substantially

3 – **Exhibit A** – *A RESOLUTION OF THE GARIBALDI CONTRACT REVIEW BOARD APPROVING AN EXEMPTION TO COMPETITIVE BID REQUIREMENTS UNDER GARIBALDI MUNICIPAL CODE §3.10, AND AUTHORIZING THE USE OF THE CM/GC PROCESS*

diminish competitive for public improvement contracts.” The City finds that selecting the contractor through an exempted competitive proposal selection process in accordance with GMC §3.10.100 – 3.10.140 and OAR 125-249-0620 and 125-249-0630 will not inhibit competition or encourage favoritism. This finding is supported by the following facts:

- 1) The proposed CM/GC alternative contract delivery methodology is a competitive proposal process that allows the City to select a firm to Seismically Rehabilitate the Fire Station at the best possible value to the City. Simple price competition is not feasible due to technical complexity associated with a seismic rehabilitation project of this nature. The technical complexity of the installation of certain structural systems within the rehabilitation plan lends it to specialized contractors with knowledge of these systems.
- 2) The CM/GC contractor will be selected through an open and competitive process as prescribed by GMC §3.10.130-3.10.140.

#### IV. FINDING REGARDING SIGNIFICANT COST SAVINGS

GMC §3.10.100(B)(2) requires the Contract Review Board to find: “The exemption will result in substantial cost savings to the city.” GMC §3.10.130(C)(2) also provides the Contract Review Board to find: “There are expected substantial savings on direct construction costs.” In making such findings, the Contract Review Board may consider the type, cost, amount of the contract, number of persons available to bid and such other factors as the Board may deem appropriate under ORS 279C.335(2)(b): “The awarding of public improvement contract under the exemption will result in substantial cost savings to the public contracting agency.” This finding is supported by the following facts:

- 1) This work integrates specialized equipment and personnel to properly install certain items of the rehabilitation. A requirement to competitively bid this type of work would create additional expenses and lead to uncertainty regarding installation of these items.
- 2) An exemption from competitive bidding will allow the City to take advantage of specialized general contractors knowledgeable in the rehabilitation of existing structures and skilled in value engineering the project during the design phase. This will allow the City to obtain the best value and potentially eliminate costly change orders resulting from unknowns in the field.

#### V. SUMMARY

Use of the CM/GC method of contracting for the Fire Station Seismic Rehabilitation is an appropriate use of that alternative contracting method under GMC §3.10.130 and OAR 137-049-0620. Additionally, an exemption from competitive bidding requirements is justified under the criteria outlined in GMC §3.10.100 – 3.10.130 and ORS 279C.330, findings have been developed in compliance with ORS 279C.335(2), and the City will perform the post-project evaluation required by ORS 279C.355. Based upon previously listed findings, the City specially concludes that:

- 1) It is unlikely the exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; and
- 2) The exemption will result in substantial cost savings to the affected City for the services provided.

Questions should be directed to John O’Leary, City Manager, at (503) 322-3327.