

**CITY OF GUSTAVUS, ALASKA
ORDINANCE FY14-15**

**AN ORDINANCE FOR THE CITY OF GUSTAVUS ADOPTING A MAJOR
REVISION FOR TITLE 4.17 CONTRACTS AND PURCHASING**

BE IT ENACTED BY THE GUSTAVUS CITY COUNCIL AS FOLLOWS:

- Section 1. Classification This ordinance is of general and permanent nature and shall become a part of the City of Gustavus Municipal Code.
- Section 2. Severability If any section or subsection of this title is determined to be illegal or unenforceable, the remaining provisions shall not be affected, but remain valid and enforceable to the extent permitted by law.
- Section 3. Enactment Now therefore, be it enacted by the Gustavus City Council that this major revision of Title 4.17 as follows: ~~Strikethroughs~~ are deleted, ***Bold, italicized*** words are adopted.

**Chapter 4.17
Contracts and Purchasing**

Sections:

4.17.005	General
4.17.010	Definitions
4.17.020	Purchasing Agent Authority
4.17.030	Purchases
4.17.040	Competitive Bidding Required
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- 4.17.100 Bids – No Response
- 4.17.110 Bid Submittal and Opening
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- 4.17.160 Construction Contracts – Letting
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Section 4.17.005 General

All contracts, except as otherwise provided in 4.17.020, shall be authorized by the Council and shall be signed on behalf of the City of Gustavus by the Mayor and the City Clerk/Treasurer, after having been approved as to form by the City Attorney.

Section 4.17.010 Definitions

City: City of Gustavus

Competitive Contract: consideration of more than one source, as may be evidenced by competitive requests for proposals, to insure full and free competition consistent with the types of services required and necessary to meet the needs of the City. Also known as competitive bid.

Construction: the on-site erection, alternation, extension or repair of improvements to real property or other improvements under contract or owned by the City.

Contract: an agreement for the purchase, lease or disposal of personal and real property, professional services, services and construction.

Contract Amendment: any change in the terms of the contract accomplished by agreement of both parties, including change orders.

Emergency Purchases: a requirement which arises from a situation where a threat to public health, welfare or safety such as may arise by reason of flood, epidemics, riots, equipment failure, earthquake, or tidal wave, or such other reason may be proclaimed by the Mayor or his/her delegate. The existence of such condition creates an immediate and serious need for supplies, services or construction that cannot be met through normal public bidding methods and the lack of which would seriously threaten (a) the health or safety of any person, (b) the protection of property.

Invitation to Bid: *The complete assembly of a bid package or related documents (whether attached or incorporated by reference) that is furnished prospective bidders for the purpose of bidding. The notice to bidders is a means of publicizing the invitation for bids.*

Personal Property: *everything that is subject to ownership (by the City) not coming under the denomination of real estate, normally being movable.*

Professional Services: *those advisory, consulting, architectural, engineering, research or developmental services which involve the exercise of discretion and independent judgment together with an advanced, or specialized knowledge, expertise or having good by formal studies or experience.*

Project Manager: *The Mayor, the departmental head or a person approved by the Council. The minutes of the Council meeting relating to the matter may be used as written consent by the Council.*

Purchasing Agent: *The Mayor or the Mayor's designee. The Mayor may designate the City Clerk/Treasurer to be the City purchasing agent.*

Section 4.17.020 ~~Limitation on Purchasing Agent's Authority~~

~~a. The Mayor is the purchasing agent for the City. The Mayor may designate the City Clerk or another designee to be the City purchasing agent.~~

a. The purchasing agent or his/her designee may carry out any of the following:

- 1. Contract for, purchase or issue purchase authorizations for all supplies, materials, equipment, and services for the offices, departments and committees of the City;**
- 2. Contract for the construction, repair, or improvements of City facilities.**

b. The purchasing agent may purchase personal property only as authorized by the Council and upon competitive bids, except as follows:

- 1. Budgeted personal property or professional services in the amount of five thousand dollars (\$5,000.00) or less. ~~2,500.00 or less~~ without council approval, or competitive bid shall make all purchases of supplies, materials, equipment and contractual services needed by the committees, departments, and agencies of the City government in accordance with the ordinances of the City.**

~~e. The purchasing agent shall recommend joint purchases with other units of government when the best interest of the City would be served.~~

- a. **Negotiated procurement following unsuccessful efforts to obtain a qualified bid through competitive bidding.**
- b. **Small procurement, below ten thousand dollars (\$10,000.00).**
- c. **Emergency procurement.**
- d. **Procurement of consultant, technical, real estate, architect, engineer or audit services.**
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- g. **Specialized equipment for enterprise funds where standardization is a primary criteria.**
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 - 1. **Procurement resulting from competitive sealed proposals**
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 - 3. **Contracts for electronic data processing and system control software and hardware systems and other software systems shall be by professional services contract; provided, however:**
 - A. **To be exempt from competitive bidding the service in question must be truly a "system" which is professionally designed.**
 - B. **The purchase of hardware which is not an inextricable part of the system and can be bid separately shall be competitively bid.**
 - C. **Software and systems readily available on the open market (i.e. Windows 8) are not subject to this exception. Competition will be sought to the maximum extent practicable.**

~~Section 4.17.060 — Pre-Bid Conference~~

Section 4.17.060 Bid Invitation

- a. **Purchases or contracts having an estimated value that does not exceed ten thousand dollars (\$10,000.00) may be made in the open market without publishing notice in a newspaper and with such competition as is reasonable and practical in the circumstances.**
- b. **All specifications for projects must be submitted to the Council for approval prior to the notice to bid being published. The budgeted amount shall accompany the request to the Council.**
- c. **A purchase or contract authorized by Section 4.17.020 having an estimated value that exceeds ten thousand (\$10,000.00) but does not exceed twenty-five thousand (\$25,000.00) shall be based on the solicitation of at least three competitive written bids and be awarded to the lowest responsive and responsible bidder as determined by Section 4.17.130(c), and without observing the procedure prescribed for the award of formal sealed bids.**

~~3. All purchase of supplies and contractual services of less than five thousand dollars (\$5,000.00) shall be made on the open market, without observing the procedure prescribed in Section 4.16.030 through Section 4.16.080.~~

Section 4.17.030 Purchases

~~a. All Every contract for Purchases of supplies, materials, equipment and personal property or contractual services when the estimated cost exceeds five thousand dollars (\$5,000.00) for more than two thousand dollars (\$2,000.00) will require the prior approval of the Council. If emergency expenditures are required, verbal permission must be given by the City Clerk/Treasurer and the Mayor.~~

~~b. All supplies, equipment or contractual services for more than five thousand dollars (\$5,000.00) two thousand dollars (\$2,000.00) personal property except as otherwise provided in this chapter, when the estimated costs thereof exceed ten thousand dollars (\$10,000.00) shall be purchased by formal, written contract from the lowest responsible bidder as defined in Section 4.17.100(c) after due notice inviting proposals.~~

~~b. All purchases of supplies and contractual services of less than five thousand dollars (\$5,000.00) shall be made on the open market, without observing the procedure prescribed in Section 4.16.030 through Section 4.16.080.~~

~~Section 4.17.040 Bid Invitation~~

Section 4.17.040 Competitive Contract

a. All purchases of and contracts for supplies and contractual services *in excess of \$10,000*, shall be based wherever possible on competitive bids, except as specifically provided in **Section 4.17.050**.~~this chapter~~

b. When competitive bids are not deemed to be practical, a purchase or contract for supplies may be entered into if the Council certifies in writing by resolution that competitive bids are impractical, reciting the reasons therefore, and specifies how the purchase shall be made or the contract shall be entered into.

~~Section 4.17.050 Bid Deposits~~

Section 4.17.050 Exceptions to Competitive Contract Requirements

Unless otherwise authorized by law, all procurement actions shall be by competitive bidding. The following is a list of authorized exceptions describing situations in which competitive bidding is not practicable:

d. The purchasing agent *may establish and maintain a list of contractors who wish to provide goods and services to the City. Upon an invitation for bids, each contractor on the list with the necessary qualifications to bid shall receive a notice of the invitation.* ~~May also solicit bids from all responsible prospective suppliers and/or contractors who have indicated an interest in bidding on City contracts.~~

e. Before bid invitations can be issued, the purchasing agent will write and have on file for public viewing the Council-approved bid specifications. A tentative contract, approved by the Council, may also be available for public inspection.

f. A notice inviting bids shall be posted at least ten (10) working days prior to the last day set for the receipt of proposals. The notice will include a general description of the work, or materials or service, ~~will~~ a **statement** where bid forms and specifications may be secured, the closing time for submission of bids and the time and place of opening of bids. Bid deposits, if they are required, will be prescribed in the public notices inviting the bids.

~~Section 4.17.070~~ ~~Changes and Addendas~~

Section 4.17.070 Bid Deposits

When deemed necessary by the Council, *every person submitting a bid pursuant to competitive bidding procedures must accompany his bid with either a corporate surety bond from a surety company authorized to do business in Alaska or a certified or cashier's cheque, drawn on a bank doing business in Alaska, in an amount as required in the notice and instructions to bidders.*

~~Section 4.17.080~~ ~~Bid Submittal and Opening~~

Section 4.17.080 Pre-Bid Conference

The Council-approved project manager may provide for a pre-bid conference at least seven (7) working days prior to the time for submission of bids or upon request of any bidder. All points of clarification and questions answered at the conference which may affect the bid, will be issued in the form of an addenda.

~~Section 4.17.090~~ ~~Rejection of Bids~~

Section 4.17.090 Changes and Addenda's

No official or officer of the City shall make any oral interpretations that may affect the substance of the contract documents. Addenda will be issued to all bidders when questions arise. Addenda **will** be delivered *via email which states, in part, that the bidder shall notify the City of receipt of addenda by email* or by certified mail with a return receipt requested, or by hand delivery with a written receipt obtained. When an addendum is issued less than four (4) working days before the time for receipt of bids, the addendum shall contain a new bid date of at least four (4) working days from the original

receipt of bids date. Receipt of **all** addenda **shall** be acknowledged **by bidder** as part of the bid summary.

~~Section 4.17.100~~ ~~Award of Contract~~

Section 4.17.100 Bids – No Response or Unsatisfactory Bid
If, after opportunity for competitive bidding, no bids are received or bids received are not satisfactory to the Council, the Council may authorize the project manager to negotiate for a contract in the open market.

~~Section 4.17.110~~ ~~Contractor Bonding~~

Section 4.17.110 Bid Submittal and Opening
The bid opening date shall be scheduled by the manager of the project, after the appropriate notice thereof of not less than two (2) weeks.

- a. Bids will be submitted personally or by mail to the City Clerk/**Treasurer**, designated in the notice inviting bids, and identified **on the outside of the sealed envelope with a printed sticker provided by City as stated in RFQ or RFP documentation.**
- b. ***If the Council requires that potential bidders show evidence of meeting certain requirements, the City Clerk/Treasurer shall determine the qualification of bidders before any bids are solicited. The City Clerk/Treasurer shall determine whether a bidder is qualified, responsive and responsible on the basis of the following criteria:***
- 1. The skill and experience demonstrated by the potential bidder in performing contracts of a similar nature;***
 - 2. The potential bidder's record of honesty and integrity;***
 - 3. The potential bidder's capacity to perform in terms of facilities, personnel and financing;***
 - 4. The potential bidder's past performance under City contract, if applicable. If the bidder failed in any material way to perform its obligations under any contract with the City, the bidder may be deemed a non-responsible bidder.***

At all times, the best interests of the City shall be recognized in awarding bids.

b.c. Bids will be opened in public by the City **Clerk/Treasurer** designated at the time and place so stated in the public notice. ***That opening will follow immediately after the closing time for submission of the bids. Bids shall be opened so as to avoid disclosing their contents to competing proponents. Any bidder is welcome to attend the opening. Proposals, tabulations, and evaluations thereof shall be open to public inspection only after the contract award.***

d. ***At the time the bids are opened, the project manager and the City Clerk/Treasurer shall review all bids for irregularities, errors and exceptions. If it appears that minor irregularities or errors were made through inadvertence, the City Clerk/Treasurer may authorize the bidder to make changes, or may waive the errors and irregularities. In the event of major errors and irregularities, the bid shall be rejected and the bid price not disclosed. Bid bonds and certified or cashier's cheques shall be checked for adequacy.***

ee. A tabulation of all bids received will be forwarded to the City Council by the City Clerk/Treasurer with the appropriate recommendations for acceptance or rejection of bids. A copy of the tabulation ***may*** be furnished to each bidder, ***if bidder so requests.***

~~Section 4.17.120 Professional Services Contract~~
Section 4.17.120 Rejection of Bids

a. ***The Council may consider a bidder "not responsible" and reject the bid of a bidder who is in arrears on taxes, permits, special assessments and/or any other monies that may be due the City or who failed to perform on a previous contract with the City.***

ab. The Council shall have the authority to reject all bids or parts of bids or to negotiate when it is in the best interest of the City.

bc. If the lowest and best bid exceeds the budgeted amount and the City Council does not make additional funds available, the proposed contract for purchase or sale for services or for construction projects may be modified in any manner the Council deems appropriate.

ed. The Council may re-advertise the project for bidding, after making changes in the project plans.

de. If the Council rejects all bids under this section, it may later direct the purchasing agent to issue an identical or similar invitation for bids.

~~e. All open market purchases or sales will, whenever possible, be based on at least three (3) competitive bids and will be awarded to the lowest responsible bidder.~~

f. The City ***Clerk/Treasurer*** will keep a record of all open market bids submitted for competition and such records will be open to public inspection.

~~Section 4.17.130 Construction Contracts Letting~~
Section 4.17.130 Award of Contract

The Council may award contracts within the purview of this chapter. ***In most instances, the project manager will be in a position to make known his/her recommendations at the conclusion of the bid opening. The project manager will furnish each bidder with a copy of his tabulation of the bids and the name of the apparent low bidder after review, if required.***

ba. Contracts shall be awarded, if at all, to the lowest responsible bidder whose bid is responsive to the invitation for bids. ***The amount of the bid shall not exceed the project manager's estimate by more than ten percent (10%).***

eb. In determining which bid is "lowest" the Council may at its discretion apply the local contractor preference of Section ***4.17.190.4-16-160***

ec. In determining whether the lowest bidder is "responsible" the Council shall consider:

- 1. The Price;***
- 2. The experience, capacity, and skill of the bidder to perform the contract within the time and amount desired;***
- ~~***2. Whether the bidder can perform the contract within the time specified, without delay or interference;***~~
- 3. The potential bidder's quality of reputation, and performance, honesty and integrity shown in the commission of previous City contracts;***
- 4. The previous and existing compliance by the bidder with laws and ordinances relating to the contract and the City of Gustavus;***
- 5. The sufficiency of the financial resources and ability of the bidder to perform the contract.***

ed. When the award is given to other than the lowest bidder, a full and complete written statement of reasons will be delivered to the unsuccessful low bidder or bidders and filed with the other papers relating to the transaction. The minutes of the City Council meeting relating to the matter may be used as the required written statement.

fe. ***If any bidder awarded a contract with the City of Gustavus fails to enter into the contract for the exact thing called for in the Invitation To Bid within fourteen (14) working days, he/she shall forfeit his bond or cheque, if required.***

f. ***Any bidder who is not awarded a contract shall have his bid bond returned or his cheque refunded, if required.***

~~h.g.~~ At the Council's discretion, bidders may be required (with sufficient notice) to appear before the Council, in person or by telephone to answer questions concerning contracts.

~~Section 4.17.140~~ — ~~Construction Contracts Administration~~
Section 4.17.140 Contractor Bonding

Contracts for construction, alteration or repair of public buildings or public works, where the cost is in excess of one hundred thousand dollars (\$100,000.00), shall be awarded only after the contractor has provided payment and performance bonds pursuant to A.S.36.25.010(a).

a. Each bid shall be accompanied by a Bid Bond consisting of a certified or cashier's cheque payable to the City for a sum not less than five percent (5%) of the amount of the bid or accompanied by a bid bond in an amount not less than five percent (5%) of the bid with a corporate surety licensed to do business in the State of Alaska. Cheques and Bid Bonds will be returned to unsuccessful bidders.

b. The successful bidder is required to submit a Performance Bond and a Payment Bond with a Surety meeting the standards of AS 36.25.010(a) and satisfactory to the City. The amount of the Performance Bond and the amount of the Payment Bond shall be equal to the contract amount.

c. If the bidder fails to enter into the contract and furnish the Performance Bond and Payment Bond within fourteen (14) working days from the date on which the bidder is notified of being the successful bidder, the Bid Bond or check and the amount thereof shall be forfeited to the City.

d. The Mayor may wholly or partially exempt contractors from the Performance Bond and Payment Bond requirements for contracts not exceeding one hundred thousand dollars (\$100,000.00), with the approval of the Council. Any exemption shall be stated in the bid documents. When the exemption is given, the Mayor may do any one or more of the following, which shall be set forth in the bid documents:

- 1. Not require any Payment Bond or Performance Bond;***
- 2. Accept cash, certified cheque, bank cheque, letter of credit, guaranty, or other form of security (not including any interest in real property), as a Payment Bond or Performance Bond in lieu of sureties meeting the standards of AS 36.25.010(a).***
- 3. Accept a Surety Payment Bond or Performance Bond in an amount less than that set forth in paragraph b above;***
- 4. Require the contractor to meet the following criteria;***

- A. **For two years immediately preceding the award of the contract, the contractor has been a licensed contractor having his principal office in the state;**
- B. **The contractor certifies that he has not defaulted on a contract awarded him during the period of three (3) years preceding the award of the contract for which the bid is submitted;**
- C. **The contractor has submitted financial statements, prepared within a period of nine (9) months preceding the submission of a bid for the contract, demonstrating that the contractor has a net worth of not less than seventy-five percent (75%) of the amount of the contract for which a bid is submitted.**

~~Section 4.17.150 — Disbursement Set Offs~~
Section 4.17.150 Professional Services Contracts

a. A contract for **consultant, technical, real estate**, engineering, architectural, legal, medical, or other professional services shall not be binding and effective until it has been approved by the Council.

~~b. — Contracts in amounts exceeding one thousand dollars (\$1,000.00) for such services and other contractual services, which are in their nature unique and not subject to competition, shall be awarded by the Council.~~

b. The selection of professional assistance shall be based on competence, skill and experience. The **Council City** shall not award a contract to an individual, a partnership, or a corporation that is not registered, not qualified, or not authorized under Alaska Statutes.

c. No contract shall be subdivided to avoid the requirements of this section.

d. Professional services contracts may be renewed per City of Gustavus Ordinance 4.01.010 City Obligations.

~~Section 4.17.160 — Local Preference~~
Section 4.17.160 Construction Contracts – Letting

a. For the purpose of this section “contract” means and includes construction contracts. The term shall not include professional services **as listed in Section 4.17.150(a)** and other contractual services which are in their nature unique and not subject to competition.

b. All contracts shall be based whenever possible on competitive bids.

c. All contracts shall be awarded by formal, written contract to the lowest responsible bidder as defined in Section ~~4.17.130(c)~~~~4.16.100~~ after due notice inviting proposals following procedures established in Section ~~4.17.060~~
~~4.16.040~~

d. Upon awarding a construction contract the City Clerk/Treasurer shall:

1. Immediately notify the State Commissioner of Labor of the amount of the contract, the identity of the contractor and all subcontractors, the site or sites of construction and provide a project description; and

2. Verify that the bonding requirements of AS 36.25 have been met and that the requirements of AS 08.18 have been met.

~~Section 4.17.140~~

Section 4.17.170

Construction Contracts - Administration

All contracts, as defined in Section ~~4.17.140~~ **4.17.130** shall be administered by the **Mayor and a designated and qualified Council member**, in consultation with **the Council-approved project manager, or** professional managers, if deemed necessary, in accordance with the following provisions:

a. Any change required in the work shall be made after receiving a written change order proposal from the contractor for additions to or deduction from the original contract sum and the original contract time for changes proposed.

b. Upon receipt of a change order proposal for a change in the contract sum in the amount not exceeding one thousand dollars (\$1,000.00) and after determination that the contractor's proposal is reasonable, the City Clerk/**Treasurer**, at the direction of the Council, may issue a written change order. The aggregate sum of change orders so authorized shall not exceed ~~five percent (5%) of the original contract sum or one~~ **five thousand dollars (\$5,000.00) of the original contract sum.**

c. Whenever a change in the work is required immediately upon the discovery of unforeseen conditions, the Mayor shall have the power to order such change. If the change is otherwise subject to subsection (b) of this section, a full report shall be made to the Council within one week.

d. No payment for work completed shall be made to a contractor ~~for the quantities and values submitted by the contractor~~ without:

1. Approval of the Council, or
2. Pre-approval by the Council giving the Mayor authority of approval.

e. Council will be notified of contract completion including the following information:

1. Contract completion date
2. Scope of work completed
3. Total cost of contract.

Section 4.17.180 Disbursement Set-Offs

a. Disbursement of monies to a person, firm or corporation will be made only after the various receivable accounts of the City have been reviewed for outstanding balances owed. The disbursement will be reduced by setting off the amount of indebtedness due to the City from such person, firm or corporation.

b. All contracts to which the City is a party that will or may involve the disbursement of City funds shall contain the following clause or its substantial equivalent:

"Disbursement of monies by the City of Gustavus hereunder shall be subject to set-off pursuant to the provisions of Section 4.17.180 ~~4.16.150~~ of the Code of Ordinances."

Section 4.17.190 Local Preference

The Council may include local preference criteria for contracts, to be included in the bid announcement. The local preference would go to a responsible bidder who maintains an office within the City of Gustavus, if that bid does not exceed the lowest responsible bid by more than five percent (5%).

Date Introduced: March 10, 2014

Date of Public Hearing: April 14, 2014

PASSED and APPROVED by the Gustavus City Council this 14th day of April, 2014.



Sandi Marchbanks, Mayor



Attest: Noel Farevaag, City Clerk/Treasurer

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- 2. Contract for the construction, repair, or improvements of City facilities.**

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- 1. Budgeted personal property or professional services in the amount of five thousand dollars (\$5,000.00) or less. ~~2,500.00 or less~~ without council approval, or competitive bid shall make all purchases of supplies, materials, equipment and contractual services needed by the committees, departments, and agencies of the City government in accordance with the ordinances of the City.**

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 - 3. **Contracts for electronic data processing and system control software and hardware systems and other software systems shall be by professional services contract; provided, however:**
 - A. **To be exempt from competitive bidding the service in question must be truly a "system" which is professionally designed.**
 - B. **The purchase of hardware which is not an inextricable part of the system and can be bid separately shall be competitively bid.**
 - C. **Software and systems readily available on the open market (i.e. Windows 8) are not subject to this exception. Competition will be sought to the maximum extent practicable.**

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Section 4.17.060 Bid Invitation

- a. **Purchases or contracts having an estimated value that does not exceed ten thousand dollars (\$10,000.00) may be made in the open market without publishing notice in a newspaper and with such competition as is reasonable and practical in the circumstances.**
- b. **All specifications for projects must be submitted to the Council for approval prior to the notice to bid being published. The budgeted amount shall accompany the request to the Council.**
- c. **A purchase or contract authorized by Section 4.17.020 having an estimated value that exceeds ten thousand (\$10,000.00) but does not exceed twenty-five thousand (\$25,000.00) shall be based on the solicitation of at least three competitive written bids and be awarded to the lowest responsive and responsible bidder as determined by Section 4.17.130(c), and without observing the procedure prescribed for the award of formal sealed bids.**

~~3. All purchase of supplies and contractual services of less than five thousand dollars (\$5,000.00) shall be made on the open market, without observing the procedure prescribed in Section 4.16.030 through Section 4.16.080.~~

Section 4.17.030 Purchases

~~a. All Every contract for Purchases of supplies, materials, equipment and personal property or contractual services when the estimated cost exceeds five thousand dollars (\$5,000.00) for more than two thousand dollars (\$2,000.00) will require the prior approval of the Council. If emergency expenditures are required, verbal permission must be given by the City Clerk/Treasurer and the Mayor.~~

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~~b. All purchases of supplies and contractual services of less than five thousand dollars (\$5,000.00) shall be made on the open market, without observing the procedure prescribed in Section 4.16.030 through Section 4.16.080.~~

~~Section 4.17.040 Bid Invitation~~

Section 4.17.040 Competitive Contract

a. All purchases of and contracts for supplies and contractual services *in excess of \$10,000*, shall be based wherever possible on competitive bids, except as specifically provided in **Section 4.17.050**.~~this chapter~~

b. When competitive bids are not deemed to be practical, a purchase or contract for supplies may be entered into if the Council certifies in writing by resolution that competitive bids are impractical, reciting the reasons therefore, and specifies how the purchase shall be made or the contract shall be entered into.

~~Section 4.17.050 Bid Deposits~~

Section 4.17.050 Exceptions to Competitive Contract Requirements

Unless otherwise authorized by law, all procurement actions shall be by competitive bidding. The following is a list of authorized exceptions describing situations in which competitive bidding is not practicable:

d. The purchasing agent *may establish and maintain a list of contractors who wish to provide goods and services to the City. Upon an invitation for bids, each contractor on the list with the necessary qualifications to bid shall receive a notice of the invitation.* ~~May also solicit bids from all responsible prospective suppliers and/or contractors who have indicated an interest in bidding on City contracts.~~

e. Before bid invitations can be issued, the purchasing agent will write and have on file for public viewing the Council-approved bid specifications. A tentative contract, approved by the Council, may also be available for public inspection.

f. A notice inviting bids shall be posted at least ten (10) working days prior to the last day set for the receipt of proposals. The notice will include a general description of the work, or materials or service, ~~will~~ a **statement** where bid forms and specifications may be secured, the closing time for submission of bids and the time and place of opening of bids. Bid deposits, if they are required, will be prescribed in the public notices inviting the bids.

~~Section 4.17.070~~ ~~Changes and Addendas~~

Section 4.17.070 Bid Deposits

When deemed necessary by the Council, *every person submitting a bid pursuant to competitive bidding procedures must accompany his bid with either a corporate surety bond from a surety company authorized to do business in Alaska or a certified or cashier's cheque, drawn on a bank doing business in Alaska, in an amount as required in the notice and instructions to bidders.*

~~Section 4.17.080~~ ~~Bid Submittal and Opening~~

Section 4.17.080 Pre-Bid Conference

The Council-approved project manager may provide for a pre-bid conference at least seven (7) working days prior to the time for submission of bids or upon request of any bidder. All points of clarification and questions answered at the conference which may affect the bid, will be issued in the form of an addenda.

~~Section 4.17.090~~ ~~Rejection of Bids~~

Section 4.17.090 Changes and Addenda's

No official or officer of the City shall make any oral interpretations that may affect the substance of the contract documents. Addenda will be issued to all bidders when questions arise. Addenda **will** be delivered *via email which states, in part, that the bidder shall notify the City of receipt of addenda by email* or by certified mail with a return receipt requested, or by hand delivery with a written receipt obtained. When an addendum is issued less than four (4) working days before the time for receipt of bids, the addendum shall contain a new bid date of at least four (4) working days from the original

receipt of bids date. Receipt of **all** addenda **shall** be acknowledged **by bidder** as part of the bid summary.

~~Section 4.17.100~~ ~~Award of Contract~~

Section 4.17.100 Bids – No Response or Unsatisfactory Bid
If, after opportunity for competitive bidding, no bids are received or bids received are not satisfactory to the Council, the Council may authorize the project manager to negotiate for a contract in the open market.

~~Section 4.17.110~~ ~~Contractor Bonding~~

Section 4.17.110 Bid Submittal and Opening
The bid opening date shall be scheduled by the manager of the project, after the appropriate notice thereof of not less than two (2) weeks.

- a. Bids will be submitted personally or by mail to the City Clerk/**Treasurer**, designated in the notice inviting bids, and identified **on the outside of the sealed envelope with a printed sticker provided by City as stated in RFQ or RFP documentation.**
- b. **If the Council requires that potential bidders show evidence of meeting certain requirements, the City Clerk/Treasurer shall determine the qualification of bidders before any bids are solicited. The City Clerk/Treasurer shall determine whether a bidder is qualified, responsive and responsible on the basis of the following criteria:**
- 1. The skill and experience demonstrated by the potential bidder in performing contracts of a similar nature;**
 - 2. The potential bidder's record of honesty and integrity;**
 - 3. The potential bidder's capacity to perform in terms of facilities, personnel and financing;**
 - 4. The potential bidder's past performance under City contract, if applicable. If the bidder failed in any material way to perform its obligations under any contract with the City, the bidder may be deemed a non-responsible bidder.**

At all times, the best interests of the City shall be recognized in awarding bids.

b.c. Bids will be opened in public by the City **Clerk/Treasurer** designated at the time and place so stated in the public notice. **That opening** will follow immediately after the closing time for submission of the bids. **Bids shall be opened so as to avoid disclosing their contents to competing proponents.** Any bidder **is welcome to attend the opening. Proposals, tabulations, and evaluations thereof shall be open to public inspection only after the contract award.**

d. ***At the time the bids are opened, the project manager and the City Clerk/Treasurer shall review all bids for irregularities, errors and exceptions. If it appears that minor irregularities or errors were made through inadvertence, the City Clerk/Treasurer may authorize the bidder to make changes, or may waive the errors and irregularities. In the event of major errors and irregularities, the bid shall be rejected and the bid price not disclosed. Bid bonds and certified or cashier's cheques shall be checked for adequacy.***

ee. A tabulation of all bids received will be forwarded to the City Council by the City Clerk/Treasurer with the appropriate recommendations for acceptance or rejection of bids. A copy of the tabulation ***may*** be furnished to each bidder, ***if bidder so requests.***

~~Section 4.17.120 Professional Services Contract~~
Section 4.17.120 Rejection of Bids

a. ***The Council may consider a bidder "not responsible" and reject the bid of a bidder who is in arrears on taxes, permits, special assessments and/or any other monies that may be due the City or who failed to perform on a previous contract with the City.***

ab. The Council shall have the authority to reject all bids or parts of bids or to negotiate when it is in the best interest of the City.

bc. If the lowest and best bid exceeds the budgeted amount and the City Council does not make additional funds available, the proposed contract for purchase or sale for services or for construction projects may be modified in any manner the Council deems appropriate.

ed. The Council may re-advertise the project for bidding, after making changes in the project plans.

de. If the Council rejects all bids under this section, it may later direct the purchasing agent to issue an identical or similar invitation for bids.

~~e. All open market purchases or sales will, whenever possible, be based on at least three (3) competitive bids and will be awarded to the lowest responsible bidder.~~

f. The City ***Clerk/Treasurer*** will keep a record of all open market bids submitted for competition and such records will be open to public inspection.

~~Section 4.17.130 Construction Contracts Letting~~
Section 4.17.130 Award of Contract

The Council may award contracts within the purview of this chapter. ***In most instances, the project manager will be in a position to make known his/her recommendations at the conclusion of the bid opening. The project manager will furnish each bidder with a copy of his tabulation of the bids and the name of the apparent low bidder after review, if required.***

ba. Contracts shall be awarded, if at all, to the lowest responsible bidder whose bid is responsive to the invitation for bids. ***The amount of the bid shall not exceed the project manager's estimate by more than ten percent (10%).***

eb. In determining which bid is "lowest" the Council may at its discretion apply the local contractor preference of Section ***4.17.190.4-16-160***

ec. In determining whether the lowest bidder is "responsible" the Council shall consider:

- 1. The Price;***
- 2. The experience, capacity, and skill of the bidder to perform the contract within the time and amount desired;***
- ~~***2. Whether the bidder can perform the contract within the time specified, without delay or interference;***~~
- 3. The potential bidder's quality of reputation, and performance, honesty and integrity shown in the commission of previous City contracts;***
- 4. The previous and existing compliance by the bidder with laws and ordinances relating to the contract and the City of Gustavus;***
- 5. The sufficiency of the financial resources and ability of the bidder to perform the contract.***

ed. When the award is given to other than the lowest bidder, a full and complete written statement of reasons will be delivered to the unsuccessful low bidder or bidders and filed with the other papers relating to the transaction. The minutes of the City Council meeting relating to the matter may be used as the required written statement.

fe. ***If any bidder awarded a contract with the City of Gustavus fails to enter into the contract for the exact thing called for in the Invitation To Bid within fourteen (14) working days, he/she shall forfeit his bond or cheque, if required.***

f. ***Any bidder who is not awarded a contract shall have his bid bond returned or his cheque refunded, if required.***

~~h.g.~~ At the Council's discretion, bidders may be required (with sufficient notice) to appear before the Council, in person or by telephone to answer questions concerning contracts.

~~Section 4.17.140~~ — ~~Construction Contracts Administration~~
Section 4.17.140 Contractor Bonding

Contracts for construction, alteration or repair of public buildings or public works, where the cost is in excess of one hundred thousand dollars (\$100,000.00), shall be awarded only after the contractor has provided payment and performance bonds pursuant to A.S.36.25.010(a).

a. Each bid shall be accompanied by a Bid Bond consisting of a certified or cashier's cheque payable to the City for a sum not less than five percent (5%) of the amount of the bid or accompanied by a bid bond in an amount not less than five percent (5%) of the bid with a corporate surety licensed to do business in the State of Alaska. Cheques and Bid Bonds will be returned to unsuccessful bidders.

b. The successful bidder is required to submit a Performance Bond and a Payment Bond with a Surety meeting the standards of AS 36.25.010(a) and satisfactory to the City. The amount of the Performance Bond and the amount of the Payment Bond shall be equal to the contract amount.

c. If the bidder fails to enter into the contract and furnish the Performance Bond and Payment Bond within fourteen (14) working days from the date on which the bidder is notified of being the successful bidder, the Bid Bond or check and the amount thereof shall be forfeited to the City.

d. The Mayor may wholly or partially exempt contractors from the Performance Bond and Payment Bond requirements for contracts not exceeding one hundred thousand dollars (\$100,000.00), with the approval of the Council. Any exemption shall be stated in the bid documents. When the exemption is given, the Mayor may do any one or more of the following, which shall be set forth in the bid documents:

- 1. Not require any Payment Bond or Performance Bond;***
- 2. Accept cash, certified cheque, bank cheque, letter of credit, guaranty, or other form of security (not including any interest in real property), as a Payment Bond or Performance Bond in lieu of sureties meeting the standards of AS 36.25.010(a).***
- 3. Accept a Surety Payment Bond or Performance Bond in an amount less than that set forth in paragraph b above;***
- 4. Require the contractor to meet the following criteria;***

- A. **For two years immediately preceding the award of the contract, the contractor has been a licensed contractor having his principal office in the state;**
- B. **The contractor certifies that he has not defaulted on a contract awarded him during the period of three (3) years preceding the award of the contract for which the bid is submitted;**
- C. **The contractor has submitted financial statements, prepared within a period of nine (9) months preceding the submission of a bid for the contract, demonstrating that the contractor has a net worth of not less than seventy-five percent (75%) of the amount of the contract for which a bid is submitted.**

~~Section 4.17.150 — Disbursement Set Offs~~
Section 4.17.150 Professional Services Contracts

a. A contract for **consultant, technical, real estate**, engineering, architectural, legal, medical, or other professional services shall not be binding and effective until it has been approved by the Council.

~~b. — Contracts in amounts exceeding one thousand dollars (\$1,000.00) for such services and other contractual services, which are in their nature unique and not subject to competition, shall be awarded by the Council.~~

b. The selection of professional assistance shall be based on competence, skill and experience. The **Council City** shall not award a contract to an individual, a partnership, or a corporation that is not registered, not qualified, or not authorized under Alaska Statutes.

c. No contract shall be subdivided to avoid the requirements of this section.

d. Professional services contracts may be renewed per City of Gustavus Ordinance 4.01.010 City Obligations.

~~Section 4.17.160 — Local Preference~~
Section 4.17.160 Construction Contracts – Letting

a. For the purpose of this section “contract” means and includes construction contracts. The term shall not include professional services **as listed in Section 4.17.150(a)** and other contractual services which are in their nature unique and not subject to competition.

b. All contracts shall be based whenever possible on competitive bids.

c. All contracts shall be awarded by formal, written contract to the lowest responsible bidder as defined in Section ~~4.17.130(c)~~~~4.16.100~~ after due notice inviting proposals following procedures established in Section ~~4.17.060~~
~~4.16.040~~

d. Upon awarding a construction contract the City Clerk/Treasurer shall:

1. Immediately notify the State Commissioner of Labor of the amount of the contract, the identity of the contractor and all subcontractors, the site or sites of construction and provide a project description; and

2. Verify that the bonding requirements of AS 36.25 have been met and that the requirements of AS 08.18 have been met.

~~Section 4.17.140~~

Section 4.17.170

Construction Contracts - Administration

All contracts, as defined in Section ~~4.17.140~~ **4.17.130** shall be administered by the **Mayor and a designated and qualified Council member**, in consultation with **the Council-approved project manager, or** professional managers, if deemed necessary, in accordance with the following provisions:

a. Any change required in the work shall be made after receiving a written change order proposal from the contractor for additions to or deduction from the original contract sum and the original contract time for changes proposed.

b. Upon receipt of a change order proposal for a change in the contract sum in the amount not exceeding one thousand dollars (\$1,000.00) and after determination that the contractor's proposal is reasonable, the City Clerk/**Treasurer**, at the direction of the Council, may issue a written change order. The aggregate sum of change orders so authorized shall not exceed ~~five percent (5%) of the original contract sum or one~~ **five thousand dollars (\$5,000.00) of the original contract sum.**

c. Whenever a change in the work is required immediately upon the discovery of unforeseen conditions, the Mayor shall have the power to order such change. If the change is otherwise subject to subsection (b) of this section, a full report shall be made to the Council within one week.

d. No payment for work completed shall be made to a contractor ~~for the quantities and values submitted by the contractor~~ without:

1. Approval of the Council, or
2. Pre-approval by the Council giving the Mayor authority of approval.

e. Council will be notified of contract completion including the following information:

1. Contract completion date
2. Scope of work completed
3. Total cost of contract.

Section 4.17.180 Disbursement Set-Offs

a. Disbursement of monies to a person, firm or corporation will be made only after the various receivable accounts of the City have been reviewed for outstanding balances owed. The disbursement will be reduced by setting off the amount of indebtedness due to the City from such person, firm or corporation.

b. All contracts to which the City is a party that will or may involve the disbursement of City funds shall contain the following clause or its substantial equivalent:

"Disbursement of monies by the City of Gustavus hereunder shall be subject to set-off pursuant to the provisions of Section 4.17.180 ~~4.16.150~~ of the Code of Ordinances."

Section 4.17.190 Local Preference

The Council may include local preference criteria for contracts, to be included in the bid announcement. The local preference would go to a responsible bidder who maintains an office within the City of Gustavus, if that bid does not exceed the lowest responsible bid by more than five percent (5%).

Date Introduced: March 10, 2014

Date of Public Hearing: April 14, 2014

PASSED and APPROVED by the Gustavus City Council this 14th day of April, 2014.



Sandi Marchbanks, Mayor



Attest: Noel Farevaag, City Clerk/Treasurer