

CITY OF MAPLE VALLEY, WASHINGTON

ORDINANCE NO. O-12-511

**AN ORDINANCE OF THE CITY OF MAPLE VALLEY, WASHINGTON, AMENDING
CHAPTER 2.75, CITY CONTRACTING, OF THE MAPLE VALLEY MUNICIPAL CODE,
PROVIDING FOR SEVERABILITY, ESTABLISHING AN EFFECTIVE DATE, AND
PROVIDING FOR CORRECTIONS**

WHEREAS, in 2010, the City Council approved Ordinance O-10-406, adopting contracting policies for the City; and

WHEREAS, SSB 1384, adopted by the Washington Legislature in 2012 became effective July 22, 2011 requiring that public improvement contracts involving the construction, alteration, repair, or improvement of any highway, road or street funded in whole or in part by federal transportation funds shall rely upon the contract bond as referred to in chapter 39.08 RCW for the protection and payment of suppliers, materialmen, and laborers as well as the payment of State of Washington for certain taxes; and

WHEREAS, City staff has recommended that State bond requirements involving public improvement contracts be incorporated into the City code requirements for clarity and guidance;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MAPLE VALLEY, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1: Chapter 2.75, City Contracting, is hereby amended.

2.75.060 Public works projects.

A. General Provisions. See MVMC 2.75.030 for the definition of “public work.”

1. Pursuant to RCW 35.23.352, 35A.40.210, and 35.22.620:

a. As limited by subsection b. of this section, the City may have public works performed by City employees in any annual or biennial budget period equal to a dollar value not exceeding ten percent of the public works construction budget, including any amount in a supplemental public works construction budget, over the budget period. The amount of public works that the City has a county perform for it under RCW 35.77.020 shall be included within this ten percent limitation. Whenever the City has had public works performed in any budget period up to the maximum permitted amount for that budget period, all remaining public works within that budget period shall be done by contract pursuant to public notice and call for competitive bids.

b. City employees may be used for any multiple craft or trade project that does not cost more than \$90,000, and on any single craft or trade project that does not cost more than \$45,000, or when the public works project is street signalization or street lighting. Whenever the cost of a public work or improvement, including materials, supplies and equipment, will exceed these amounts, the same shall be done by contract. In determining the cost for a public works project, applicable materials, supplies, equipment, labor and sales tax must be included. A public works project is a complete project. The restrictions in this section do not permit the division of the project into units of work or classes of work to avoid the restriction on work that may be performed by day labor on a single project.

1. The small works roster process in subsection (B) of this section shall be utilized for projects with a cost exceeding the dollar thresholds as provided in this subsection (A), up to a maximum price of \$300,000.

2. Projects with a cost in excess of the maximum dollar threshold of \$300,000 as provided in RCW 39.04.155, as written or hereafter amended, require a formal competitive bid process. See “formal competitive bid” in MVMC 2.75.030.

3. Bond requirement. Consistent with Chapter 39.08 RCW, whenever the City of Maple Valley shall contract with any person or corporation to do any work for the City, a good and sufficient bond shall be required from such person or corporation, and with a surety, as surety, conditioned that such person or persons shall faithfully perform all the provisions of such contract and pay all laborers, mechanics, and subcontractors and material suppliers, and all persons who supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such work, which bond shall be filed with the City Clerk, and any person or persons performing such services or furnishing such material to any subcontractor shall have the same right under the provisions of such bond as if such work, services, or material was furnished to the original contractor: PROVIDED, HOWEVER, that on contracts of thirty-five thousand dollars or less, at the option of the contractor the City may, in lieu of the bond, retain fifty percent of the contract amount for a period of thirty days after date of final acceptance, or until receipt of all necessary releases from the department of revenue and the department of labor and industries and settlement of any liens filed under Chapter 60.28 RCW, whichever is later: PROVIDED FURTHER, That for contracts of one hundred thousand dollars or less, the City may accept a full payment and performance bond from an individual surety or sureties: AND PROVIDED FURTHER, That the surety must agree to be bound by the laws of the State of Washington and subjected to jurisdiction of the State of Washington.

a. The bond required by the preceding section shall be in an amount equal to the full contract price agreed to be paid for such work or improvement, and shall be to the City of Maple Valley: PROVIDED, The same shall not be for a less amount than twenty-five percent of the contract price of any such improvement, and may

designate that the same shall be payable to the City and all persons mentioned in the preceding section shall have a right of action in his, her, or their own name or names on such bond for work done by such laborers or mechanics, and for materials furnished or provisions and goods supplied and furnished in the prosecution of such work, or the making of such improvements: PROVIDED, That such persons shall not have any right of action on such bond for any sum whatever, unless within thirty days from and after the completion of the contract with an acceptance of the work by the affirmative action of the City Council, the laborer, mechanic or subcontractor, or material supplier, or person claiming to have supplied such materials provisions or goods for the prosecution of such work, or the making of such improvement, shall present to and file with the City Clerk a notice in writing in substance as set forth in RCW 39.08.030(1), as written or hereafter amended. Such notice shall be signed by the person or corporation making the claim or giving the notice, and said notice, after being presented and filed, shall be a public record open to inspection by any person, and in any suit or action brought against such surety or sureties by any such person or corporation to recover for any of the items hereinbefore specified, the claimant shall be entitled to recover in addition to all other costs, attorney's fees in such sum as the court shall adjudge reasonable: PROVIDED, HOWEVER, That no attorney's fees shall be allowed in any suit or action brought or instituted before the expiration of thirty days following the date of filing of the notice hereinbefore mentioned: PROVIDED FURTHER, That the City may avail itself of the provisions of RCW 39.08.010 through 39.08.030, notwithstanding any charter provisions in conflict herewith: AND PROVIDED FURTHER, That the City may impose any other or further conditions and obligations in such bond as may be deemed necessary for its proper protection in the fulfillment of the terms of the contract secured thereby, and not in conflict herewith.

- b. Every person, firm, or corporation furnishing materials, supplies, or provisions to be used in the construction, performance, carrying on, prosecution, or doing of any work for the City, shall, not later than ten days after the date of the first delivery of such materials, supplies, or provisions to any subcontractor or agent of any person, firm, or corporation having a subcontract for the construction, performance, carrying on, prosecution, or doing of such work, deliver or mail to the contractor a notice in writing stating in substance and effect that such person, firm, or corporation has commenced to deliver materials, supplies, or provisions for use thereon, with the name of the subcontractor or agent ordering or to whom the same is furnished and that such contractor and his or her bond will be held for the payment of the same, and no suit or action shall be maintained in any court against the contractor or his or her bond to recover for such material, supplies, or

provisions or any part thereof unless the provisions of this section have been complied with.

B. **Small Works Roster.** There is established for the City of Maple Valley a small works roster process for public works projects with an estimated value threshold as provided under RCW 39.04.155, as written or hereafter amended (see threshold amounts in subsection (B)(1) of this section). The City Council, in Resolution R-08-628, as amended by R-09-698, has authorized the use of the Municipal Research Service Center (MRSC) of Washington electronic database for small works and consulting services.

1. Projects with a cost up to the maximum threshold of \$300,000, including sales tax, shall use the small works roster process.

C. **Limited Public Works.** The City may use the limited public works process, as defined in MVMC 2.75.030, to award public works projects as provided under RCW 39.04.155, as written or hereafter amended. The limited public works process is set forth in Resolution R-08-628, as amended by R-09-698, or as may hereafter be amended. This procedure may only be utilized for projects with dollar amounts less than \$35,000, including sales tax.

D. **Formal Competitive Bid.** For public works not using a small works roster or limited public works process, the formal competitive bid process shall be used. All public works in excess of \$300,000 must utilize the formal competitive bid process.

E. **Bid Bond, Bid Deposit, Noncollusion Affidavit, and Retainage for Public Works Improvement Projects.**

1. **Bid Bond/Bid Deposit.** Whenever a formal competitive bid is sought, the bidder must make a deposit in the form of a certified check or bid bond in an amount not less than five percent of the total bid, which percentage shall be specified in the call for bids. As part of any bid submitted, the bidder shall be required to warrant that the bid is a genuine bid, and that he/she has not entered into collusion with any other bidder or any other person. These requirements will be specified in the call for bids. See subsection (E)(2) of this section.
2. **Noncollusion Affidavit.** All public works contractors shall furnish a signed and notarized noncollusion affidavit on a form approved by the City Attorney.
3. The provisions of Chapter 60.28 RCW shall apply to all public works contracts.

F. **Contract Contingencies and Change Orders.** A provisionary dollar amount shall be held in reserve to offset unforeseen costs incurred under a public works contract (“contingency”). The contingency shall be allocated to all approved public works projects at the time of bid award by the City Council.

1. Amount of Contingency. If the bid award is equal to or less than \$300,000, the contingency amount shall be a minimum of 10 percent and no greater than 20 percent. If the bid award is greater than \$300,000 the contingency amount shall be a minimum of 10 percent and no greater than 15 percent.
2. The City Manager or his/her designee shall execute change orders for public works projects wherein the change order is within the contingency amount. If a change order would exceed the contingency amount, the City Council shall approve the change order.

G. Project Manager Responsibilities. The designated project manager for the public works project shall be responsible for monitoring the contractor's work under the scope of work and according to the bid specifications, and for monitoring the budget expenditures for the project. The project manager shall be responsible for project closeout according to Resolution R-09-720, as written or hereafter amended, and according to any applicable administrative orders.

Section 2. Severability. If any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be preempted by state or federal law or regulation, such decision or preemption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 3. Effective Date. A summary of this ordinance shall be published in the official newspaper of the City, and this ordinance shall take effect and be in full force five days after adoption and publication pursuant to RCW 35A.13.190.

Section 4. Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 24TH DAY OF SEPTEMBER, 2012.

William T. Allison, Mayor

ATTEST:

Shaunna Lee-Rice, City Clerk

More signatures appear on following page

APPROVED AS TO FORM:

Christy A. Todd, City Attorney

Date of Publication: October 9, 2012

Effective Date: October 14, 2012