



CITY COUNCIL AGENDA ITEM

2/24/09

REQUESTED COUNCIL MEETING DATE 1/27/09

SUBJECT: Annual Wrecker Services

DEPARTMENT: Police

RECOMMENDED MOTION:

To reject all bids submitted, extend current contract for up to six-(6) months in order to complete a re-bid with revised specifications.

SUMMARY:

There were four bids submitted for the annual wrecker services. In the process of evaluating the bids, various deficiencies were found in each bid submission. Said deficiencies ranged from bidders not meeting specifications with facilities, equipment and employees. After careful review of these submissions, Staff cannot recommend any of the bidders. Therefore Staff respectfully recommends that Council reject all of the bids received. Staff further recommends that the current wrecker services contract be extended for up to six (6) months in order to complete a re-bid of this contract, with revised specifications.

ATTACHMENTS: Ordinance Resolution Budget Resolution

Other Support Documents/Contracts Available for Review in Manager's Office

DEPARTMENT HEAD	Gerald Monahan, Chief of Police	Date	1/19/09
FINANCE DEPARTMENT	Approved as to Budget Requirements	Date	
CITY ATTORNEY	Approved as to Form and Legality	Date	1-19-09
CITY MANAGER	Approved Agenda Item For:		1/27/09

COUNCIL ACTION:

<input type="checkbox"/> Approved as Recommended	<input type="checkbox"/> Disapproved	<input type="checkbox"/> Tabled Indefinitely
<input type="checkbox"/> Continued to Date Certain	<input type="checkbox"/> Approved with Modification:	



CITY OF PORT ORANGE

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February 11, 2009

Mr. Glenn Landau
Fryer's Towing Service
722 N. Segrave Street
Daytona Beach FL 32114

Dear Mr. Landau:

On February 3, 2009, a Protest Hearing was convened in the City Manager's Conference Room. Mr. Landau indicated that he had received notice of the Protest Hearing. He was not represented by legal counsel and stated that he wanted to proceed with the hearing.

There were several issues raised during the Protest Hearing. The first issue raised was that the employee in question was not an employee of the Wrecker Company but, rather, was an employee of the Transportation Division. In checking both the Secretary of State's records as well as the State Statutes, it has been determined that the parent company of both the Wrecker Service and the Transportation Division is Landau Enterprises Inc. Further, it was found that the wrecker service is operating under a fictitious name that is legally registered with the Secretary of State. Therefore, the Wrecker Service is not a separate legal corporation. Therefore, Fryer's was required by the specifications to provide the names of all employees, regardless of the Division to which the employee is assigned.

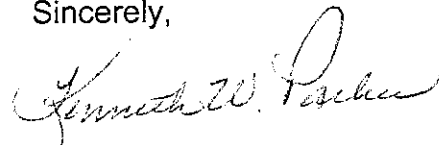
The Purchasing Ordinance, Purchasing Procedures, and the specifications all support the contractor being able to perform the task at the time the City executes the contract. Mr. Landau had signed the contract prior to the City Council meeting. By signing the contract, he represented to the City Council that Fryer's met all of the requirements of the Purchasing Ordinance, Procedures, and the specifications. Testimony was provided that Fryer's failed to comply with 7.b.1, 2, and 3 of the specifications (specifications are attached). That is the section that prohibits an individual who has been convicted of a felony from being employed by the service provider. If the City Council had approved the agreement on that evening, Fryer's would have been in violation of the contract.

A third element that was discussed was whether the contractor had to comply with the terms and conditions of the contract and specifications before the actual execution of the contract by the City of Port Orange. It was the position of the Purchasing Coordinator and the Police Chief that the contract was signed by Fryer's and presented to the City. By signing the contract, the contractor stated that they had met the terms and conditions of the contract as well as the specifications.

Mr. Landau discussed with the City that he felt that the new employee provision gave him time to correct any non-compliance issues, including entering into the original contract. There is a provision in both the specifications and in the contract that provides for the contractor to give the names of all new employees to the Police Department within a specified period of time for them to conduct the necessary background checks. The intent of that section referenced by Mr. Landau did not apply to existing employees who were employed at the time of the bid award but rather applied to those employees who became employed during the contract period.

Based upon the facts presented, it is determined that Landau Enterprises Inc. did not meet the criteria established in Section 7.b.1, 2, and 3 of the bid specifications at the time the bids were received and originally presented to the Port Orange City Council. The Wrecker Service Bid is scheduled for the City Council Agenda on Tuesday, ~~February 24, 2009~~, at 7:00 p.m. in the City Council Chambers, 1000 City Center Circle, Port Orange, Florida.

Sincerely,



Kenneth W. Parker
City Manager

Kwp/rlg

Cc: Margaret Roberts, City Attorney
Gerald Monahan, Jr., Police Chief
Roberta B. Palmer, Purchasing Coordinator
Shirley Kelly, Deputy City Clerk

- c. The Towing Company shall have an employee on duty at said storage facility from 7:00 A.M. to 5:00 P.M. Monday through Friday, including holidays. An employee of the Towing Company shall be on call twenty-four (24) hours a day and able to respond to any call with arrival at the requested location within twenty (20) minutes.
- d. Storage facilities must be in compliance with all state, local and federal regulations. The facility shall be free from trash, rodents, insects and any other cause for contamination of vehicles. The facility shall have comprehensive security to protect property and public that enters the premises. Failure to maintain a clean, safe and secure facility will subject this Agreement to termination as provided in paragraph 22.
- e. Storage facilities shall be subject to inspection and shall be approved by the City prior to the award of any Agreement. Storage facilities shall be subject to periodic inspections at any time by the Police Chief or his designee during the term of this Agreement when deemed necessary by the City to insure compliance with this Agreement.
- f. Vehicles that have been marked "HOLD" for investigative or forfeiture purposes by the Police Department shall be held at the storage facility, unless indicated otherwise, for whatever period of time necessary to properly process the vehicle and finish the investigation, at no charge to the City. Personnel of the Police Department shall be permitted access to such vehicles at any time. Vehicles stored in enclosed areas shall be secured from access by any person except as authorized by the Police Department. The Towing Company shall maintain comprehensive security to protect all stored vehicles and their contents from theft and damage. At such time the City releases the "HOLD" storage fees may begin to accrue against the owner of the vehicle.

7. Wrecker Equipment and Wrecker Company Personnel

- a. The Towing Company shall, during the term of this Agreement, own or lease a minimum of four (4) wreckers to provide the services specified in this Agreement. The wreckers must include: two (2) Class "A" wreckers, one (1) of which must have four-wheel drive; one (1) Class "C" wrecker; and one (1) car carrier. The wreckers of the Towing Company shall meet the requirements and specifications established and set forth in the Rules of the Police Department attached hereto as Exhibit "B".
- b. No owner, partner, employee, or agent of the Towing Company shall have been:

- (1) Convicted of any felony when the person's civil rights have not been restored;
 - (2) Convicted of any felony, misdemeanor, or municipal ordinance violation directly related to the business of operating a wrecker, regardless of whether civil rights have been restored. For the purpose of this paragraph, any offense involving perjury, false statement, or dishonesty is considered directly related to the business of operating a wrecker.
 - (3) For the purposes of this section, a conviction shall mean an adjudication of guilt by a court of competent jurisdiction; a plea of guilty or nolo contendere; or a jury verdict of guilty when adjudication is withheld and the accused is placed on probation.
- c. The Towing Company shall not hire or retain any wrecker driver, permanently or temporarily, who has been convicted of the offense of driving under the influence of alcohol or any controlled substance or chemical substance to the extent that normal faculties are impaired or driving with an unlawful blood alcohol level, or of any criminal traffic offense, within the last ten (10) years.
 - d. Upon execution of this Agreement and within twenty-four (24) hours of hiring any new employees, the Towing Company shall provide written notice to the Police Department of the names, addresses and drivers license numbers of all employees who operate or may operate any wrecker for the Towing Company.

8. Telephone Communications

The Towing Company shall provide cellular telephone communication system between the office and all tow trucks operated by the Towing Company. The Towing Company shall maintain a direct telephone line for incoming police calls.

9. Non-Exclusiveness of Service

The Towing Company agrees that the owner or person in possession of any vehicle that has been incapacitated shall have the opportunity of contacting a wrecker or tow company of his/her own choice if the disabled vehicle does not create a hazardous condition and a reasonable response time can be expected. Said person, at the accident or place of incapacity, shall be given the opportunity of having such vehicle towed to a location other than the storage facility of the Towing Company.