



## Legislation Text

File #: 2015-676, Version: 1

### Report to Mayor and City Council

Tuesday, September 06, 2016

Discussion

#### **SUBJECT:**

**CONSIDERATION TO AWARD A THREE-YEAR PREVENTIVE MAINTENANCE CONTRACT FOR SELECTED HEAVY-DUTY TRUCKS AND TRAILERS TO PENSKE TRUCK LEASING CO., LP. (CITY COUNCIL)**

#### **I. SUMMARY**

On July 23, 2015, the City issued a Request for Proposal (RFP) for Preventive Maintenance on selected heavy-duty trucks and trailers (Exhibit No. 1). The City received one proposal on August 6, 2015. Staff has reviewed and evaluated the proposal and recommends that the City Council award a three-year preventive maintenance contract for selected heavy-duty trucks and trailers to Penske Truck Leasing Co., LP. (Penske).

#### **II. RECOMMENDATION**

TAKE the following actions:

1. AWARD a three-year preventive maintenance contract for selected heavy-duty trucks and trailers to Penske Truck Leasing Co., LP, in an amount not-to-exceed \$39,756.00 per year which includes estimated corrective maintenance costs of \$9,000.00 per year.
2. AUTHORIZE the Mayor to execute the agreement, following approval as to form by the City Attorney.

#### **III. ALTERNATIVES**

TAKE another action the City Council deems appropriate.

#### **IV. BACKGROUND**

The Public Works Operations Division, Fleet Maintenance Section, is responsible for

providing the maintenance and care services for 73 vehicles and over 400 pieces of equipment. The majority of the vehicles are under a lease contract. Thirteen of the City owned vehicles are heavy-duty trucks and trailers which require State of California Department of Transportation (DOT) inspections. Due to the significant amount of time required to perform the maintenance and inspections on the thirteen heavy-duty trucks and trailers, the City issued a request for proposals to secure the most efficient maintenance and repair rates for any as needed repairs, ensuring that the vehicles are safe for use, and that all safety compliance records are properly maintained. .

The City sent an RFP to the following five service providers: Penske - located in Carson; Westrux International - located in Carson; Ryder Trucks - located in Rancho Dominguez; Bus West - located in Carson; and First Transit - located in Rancho Dominguez.

Listed below is the one bid that was received  
(Exhibit Nos. 2 page 25 and 3 page 51):

No.	Company	City	Total Proposal Amount
1.	Penske	Carson	Preventive maintenance monthly cost for these selected vehicles is \$2,563.00 plus \$75.00 per hour for any corrective maintenance, if needed.

The evaluation of the bid received was based on the following categories: preventive maintenance cost and corrective maintenance cost.

The bids were evaluated by Public Works staff, and it was concluded that the bid submitted by Penske is the lowest, most comprehensive, and best meets the City's needs.

The Council should be aware of the following changes to the City's boilerplate agreement that Penske asserts are non-negotiable:

1. The notarization requirement for corporations has been deleted.
2. Penske provides NO warranty on the merchantability of lack of defects in the parts they use, and no warranty on the work they perform. Penske says that because they do not manufacture the parts they cannot guarantee their merchantability. However, they will not provide a warranty on their work product, either.
3. .The scope of work includes the bid proposal. It is unclear why the scope of work cannot be fully articulated in the contract.

4. The City is entirely responsible for any damage to the vehicles except that caused by Penske's sole negligence or willful misconduct. This means that any damage caused to the vehicles while under Penske's control that is not caused by Penske's sole negligence or willful misconduct will be the City's responsibility.
5. The City can add, but not subtract, from the contract services.
6. Exhibit C: note that for every 1% rise in CPE, their prices will increase accordingly, and City approval is not required for price increases.
7. The provision that Penske's invoices have to be in a form approved by the Director of Finance has been deleted.
8. A provision has been added that all invoices must be paid within 30 days, unless the City disputes an invoice. Generally 30 days is too short of a time for the City to issue payments.
9. Time is of the essence provision has been deleted.
10. Force majeure now includes ALL causes outside the control of Penske, not just unforeseeable causes.
11. Penske has provided names of representatives, but has deleted the provision that they will be responsible for the work. Also deleted is the provision that they will notify the City of any changes to supervisory staff.
12. Provision prohibiting Penske from contracting with other entities to do the work without written approval of the City has been deleted - Penske does use subcontractors for some of the work.
13. Penske shall endeavor to have their subcontractors keep accurate records, but

will have no affirmative obligation to do so. City has the right to inspect only a representative sample of Penske's records. The provision that requires Penske to cooperate with the City is deleted.

14. The ownership of documents provision is deleted. This could be a concern because if the City terminates the contract with Penske, we may not have all the maintenance and service records for our trucks.
15. The provisions relating to confidential information that give the City the right to review discovery and that Penske will fully cooperate with City have been deleted.
16. Penske has added a provision addressing default and opportunity to cure by the City.
17. Retention of funds provision is replaced with a provision that City shall have no right to withhold funds.
18. Termination 90 days after written notice (not 30).
19. Conflict of interest provisions amended to read that the person signing the agreement does not know of any conflicts.
20. Provision requiring that Penske file a claim pursuant to the Tort Claims Act before seeking legal redress has been deleted.

The following changes have been made to the indemnity provisions:

1. Mutual indemnity has been added.
2. Penske will defend and indemnify the City except for claims arising from our negligence/willful misconduct.

3. City agrees to defend and hold harmless Penske for all claims arising out of City's noncompliance with obligations to governmental entities, injuries or damage caused by one of our drivers, or by City's failure to properly operate the vehicles.
4. Handling of claims: City will investigate and defend; City will notify Penske, who will decide whether to take no action or to investigate/defend.

The following changes have been made to the insurance provisions:

1. Commercial General Liability will have a \$5,000,000 limit.
2. Penske's Workers Comp insurance will not indemnify the City.
3. Professional Liability Insurance is replaced by Garagekeeper's Liability Insurance.
4. City is required to maintain liability insurance for each vehicle.
5. Insurance requirements changes that are concerning to Risk Management:
  - a. The requirement for subcontractors to be insured has been deleted.
  - b. Provision that Penske is the primary insurer and that the City will not contribute to Contractor's insurance has been deleted.
  - c. Provision that Penske will waive all rights of subrogation and contribution in may have against the City, its officers, employees and agents has been deleted.
  - d. Provision has been deleted that any deductibles or self-insured retentions must be included in the certificate of insurance, declared and approved by the City. Deductibles and self-insured retentions should be reasonable, and the City should know what they are.
  - e. Provision has been deleted that the City's the Risk Manager can require a change insurance if the Services increase the risk of loss to the City.

The following additional changes have been agreed to by the City:

1. Penske will be responsible for all licenses, permits and approvals relating to the

Services and their own vehicles.

2. Specifications have been added relating to method of payment of invoices.
3. A provision has been added that the City will not have the authority to bind Penske, or incur liability on its behalf (a similar provision exists in favor of the City).
4. Penske will not be liable for damage or loss to property left in vehicles.
5. Penske will not be liable for loss of City's profits.
6. City's obligations relating to reporting damage to vehicles and the operation of vehicles (e.g., vehicles will not be driven off-road, with low coolant, with underinflated tires, etc.)
7. City will make reasonable efforts to provide Penske with warranty records.

## **V. FISCAL IMPACT**

Funds for this item were not included in either the FY 2015/16 or FY2016/17 General Fund Fleet Maintenance budget, but due to a vacated Equipment Mechanic II position that will not be filled, salary savings is being used to offset the cost for the preventive maintenance contract. Expected annual expenditures amount not to exceed \$39,756. Once approved a budget transfer will be done to transfer from budgeted salary to fleet maintenance.

## **VI. EXHIBITS**

1. Preventive Maintenance for Fleet Vehicles RFP. (pgs. 7-24).
2. Proposed Vehicle Maintenance Agreement Schedule A. (pg. 25).
3. Contract Services Agreement including bid received from Penske (pgs. 26-92)

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