

Falcon Heights Council Workshop Minutes
December 4, 2013
6:30 p.m.

Members present: Mayor Lindstrom, Council Members Mercer-Taylor, Harris, Long and Gosline

Members absent:

City Staff present: City Administrator Bart Fischer
Assistant to the Administrator Michelle Tesser

1) Continued Discussion on Tobacco Ordinance Options

Representatives from the Ramsey County Tobacco Coalition were present to provide information and options to Council regarding updates to the City's Tobacco Ordinance. Council directed staff to bring an updated ordinance to an upcoming Council meeting with the following: regulation of e-cigarettes, requiring the age of a seller of tobacco to be 18 years old and language requiring landlords to disclose smoking and non-smoking units to perspective residents.

2) City License Discussion

Staff reviewed the documents from the packet with Council. Council directed staff to bring an updated rental licensing ordinance to an upcoming meeting. Council also directed staff to take a more comprehensive look at business licensing as it seems to be piecemealed presently. Finally, Council directed staff to do continued research on and come with a recommendation for a background check fee for liquor licensing.

3) Fire Truck Contract Update

The attached DRAFT contract is being worked on by the City Attorney. Staff presented the prepayment of the fire truck option to Council. Council directed staff to move forward with the prepayment option and bring the contract to the next City Council meeting.

4) Discussion on Broad-Based, Regional Issues

Councilmember Harris explained her idea for having a brainstorming session regarding which regional or County-wide issues Councilmembers should pursue, have an interest in and would benefit the City. Council directed staff to put further discussion of this on an upcoming workshop agenda.

The workshop concluded at 9:08 p.m.

Respectfully submitted,
Bart Fischer
City Administrator

**CONTRACT FOR PURCHASE
OF FIRE TRUCK**

THIS CONTRACT, made and entered into this _____ day of _____, 2013, by and between the **CITY OF FALCON HEIGHTS**, a Minnesota municipal corporation ("City"), and **PIERCE MANUFACTURING INC.**, a Wisconsin corporation ("Contractor").

WHEREAS, the City has advertised for bids for purchase of one Pierce Manufacturing Impel FR, Chassis Type, and 100' MDL, body type, Ladder Truck (herein after referred to as "Apparatus"); and

WHEREAS, the Contractor submitted a bid in response to the City's advertisement for bids; and

WHEREAS, the City Council has awarded the Contract for the Apparatus to Contractor.

NOW THEREFORE, in consideration of the mutual undertakings herein, the parties hereto agree as follows:

SECTION 1. CONTRACT DOCUMENTS. The following documents, attached hereto, shall be referred to as the "Contract Documents", all of which shall be taken together as a whole as the contract between the parties as if they were set out verbatim and in full herein:

- This document, entitled "Contract for Purchase of Fire Truck"
- Bid specifications dated _____, 2013 prepared by the City
- Contractor's bid dated _____, 2013 and attached specifications and warranties including section 6 of the Booklet and Loose equipment and Itemized published and non-published options

In the event of conflict among the provisions of these documents, the order in which they are listed above shall control, with the document listed first having the highest priority. The Contract Documents are fully a part of this Contract as if attached to this Contract or repeated herein.

SECTION 2. ACCEPTANCE OF BID. Contractor shall perform the work as provided in the Contract Documents. Contractor shall be engaged as an independent contractor and not as a City employee.

SECTION 3. CONTRACT TIME/DELIVERY. The Contractor shall deliver the Apparatus to the City's Fire Department in Falcon Heights Minnesota. The Apparatus shall be ready for delivery from Contractor within two hundred seventy (270) calendar days from the date of this Contract. The time for delivery shall be extended for the period of any reasonable delay due exclusively to unforeseeable causes beyond the control, and without the fault of the Contractor, including but not limited to, acts of God, fires, and floods. Labor strikes are deemed foreseeable. Time being of the essence of this Contract, Contractor is liable to City for liquidated damages in the amount of Five Hundred Dollars (\$500.00) per calendar day for each day that Contractor fails to deliver the Apparatus in accordance with the agreed upon delivery date.

SECTION 4. SPECIFICATIONS. Contractor agrees that all material and workmanship in and about the Apparatus shall comply with the Contract Documents. In the event of any conflict between the City's Bid Specifications and the Contractor's bid, the City's Bid Specifications shall prevail except where noted in the City's clarifications to specifications, if any.

SECTION 5. PRICE/TERMS OF PAYMENT.

A. **Price.** As a contract price for the Apparatus, the City shall pay the sum of \$767,593.00 which includes itemized published and non-published options. The bid price includes all applicable taxes, if any.

B. **Terms of Payment.** Payment shall be made in full within thirty (30) days of delivery and acceptance of the Apparatus.

SECTION 6. RISK OF LOSS. The Contractor shall bear the entire risk of loss caused by damage or destruction of equipment or property furnished pursuant to the Contract Documents to the time the Apparatus is delivered to the City.

SECTION 7. WARRANTIES. In addition to the warranties required in the specifications the Contractor provides the following warranties. The Contractor is responsible for any and all defects in workmanship and materials and upon notification by the City shall immediately replace or repair the defective workmanship and materials without cost to the City. The Contractor warrants that only new unused materials will be used. The Contractor further warrants to the City that all materials and services furnished under the Contract will be in conformance with Contract Documents and that the goods are of merchantable quality and are fit for the use for which they are sold. These warranties are in addition to any manufacturer's standard warranty, and any warranty provided by law.

SECTION 8. COPYRIGHT. Contractor shall defend actions or claims charging infringement of any copyright or patent by reason of the use or adoption of any designs, drawings or specifications supplied by it, and it shall hold harmless the City from loss or damage resulting therefrom.

SECTION 9. PATENTED DEVICES, MATERIALS AND PROCESSES. If the contract requires, or Contractor desires, the use of any design, devise, material or process covered by letters, patent or copyright, trademark or trade name, Contractor shall provide for such use by suitable legal agreement with the patentee or owner and a copy of said agreement shall be filed with the City. If no such agreement is made or filed as noted, Contractor shall

indemnify and hold harmless the City from any and all claims for infringement by reason of the use of any such patented designed, device, material or process, or any trademark or trade name or copyright in connection with the services agreed to be performed under the contract, and shall indemnify and defend the City for any costs, liability, expenses and attorney's fees that result from any such infringement.

SECTION 10. INSPECTION AT DELIVERY. At the point of delivery, the City will have ten (10) days to inspect the Apparatus for compliance with the Contract Documents. As the result of the inspection, the City will:

- A. Accept the Apparatus subject to an inspection report requiring correction and make payment; or
- B. Refuse to make payment until corrections are complete.

Refinements and improvements may be incorporated in the Apparatus quoted above at any time or times prior to delivery, with the written approval of the City, whenever proven advantageous by sound engineering development and thorough testing provided, however, that the refinements and improvements will have no material adverse affect on performance and durability, nor result in an increase in price.

SECTION 11. CANCELLATION. This Contract may be cancelled by City upon payment to Contractor of reasonable cancellation charges. Reasonable cancellation charges shall mean actual expenses reasonably incurred up to date of cancellation. Reasonable cancellation charges shall also take into account Contractor's commitments and profit, if the profit can be calculated and proven with reasonable certainty.

SECTION 12. PERFORMANCE AND PAYMENT BOND. Within fifteen (15) calendar days after the execution of this Contract and before any work or services are rendered, the

Contractor shall furnish a performance bond and payment bond insuring the faithful performance of the Contract and payment of all obligations arising thereunder pursuant to Section 574.26 of the Minnesota Statutes, and in accordance with the Bid Specifications. If the bonds are not submitted within the time frame, then the Contract shall be considered void and the City may elect to collect the proposal bonds or security as liquidated damages.

SECTION 13. ASSIGNMENT. Neither party may assign, sublet or transfer any interest or obligation in this Contract without the prior written consent of the other party, and then only upon such terms and conditions as both parties may agree to and set forth in writing.

SECTION 14. PROMPT PAYMENT TO SUBCONTRACTORS. Pursuant to Minnesota Statute § 471.25, Subdivision 4a, the Contractor must pay any subcontractor within ten (10) days of the Contractor's receipt of payment from the City for undisputed services provided by the subcontractor. The Contractor must pay interest of one and one-half percent (1½%) per month or any part of a month to subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of One Hundred Dollars (\$100.00) or more is Ten Dollars (\$10.00). For an unpaid balance of less than One Hundred Dollars (\$100.00), the Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from the Contractor shall be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

SECTION 15. WORKER'S COMPENSATION. The Contractor shall obtain and maintain for the duration of this Contract, statutory Worker's Compensation Insurance and Employer's Liability Insurance as required under the laws of the State of Minnesota.

SECTION 16. COMPREHENSIVE GENERAL LIABILITY. Contractor shall obtain the following minimum insurance coverage and maintain it at all times throughout the life of the

Contract, with the City included as an additional name insured. The Contractor shall furnish the City a certificate of insurance satisfactory to the City evidencing the required coverage:

- A. Commercial General Liability Insurance
Products/Completed Operations Aggregate - \$1,000,000.00
Each Occurrence - \$1,000,000.00
- B. Umbrella/Excess Liability Insurance
Aggregate - \$25,000,000.00
Each Occurrence - \$25,000,000.00
- C. Blanket contractual (hold harmless) protection and fire, theft and vandalism insurance for the full value of all materials and equipment furnished by the Contractor.

SECTION 17. PRODUCT LIABILITY INSURANCE. Contractor must submit a Certificate of Insurance listing the manufacturer's product liability insurance coverage. Liability insurance shall be a minimum amount of five million dollars with coverage attained with a minimum of \$1,000,000.00 underlying insurance and \$4,000,000.00 umbrella coverage. Submitted Certificate shall name the apparatus manufacturer, insurance company, policy number, and effective dates of the insurance policy.

SECTION 18. DATA PRACTICES/RECORDS.

A. All data created, collected, received, maintained or disseminated for any purpose in the course of this Contract is governed by the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, any other applicable state statute, or any state rules adopted to implement the act, as well as federal regulations on data privacy.

B. All books, records, documents and accounting procedures and practices of the Contractor and its subcontractors, if any, relative to this Contract are subject to examination by the City.

SECTION 19. U.L.I. CERTIFICATION. Contractor shall furnish City with a Certificates of Testing for the Manufacturer's Preliminary Test and the ULI Certification Tests.

SECTION 20. DELIVERY MANUALS. Upon delivery of the Apparatus, Contractor shall supply the following copies of delivery manuals on each Apparatus:

1. All warranties required by the Contract Documents.
2. Engine manufacturer's certified brake horsepower curve showing the maximum no load governed speed;
3. Manufacturer's record of pumper construction details, per NFPA;
4. Manufacturer's run-in Certification with preliminary test results;
5. Pump Manufacturer's Certification of Hydrostatic Test;
6. Pump Manufacturer's Certification of Pump Test results;
7. The Certification of Inspection/Test of Fire Department Pumper by Underwriters Laboratories, Inc.;
8. Weight documents from a certified scale showing actual loading on the front axle, rear axle, and overall vehicle (with the water tank full but without personnel, equipment, and hose);
9. At least two copies of the complete operation and maintenance manual covering the completed Apparatus as delivered including the pump, emergency lighting and sirens, portable fire pump, portable or built-in generator, or either furnished accessories;
10. Wiring diagrams of electrical systems, installed by Apparatus manufacturer;
11. A Delivery Manual, consisting of a 3-ring notebook type binder with reference tabs for each section, shall be furnished to include the following item: individual component manufacturer instructions and parts manuals, warranty forms for body, warranty forms for all major components, warranty instructions and format to be used for compliance with warranty objections, routine service forms/publications, and technical publications or training guide for major components.

SECTION 21. MISCELLANEOUS.

A. The Contractor shall hold harmless and indemnify the City from any and all claims, suits, and proceedings, including reasonable attorney fees and expenses, for infringement of any software licenses, copyrights or patent, or patents, covering the property purchased hereunder.

B. Each and all of the covenants and agreements herein contained shall extend to and be binding upon the successors and assigns of the parties hereto; provided however, that the Contractor shall not assign this Contract with any person, firm, or corporation for the performance of the Contractor's obligations hereunder, or any part thereof, without the written approval of the City.

C. This Contract shall be governed by the laws of the State of Minnesota. In the event of litigation the exclusive venue shall be in the District Court of the State of Minnesota for Ramsay County.

D. If either party waives any breach of this Contract by the other, such waiver shall not constitute a waiver of any other or any succeeding breach of this Contract by either party, whether of the same or any other covenant, condition or obligation.

E. This Contract, and the Contract Documents, embody the entire understanding between the parties relating to the subject matter contained herein, and merges all prior discussions and agreements between them. No agent or representative of the Contractor has authority to make any representations, statements, warranties or agreements not herein expressed.

THIS CONTRACT ENTERED INTO AS OF THE DAY AND YEAR FIRST ABOVE WRITTEN.

CITY OF FALCON HEIGHTS

PIERCE MANUFACTURING INC.

BY: _____

BY: _____

Peter Lindstrom, Mayor

Its _____

BY: _____
Bart Fischer, City Administrator/Clerk

