

Council Communication

December 2, 2014 Business Meeting

Special Procurement for Key Manufacturing, Ice Rink Tent install and removal.

FROM:

Rachel Dials, Recreation Superintendent, rachel.dials@ashland.or.us

SUMMARY

Recommendation of a Special Procurement for Key Manufacturing for up to 5 years (through Ice Rink season 2019) for install and removal of the ice rink tent. Installation is set for December 9th and removal is scheduled for no later than March 31, 2015.

BACKGROUND AND POLICY IMPLICATIONS:

The Ashland Rotary Centennial Ice Rink , located at 95 Winburn Way received approval on November 25th, 2014 from the Planning Commission to install the Ice Rink tent. Parks staff received 3 quotes in 2014 for install, removal, storage, cleaning and repair of the tent from 3 different companies. Of the 3 quotes, Key Manufacturing was the low bid. Key Manufacturing out of Portland, Oregon removed the tent in April, 2014 and is very familiar with this type of structure. It would be in the City of Ashland's best interest to continue to work with this company.

COUNCIL GOALS SUPPORTED:

N/A

FISCAL IMPLICATIONS:

Cost estimate for FY 2014-2015 is \$18,000. Cost for subsequent seasons is estimated to be \$18,000 to \$25,000 per season. The costs will be budgeted in the Parks and Recreation budget.

STAFF RECOMMENDATION AND REQUESTED ACTION:

Approval of the Special Procurement for Key Manufacturing for set up and removal of the ice rink tent through the 2019 Ice Rink Season.

SUGGESTED MOTION:

N/A.

ATTACHMENTS:

Form #4 Determinations to Procure

Form #9, Special Procurement-Request for Approval



**SPECIAL PROCUREMENT
REQUEST FOR APPROVAL**

To: City Council, Local Contract Review Board
From: Michael Black, Director, Ashland Parks and Recreation
Date: 12-2-14
Subject: REQUEST FOR APPROVAL OF A SPECIAL PROCUREMENT

In accordance with ORS279B.085, this request for approval of a Special Procurement is being presented to the City Council for approval. This written request for approval describes the proposed contracting procedure and the goods or services or the class of goods or services to be acquired through the special procurement and the circumstances that justify the use of a special procurement under the standards set forth ORS 279B.085(4).

- 1. **Requesting Department Name:** Ashland Parks and Recreation
- 2. **Department Contact Name:** Rachel Dials
- 3. **Type of Request:** Class Special Procurement X Contract-specific Special Procurement
- 4. **Time Period Requested:** From Fall - 2014 To: Spring – 2019
- 5. **Total Estimated Cost:** Cost estimate for FY 2014-2015 is \$18,000. Cost for subsequent seasons is estimated to be \$18,000 to \$25,000 per season
- 6. **Short title of the Procurement:** Fall Re-Install of Ice Rink Tent Structure and Removal of Tent Structure in Spring

Supplies and/or Services or class of Supplies and/or Services to be acquired:
Installation, removal, storage, cleaning and repair of the Ice Rink Tent Structure

7. Background and Proposed Contracting Procedure: Provide a description of what has been done in the past and the proposed procedure. The Agency may, but is not required to, also include the following types of documents: Notice/Advertising, Solicitation(s), Bid/Proposal Forms(s), Contract Form(s), and any other documents or forms to be used in the proposed contracting procedure. Attach additional sheets as needed.

Background: Parks staff received 3 quotes to remove the structure at the end of the 2013-2014 season. Quotes were received from Creative Tent \$53,436.30, Noel Lesley \$33,860.00 and Key Manufacturing \$15,000.00. The quotes from each of these three contractors included installation, removal, storage, cleaning and repair of the tent. The resulting contract was awarded to Key Manufacturing. Key Manufacturing successfully removed and stored the ice rink tent during the off season.

Proposed procedure: Directly award a contract to Key Manufacturing on an annual basis for these services for the terms and services described and approved in this Special Procurement.

8. Justification for use of Special Procurement: Describe the circumstances that justify the use of a Special Procurement. Attach relevant documentation.

Parks staff was unable to locate another qualified contractor willing to provide and accept the responsibilities associated with the removal, reinstallation and storage of this tent structure.

9. Findings to Satisfy the Required Standards: This proposed special procurement:

X (a) will be unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts because:

Staff looked locally and there was only one other local company that was willing to give a quote. Staff called most local construction companies as well as 2 other local tent companies and all were unwilling to give a quote.

(Please provide specific information that demonstrates how the proposed Special Procurement meets this requirement.); **and**

X (b)(i) will result in substantial cost savings to the contracting agency or to the public because:

Staff looked locally and there was only one other local company that was willing to give a quote. This company would not consider signing the City of Ashland contract and priced their quote \$15,000 higher than Key Manufacturing.

(Please provide the total estimate cost savings to be gained and the rationale for determining the cost savings); **or**

X (b)(ii) will otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with the requirements of ORS 279B.055, 279B.060, 279B.065, or 279B.070, or any rules adopted thereunder because:

Key Manufacturing successfully removed and stored the ice rink tent during the off season. It is in the City's best interest to contract with the same contractor, Key Manufacturing, to reinstall this complex tent structure they removed last season and have been storing for the Parks Department.

(Please provide specific information that demonstrates how the proposed Special Procurement meets this requirement.)

Public Notice:

Pursuant to ORS 279B.085(5) and OAR 137-047-0285(2), a Contracting Agency shall give public notice of the Contract Review Authority's approval of a Special Procurement in the same manner as a public notice of competitive sealed Bids under ORS 279B.055(4) and OAR 137-047-0300. The public notice shall describe the Goods or Services or class of Goods or Services to be acquired through the Special Procurement and shall give such public notice of the approval of a Special Procurement at least seven (7) Days before Award of the Contract.

After the Special Procurement has been approved by the City Council, the following public notice will be posted on the City's website to allow for the seven (7) day protest period.

Date Public Notice first appeared on www.ashland.or.us – December 3, 2014

PUBLIC NOTICE

Approval of a Special Procurement

First date of publication: *December 3, 2014*

A request for approval of a Special Procurement was presented to and approved by the City Council, acting as the Local Contract Review Board, on *December 2, 2014*

This Contract-specific Special Procurement will allow the Parks Department to continue contracting with Key Manufacturing for the installation, removal, storage, cleaning and repair of the ice rink tent structure. Key Manufacturing successfully removed and stored this complex ice rink tent structure after the 2013-2014 skating season, and it is in the City's best interest to continue contracting with Key Manufacturing to provide these services for the Parks Department.

It has been determined based on written findings that the Special Procurement will be unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts, and result in substantial cost savings or substantially promote the public interest in a manner that could not be realized by complying with the requirements that are applicable in ORS 279B.055, 279B.060, 279B.065, or 279B.070.

An affected person may protest the request for approval of a Special Procurement in accordance with ORS 279B.400 and OAR 137-047-0300. A written protest shall be delivered to the following address: City of Ashland, [Ashland Parks and Recreation, Rachel Dials, 340 S. Pioneer St. Ashland, OR 97520. The seven (7) protest period will expire at 5:00pm on *December 9, 2014*

This public notice is being published on the City's Internet World Wide Web site at least seven days prior to the award of a public contract resulting from this request for approval of a Special Procurement.

Contract for GOODS AND SERVICES Less than \$25,000

<p>CITY OF ASHLAND 20 East Main Street Ashland, Oregon 97520 Telephone: 541/488-6002 Fax: 541/488-5311</p>	<p>CONTRACTOR: Key Manufacturing and Rentals, Inc</p> <p>CONTACT: Annie Chisholm</p> <p>ADDRESS: 18179 Boones Ferry Rd. Portland, OR 97224</p> <p>TELEPHONE: (503) 597-2023</p>
DATE AGREEMENT PREPARED: October 1, 2014	FAX: (503) 597-2040
BEGINNING DATE: October 27, 2014	COMPLETION DATE: March 31, 2015
COMPENSATION: Not to exceed \$18,000.00 per quotes attached as Exhibit C and D.	
GOODS AND SERVICES TO BE PROVIDED: 2014 Fall Re-Install of Ice Rink Structure and Removal of Structure in Spring of 2015 - Includes set up, tear down, storage, cleaning and repair of ice rink tent for 2014/2015 season per quotes attached as Exhibit C and D.	
ADDITIONAL TERMS:	
<p>NOW THEREFORE, pursuant to AMC 2.50.090 and after consideration of the mutual covenants contained herein the CITY AND CONTRACTOR AGREE as follows:</p> <ol style="list-style-type: none"> 1. All Costs by Contractor: Contractor shall, provide all goods as specified above and shall at its own risk and expense, perform any work described above and, unless otherwise specified, furnish all labor, equipment and materials required for the proper performance of such work. 2. Qualified Work: Contractor has represented, and by entering into this contract now represents, that any personnel assigned to the work required under this contract are fully qualified to perform the work to which they will be assigned in a skilled and worker-like manner and, if required to be registered, licensed or bonded by the State of Oregon, are so registered, licensed and bonded. Contractor must also maintain a current City business license. 3. Completion Date: Contractor shall provide all goods in accordance with the standards and specifications, no later than the date indicated above and start performing the work under this contract by the beginning date indicated above and complete the work by the completion date indicated above. 4. Compensation: City shall pay Contractor for the specified goods and for any work performed, including costs and expenses, the sum specified above. Payments shall be made within 30 days of the date of the invoice. Should the contract be prematurely terminated, payments will be made for work completed and accepted to date of termination. Compensation under this contract, including all costs and expenses of Contractor, is limited to \$25,000.00, unless a separate written contract is entered into by the City. 5. Ownership of Documents: All documents prepared by Contractor pursuant to this contract shall be the property of City. 6. Statutory Requirements: ORS 279B.220, 279B.225, 279B.230, 279B.235, ORS Chapter 244 and ORS 670.600 are made part of this contract. 7. Living Wage Requirements: If contractor is providing services under this contract and the amount of this contract is \$20,142.20 or more, Contractor is required to comply with chapter 3.12 of the Ashland Municipal Code by paying a living wage, as defined in this chapter, to all employees performing work under this contract and to any subcontractor who performs 50% or more of the work under this contract. Contractor is also required to post the notice attached hereto as Exhibit B predominantly in areas where it will be seen by all employees. 8. Indemnification: Contractor agrees to defend, indemnify and save City, its officers, employees and agents harmless from any and all losses, claims, actions, costs, expenses, judgments, subrogations, or other damages resulting from injury to any person (including injury resulting in death), or damage (including loss or destruction) to property, of whatsoever nature arising out of or incident to the performance of this contract by Contractor (including but not limited to, Contractor's employees, agents, and others designated by Contractor to perform work or services attendant to this contract). Contractor shall not be held responsible for any losses, expenses, claims, subrogations, actions, costs, judgments, or other damages, directly, solely, and proximately caused by the negligence of City. 9. Termination: <ol style="list-style-type: none"> a. <u>Mutual Consent.</u> This contract may be terminated at any time by mutual consent of both parties. b. <u>City's Convenience.</u> This contract may be terminated at any time by City upon 30 days' notice in writing and delivered by certified mail or in person. c. <u>For Cause.</u> City may terminate or modify this contract, in whole or in part, effective upon delivery of written notice to Contractor, or at such later date as may be established by City under any of the following conditions: 	

- i. If City funding from federal, state, county or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services;
 - ii. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract; or
 - iii. If any license or certificate required by law or regulation to be held by Contractor to provide the services required by this contract is for any reason denied, revoked, suspended, or not renewed.
 - d. For Default or Breach.
 - i. Either City or Contractor may terminate this contract in the event of a breach of the contract by the other. Prior to such termination the party seeking termination shall give to the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured the breach within 15 days of the date of the notice, or within such other period as the party giving the notice may authorize or require, then the contract may be terminated at any time thereafter by a written notice of termination by the party giving notice.
 - ii. Time is of the essence for Contractor's performance of each and every obligation and duty under this contract. City by written notice to Contractor of default or breach, may at any time terminate the whole or any part of this contract if Contractor fails to provide services called for by this contract within the time specified herein or in any extension thereof.
 - iii. The rights and remedies of City provided in this subsection (d) are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.
 - e. Obligation/Liability of Parties. Termination or modification of this contract pursuant to subsections a, b, or c above shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination or modification. However, upon receiving a notice of termination (regardless whether such notice is given pursuant to subsections a, b, c or d of this section, Contractor shall immediately cease all activities under this contract, unless expressly directed otherwise by City in the notice of termination. Further, upon termination, Contractor shall deliver to City all contract documents, information, works-in-progress and other property that are or would be deliverables had the contract been completed. City shall pay Contractor for work performed prior to the termination date if such work was performed in accordance with the Contract.
10. **Independent Contractor Status:** Contractor is an independent Contractor and not an employee of the City. Contractor shall have the complete responsibility for the performance of this contract.
11. **Non-discrimination Certification:** The undersigned certifies that the undersigned Contractor has not discriminated against minority, women or emerging small businesses enterprises in obtaining any required subcontracts. Contractor further certifies that it shall not discriminate in the award of such subcontracts, if any. The Contractor understands and acknowledges that it may be disqualified from bidding on this contract, including but not limited to City discovery of a misrepresentation or sham regarding a subcontract or that the Bidder has violated any requirement of ORS 279A.110 or the administrative rules implementing the Statute.
12. **Asbestos Abatement License:** If required under ORS 468A.710, Contractor or Subcontractor shall possess an asbestos abatement license.
13. **Assignment and Subcontracts:** Contractor shall not assign this contract or subcontract any portion of the work without the written consent of City. Any attempted assignment or subcontract without written consent of City shall be void. Contractor shall be fully responsible for the acts or omissions of any assigns or subcontractors and of all persons employed by them, and the approval by City of any assignment or subcontract shall not create any contractual relation between the assignee or subcontractor and City.
14. **Use of Recyclable Products:** Contractor shall use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document.
15. **Default.** The Contractor shall be in default of this agreement if Contractor: commits any material breach or default of any covenant, warranty, certification, or obligation it owes under the Contract; if it loses its QRF status pursuant to the QRF Rules or loses any license, certificate or certification that is required to perform the work or to qualify as a QRF if Contractor has qualified as a QRF for this agreement; institutes an action for relief in bankruptcy or has instituted against it an action for insolvency; makes a general assignment for the benefit of creditors; or ceases doing business on a regular basis of the type identified in its obligations under the Contract; or attempts to assign rights in, or delegate duties under, the Contract.
16. **Insurance.** Contractor shall at its own expense provide the following insurance:
- a. Worker's Compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers
 - b. General Liability insurance with a combined single limit, or the equivalent, of not less than Enter one: \$200,000, \$500,000, \$1,000,000, **\$2,000,000** or Not Applicable for each occurrence for Bodily Injury and Property Damage. It shall include contractual liability coverage for the indemnity provided under this contract.
 - c. Automobile Liability insurance with a combined single limit, or the equivalent, of not less than Enter one: \$200,000, \$500,000, **\$1,000,000**, or Not Applicable for each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.
 - d. Notice of cancellation or change. There shall be no cancellation, material change, reduction of limits or

intent not to renew the insurance coverage(s) without 30 days' written notice from the Contractor or its insurer(s) to the City.

e. Additional Insured/Certificates of Insurance. Contractor shall name The City of Ashland, Oregon, and its elected officials, officers and employees as Additional Insureds on any insurance policies required herein but only with respect to Contractor's services to be provided under this Contract. As evidence of the insurance coverages required by this Contract, the Contractor shall furnish acceptable insurance certificates prior to commencing work under this contract. The contractor's insurance is primary and non-contributory. The certificate will specify all of the parties who are Additional Insureds. Insuring companies or entities are subject to the City's acceptance. If requested, complete copies of insurance policies, trust agreements, etc. shall be provided to the City. The Contractor shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

17. **Governing Law; Jurisdiction; Venue:** This contract shall be governed and construed in accordance with the laws of the State of Oregon without resort to any jurisdiction's conflict of laws, rules or doctrines. Any claim, action, suit or proceeding (collectively, "the claim") between the City (and/or any other or department of the State of Oregon) and the Contractor that arises from or relates to this contract shall be brought and conducted solely and exclusively within the Circuit Court of Jackson County for the State of Oregon. If, however, the claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon filed in Jackson County, Oregon. Contractor, by the signature herein of its authorized representative, hereby consents to the in personam jurisdiction of said courts. In no event shall this section be construed as a waiver by City of any form of defense or immunity, based on the Eleventh Amendment to the United States Constitution, or otherwise, from any claim or from the jurisdiction.
18. THIS CONTRACT AND ATTACHED EXHIBITS CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. CONTRACTOR, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.
19. **Nonappropriations Clause.** Funds Available and Authorized: City has sufficient funds currently available and authorized for expenditure to finance the costs of this contract within the City's fiscal year budget. Contractor understands and agrees that City's payment of amounts under this contract attributable to work performed after the last day of the current fiscal year is contingent on City appropriations, or other expenditure authority sufficient to allow City in the exercise of its reasonable administrative discretion, to continue to make payments under this contract. In the event City has insufficient appropriations, limitations or other expenditure authority, City may terminate this contract without penalty or liability to City, effective upon the delivery of written notice to Contractor, with no further liability to Contractor.
20. **Prior Approval Required Provision.** Approval by the City of Ashland Council or the Public Contracting Officer is required before any work may begin under this contract.
21. **Certification.** Contractor shall sign the certification attached hereto as Exhibit A and herein incorporated by reference.

Contractor:	City of Ashland
By _____ Signature	By _____ Department Head
_____ Print Name	_____ Print Name
_____ Title	_____ Date
W-9 One copy of a W-9 is to be submitted with the signed contract.	Purchase Order No. _____

EXHIBIT A

CERTIFICATIONS/REPRESENTATIONS: Contractor, under penalty of perjury, certifies that (a) the number shown on the attached W-9 form is its correct taxpayer ID (or is waiting for the number to be issued to it and (b) Contractor is not subject to backup withholding because (i) it is exempt from backup withholding or (ii) it has not been notified by the Internal Revenue Service (IRS) that it is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified it that it is no longer subject to backup withholding. Contractor further represents and warrants to City that (a) it has the power and authority to enter into and perform the work, (b) the Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms, (c) the work under the Contract shall be performed in accordance with the highest professional standards, and (d) Contractor is qualified, professionally competent and duly licensed to perform the work. Contractor also certifies under penalty of perjury that its business is not in violation of any Oregon tax laws, and it is a corporation authorized to act on behalf of the entity designated above and authorized to do business in Oregon or is an independent Contractor as defined in the contract documents, and has checked four or more of the following criteria:

- _____ (1) I carry out the labor or services at a location separate from my residence or is in a specific portion of my residence, set aside as the location of the business.
- _____ (2) Commercial advertising or business cards or a trade association membership are purchased for the business.
- _____ (3) Telephone listing is used for the business separate from the personal residence listing.
- _____ (4) Labor or services are performed only pursuant to written contracts.
- _____ (5) Labor or services are performed for two or more different persons within a period of one year.
- _____ (6) I assume financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

Contractor

(Date)

EXHIBIT B

City of Ashland LIVING WAGE

ALL employers described below must comply with City of Ashland laws regulating payment of a living wage.



\$14.42 per hour effective June 30, 2014

(Increases annually every June 30 by the Consumer Price Index)

Employees must be paid a living wage:

- For all hours worked under a service contract between their employer and the City of Ashland if the contract exceeds **\$20,142.20** or more.
- For all hours worked in a month if the employee spends 50% or more of the employee's time in that month working on a project or

portion of business of their employer, if the employer has ten or more employees, and has received financial assistance for the project or business from the City of Ashland in excess of **\$20,142.20**.

- If their employer is the City of Ashland including the Parks and Recreation Department.
- In calculating the living wage, employers may add the value of health care, retirement,

401K and IRS eligible cafeteria plans (including childcare) benefits to the amount of wages received by the employee.

- **Note:** "Employee" does not include temporary or part-time employees hired for less than 1040 hours in any twelve-month period. For more details on applicability of this policy, please see Ashland Municipal Code Section 3.12.020.

For additional information:

Call the Ashland City Administrator's office at 541-488-6002 or write to the City Administrator, City Hall, 20 East Main Street, Ashland, OR 97520 or visit the city's website at www.ashland.or.us.

Notice to Employers: This notice must be posted predominantly in areas where it can be seen by all employees.

CITY OF
ASHLAND

