



AGENDA STAFF REPORT

AGENDA LOCATION: Action Item #10-D

MEETING DATE: October 9, 2017

TO: Honorable Mayor and City Council

FROM: Gene Parker, City Attorney

ISSUE: Protest related to Contract No. 2018-004 for fixed based operator services filed by Gorge Aviation Services, LLC

RELATED COUNCIL GOAL: None.

BACKGROUND: On September 27, 2017, Gorge Aviation Services, LLC (“GAS”) submitted a written protest for Contract No. 2018-004 for fixed based operator services at the Columbia Gorge Regional Airport. A copy of the written protest is included with this staff report.

Concerning the first issue raised in the protest, posting of a request for proposal on the City’s website is optional under the City’s Local Contract Review Board Rules. Staff’s practice has been not to post solicitations for public contract documents on the City’s website because there is no way to confirm when potential proposers or bidders have obtained a copy of the solicitation documents. In order to ensure that potential proposers obtain copies of any addendums issued by the City, the City needs to keep track of who has picked up the documents to place those potential proposers on a plan holder’s list.

The initial date for opening of the proposals for Contract No. 2018-004 was scheduled for October 5th. Staff determined that additional time was needed to do further research related to issues raised by the protest. The City’s contract review board rules allow for a proposal opening to be extended if additional time is needed to review and respond to a written protest, and the proposal opening for Contract No. 2018-004 was extended to October 19th. This extension allowed for the publication of the advertisement for the proposals in The Dalles Chronicle on October 8th, which was a requirement that was initially overlooked. Staff recommends that the first ground for the protest be denied.

Concerning the second issue related to the use of allegedly confidential and proprietary information related to fuel sales, state public contracting law requires that written protests contain evidence or supporting documentation that supports the ground on which the protest is based. The written protest refers to a letter sent on December 3, 2015 by GAS to Kate Mast, the former City Finance Director responding to a request for aviation fuel sale records. The letter is referred to as Exhibit 1, but no attachment was included with the written protest. Mr. Craig Russillo, the consulting attorney assisting my office with issues related to the agreements with GAS and Aeronautical Management, Inc., is conducting further research on this second issue, and I anticipate I will have further information to present at the Council meeting.

Regarding the third issue which alleges the Lease Agreement between the City and Klickitat County and GAS was wrongfully terminated, which constitutes grounds for withdrawal of the request for proposal, the City's position has consistently been that the City and County properly terminated the Lease Agreement with GAS for convenience. A claim of wrongful termination of a contract focuses upon issues of contract law, and not public contracting law. This element of the protest cites no provisions of public contract law which allegedly were violated by the City. Staff recommends that the third ground of the protest be denied.

BUDGET IMPLICATIONS: None.

COUNCIL ALTERNATIVES:

1. *Staff recommendation:* The Council move to direct staff to prepare a letter to Gorge Aviation Services, LLC denying the protest of Contract No. 2018-004 submitted on September 27, 2017.
2. If the Council finds that any of the grounds for the protest filed by Gorge Aviation Services, LLC have merit, the Council should indicate what those grounds are and direct staff to prepare a response sustaining the protest on those specified grounds, and directing staff to take appropriate action.

Gorge Aviation Services

September 27, 2017

Hand Delivered

City Manager
313 Court Street
The Dalles, OR 97058

RE: Gorge Aviation Services, LLC Protest to Request for Proposals for Columbia Gorge Regional Airport Fixed-Base Operator

City Manager:

This protest is made pursuant to section 1.3 Protests of the Request for Proposals (hereinafter "RFP") Columbia Gorge Regional Airport Fixed-Base Operator Contract No. 2018-004 and Section 02-0730 of the City's Contract Review Board Rules.

Gorge Aviation Services, LLC (hereinafter "GAS") as a prospective bidder in RFP Contract No. 2018-004 submits this protest for the following reasons:

- 1) RFP Contract No. 2018-004 was improperly solicited and as a result is unnecessarily restrictive. The City Manager failed to advertise the RFP on the City of The Dalles website or the Klickitat County website, and to date has not advertised on the City of The Dalles RFP webpage (http://www.ci.the-dalles.or.us/node/71?q=current_job_openings.htm) or Klickitat County RFP webpage (<http://www.klickitatcounty.org/523/Request-for-ProposalQualifications>). GAS as a potential bidder, was unaware of the RFP or the upcoming deadline. GAS lost approximately 10 days to properly prepare a proposal for Contract No. 2018-004. GAS requests that the City Manager post the RFP on the City of The Dalles and the Klickitat County websites and amend the proposal filing deadline accordingly.
- 2) Addendum No. 1 to Contract No 2018-004 dated September 20, 2017 uses confidential and proprietary GAS information that is the property of GAS, thus the RFP is contrary to law and as a result is legally flawed. On December 3, 2015 GAS sent Kate Mast, Finance Director to City of The Dalles a letter (attached as Exhibit 1) responding to requests for aviation fuel sales records. This letter clearly stated that any information provided regarding fuel sales was considered confidential and proprietary to GAS and that it was not to be disclosed. Pages 3-5 of Addendum No. 1 to Contract No 2018-004 were fuel sales records that were provided to City of The Dalles confidentially by GAS as the Fixed Based Operator for the Columbia Gorge Regional Airport. Additionally, pages 6-10 of the

Addendum are highly confidential information that is only for internal use and has never been provided to the City of The Dalles with GAS's knowledge or consent. These pages of the Addendum are not part of any information that GAS provides to the City of The Dalles under the current FBO lease or in any other manner. GAS requests that City of The Dalles retract the confidential and proprietary documents that were provided in Addendum No. 1 to potential bidders, dis-allow any use of any of the documents by potential bidders and disregard information in any proposal that relies on the above mentioned confidential and proprietary information.

- 3) GAS further protests RFP Contract No. 2018-004 on the grounds that the current FBO Lease has been wrongfully terminated. Therefore, the RFP is contrary to law and legally flawed. On July 21, 2017 GAS received notice that City of The Dalles and Klickitat County terminated the current contract for convenience. The termination was self-serving, an abuse of discretion, and in bad faith, and as such is a wrongful termination of the current FBO lease and therefore does not provide City of The Dalles an opportunity to Request Proposals for a lease that is in place. As a result, GAS requests that the City Manager remove the RFP Contract No. 2018-004 in its entirety.

Sincerely,



Rolf Anderson, Member of Gorge Aviation Services, LLC



Ronald Berg, Member of Gorge Aviation Services, LLC

Cc:
Klickitat County
Bradley V. Timmons
James M. Habberstad
Charles Covert
Gene Parker