CITY OF EL PASO, TEXAS
REQUEST FOR COUNCIL ACTION (RCA)

DEPARTMENT: General Services

AGENDA DATE: April 28, 2009

CONTACT PERSON/PHONE: Terrence Freiburg, Purchasing Manager, 541-4313

DISTRICT (S) AFFECTED: All

SUBJECT:
APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include $ amount if applicable.

The Purchasing Manager, Financial Services, Purchasing Division, requests that Mayor and Council terminate Contract No. 2008-157 with Barnett Harley-Davidson for Police Motorcycles for default pursuant to Section C Clause No. 18B of the Contract, an item titled Termination for Default, whereby the City reserved the right to terminate the Contract for default.

BACKGROUND / DISCUSSION:
Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

Barnett Harley-Davidson failed to meet the requirements of the above referenced contract because they failed to deliver the police motorcycles, including all of the accessories listed in the bid, at the bid price offered that was awarded by City Council and subsequently must be terminated for default.

PRIOR COUNCIL ACTION:
Has the Council previously considered this item or a closely related one?

Yes.

AMOUNT AND SOURCE OF FUNDING:
How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

N/A

BOARD / COMMISSION ACTION:
Enter appropriate comments or N/A

N/A

**********REQUIRED AUTHORIZATION**********

LEGAL: _____ (If required)

FINANCE: _____ (If required)

DEPARTMENT HEAD: _____
Name Signature Date

(Example: if RCA is initiated by Purchasing, client department should sign also)
Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

RESOLUTION

WHEREAS, the City awarded Contract No. 2008-157 to Barnett Harley-Davidson of El Paso, Texas, on September 16, 2008, for Police Motorcycles for General Services Department, Fleet Division; and

WHEREAS, the City Council finds that the Company is in default of the provisions of the Contract because they failed to deliver the police motorcycles, including all of the accessories listed in the bid, at the bid price offered that was awarded by City Council; and

WHEREAS, pursuant to Section C 18B of the Contract (Termination for Default), the City is authorized to terminate the Contract in the event of default; and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Purchasing Manager is authorized to notify Barnett Harley-Davidson of El Paso, Texas, that the City is terminating Contract No. 2008-157 for default pursuant to the provisions and requirements of Section C 18B of the Contract Clauses due to contractor's default and that the termination shall be effective as of April 28, 2009.

PASSED AND APPROVED this _____ day of _____, 2009.

THE CITY OF EL PASO

_____
John F. Cook
Mayor

ATTEST:

_____
Richarda D. Momsen
City Clerk

APPROVED AS TO FORM:

_____
Bertha A. Ontiveros
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Terrence Freiburg
Purchasing Manager
Financial Services, Purchasing Division

#47364 v1 - Purchasing/1/Reso Termination Barnett Harley Davidson
Document Author: BONT

PROJECT FORM

FINANCIAL SERVICES DEPARTMENT, PURCHASING DIVISION

DATE: April 6, 2009

TO: Municipal Clerk

FROM: Terrence Freiburg
Purchasing Manager, ext. 4313

Please place the following item on the **CONSENT** Agenda for the Council Meeting of Tuesday, **April 28, 2009.**

Item should read as follow:

The Purchasing Manager, Financial Services, Purchasing Division, requests that Mayor and Council terminate Contract No. 2008-157 with Barnett Harley-Davidson for Police Motorcycles for default pursuant to Section C Clause No. 18B of the Contract, an item titled Termination for default, whereby the City reserved the right to terminate the Contract for default.

The vendor will be notified.

Department: General Services

REVIEWED: Edward Hyatt

Edward Hyatt
Administrative Analyst

SPECIAL INSTRUCTIONS:

Municipal Clerk's Use

ITEM NO. _____

cc: BID FILE

Dedicated to Outstanding Customer Service for a Better Community

SERVICE SOLUTIONS SUCCESS

February 24, 2009

Mr. Mark Barnett
Barnett H-D
8272 Gateway East
El Paso, Texas 79907

RE: Solicitation No. 2008-157

Dear Mr. Barnett:

The City is in receipt of your letter dated February 5, 2009 regarding the contract for police motorcycles. As you know, your company has attempted to deliver five (5) motorcycles on or about December 19, 2008. While the vehicles are currently in the possession of the City's General Services department, the City/Police Department has refused delivery because the motorcycles you've provided do not come equipped with a police radio.

In your letter of February 5, 2009 you acknowledge that your company made a mistake in bidding the motorcycles with police radios. While it is true that in the past the City did not require the installation, that practice created many additional problems and therefore the Police Department and the City specifically decided that in this solicitation, the police radios needed to be installed by the vendor. It is unfortunate that your company did not submit a bid that included all your costs. However, that is the contract price that you offered to the City, that was accepted by the City Council and which our legal department informs us is legally binding. Under state purchasing laws, the City cannot renegotiate or revise its contract with you to include the additional compensation you've requested for the police radios that were a part of the original bid specifications. Had the City known that your bid did not include the radios, the contract would not have been awarded.

You also pointed out, however, that the City did not include the radio boxes as a part of its bid specifications and therefore that item is not a part of the contract. Assuming that you will perform the contract as awarded, we can discuss payment of this additional item that was not originally contracted.

At this point, the City would like your company to make arrangements with General Services to pick up the five motorcycles since the City has refused delivery. You may contact Edel Romero at (915) 867-2376, or David St. Leon at (915) 621-6844 to make those arrangements.

THE CITY OF EL PASO TEXAS

Mayor
John F. Cook

City Council

District 1
Ann Morgan Lilly

District 2
Susannah M. Byrd

District 3
Emma Acosta

District 4
Melina Castro

District 5
Rachel Quintana

District 6
Eddie Holguin Jr.

District 7
Steve Ortega

District 8
Beto O'Rourke

City Manager
Joyce A. Wilson

Financial Services – Purchasing Division
2 Civic Center Plaza, 7th Floor - El Paso, Texas 79901 - (915) 541-4308; Fax (915) 541-4347

Pursuant to Section 17 of the Contract Terms and Conditions, the City is also requesting written assurance of your intent to perform the services under this Contract No. 2008-157. If the City has not received such written assurance within five days (by Thursday, March 5, 2009), including a new projected delivery date, the City will have no choice but to notify you that you are in default of the contract and City staff will request that City Council approve the termination of this contract. Please be aware that a termination for default on a City contract may be the basis for disqualifying a contractor as a non-responsible bidder on future solicitations.

We do appreciate that your company has a long history of providing services to the City for many years. However, under the state purchasing laws, the City cannot renegotiate a contract with a vendor after it has been awarded.

If you have any questions, please contact me at your convenience at (915) 541-4308.

Sincerely,

Terrence Freiburg
Purchasing Manager

cc: Stuart Ed
Bertha Ontiveros

THE CITY OF EL PASO TEXAS

Mayor
John F. Cook

City Council

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Ann Morgan Lilly

District 2
Susannah M. Byrd

District 3
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Melina Castro

District 5
Rachel Quintana

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Eddie Holguin Jr.

District 7
Steve Ortega

District 8
Beto O'Rourke

City Manager
Joyce A. Wilson

8272 Gateway East on 10, El Paso, Texas 79907 www.barnettharley.com (915) 592-5804 (800) 736-8173 Fax (915) ~~591-8889~~
592-6355

Mark Barnett
Barnett H-D
8272 Gateway East
El Paso, TX 79907

RE: Solicitation No. 2008-157

Dear Mr. Freiburg,

We're sorry about the confusion over the police radios. I can't take that big of a loss, so I will come and get the bikes. I hope you will include us in future bids. We'll spend a lot more time on the bids and ask questions if we are unclear. That one just fell through the cracks, the senior people weren't here to do it.

Sincerely,

Mark Barnett