
MEMORANDUM

To: Mayor McConnell and Members of the Assembly
Mark Gorman, Municipal Administrator

From: Michael Harmon, Public Works Director *mt*
Stephen L. Weatherman, P.E. Municipal Engineer *J*

CC: Jay Sweeney, Finance Director

Date: March 5, 2013

Subject: **Contract to provide Transit Services to transport cruise ship passengers from the Old Sitka Dock to the Centennial Hall or O'Connell Bridge parking area**

Background:

Halibut Point Marine (HPM) constructed a deepwater dock (Old Sitka Dock) at their marine haul out facility on Halibut Point Road. HPM submitted a proposal to CBS to consider using a portion of the Commercial Passenger Excise Tax (CPET) funds to support transportation of cruise passengers between Old Sitka Dock and Centennial Hall or O'Connell Bridge parking area. On 11/29/11 the Sitka Assembly approved the "Old Sitka Dock Improved Passenger Access Project" proposal with amendments.

Only one ship utilized the Old Sitka Dock in 2012 so a contract was not signed. In 2013 Sitka Tours was the low bidder at \$2.81 per passenger and was awarded the contract for transportation of the cruise passenger to Centennial Hall and the O'Connell Bridge parking area. The first ship arrived at the Old Sitka Dock on 5/13/13 and the last ship arrived 9/17/13. A total of 24 ships docked at the Old Sitka Dock and the total passengers billed were 13,252 for a total payment of \$37,238.12.

The contract provides the City and Borough the flexibility to extend the contract upon Assembly approval. Specifically the contract specified under Section 2b: "The contract time begins when signed and ends 30 days after the last cruise ship of the 2013 cruise ship season departs Sitka, Alaska". Any extension of the contract should go to the Assembly prior to the contract expiration.

The market has changed considerably with service providers investing in new equipment, new large ships utilizing the port, increased infrastructure for bus loading both in town and at the dock facility, traffic/construction delays related to the HPR project, etc. All of these elements have a significant potential to influence how this service is provided for the coming season and are significant changes from the last time the contract was bid. It is generally in the best interest of the contracting agency to

rebid when there are changes of this magnitude combined with the reality that there are service providers with new capability. This allows everyone an equal opportunity to compete and reevaluate how these changes impact the service to be provided.

To provide the Transit Services for the 2014 cruise season an advertisement for transit Services was published on 1/27/14. Two bids were received on 2/25/14 from Sitka Tours and Alaska Coach Tours

Analysis:

There were two proposers for the required transit services;

Sitka Tours

- **\$2.77** per Revenue Generating Passenger
- 23 Available Transit Fleet Vehicles with a Capacity of 795 Passengers

Alaska Coach Tours

- \$3.00 per Revenue Generating Passenger
- 10 Available Transit Fleet Vehicles with a Capacity of 472 Passengers

The proposal from Sitka Tours was complete, responsive and responsible as specified by the instruction to bidders. The proposal from Alaska Coach Tours had minor deficiencies (did not acknowledge addenda and only submitted 1 copy of proposal where 4 were required) but was determined to be responsive and responsible.

The Assembly may also wait up to 45 days from the bid opening date (2/25/14) to make a decision on awarding or not awarding the contract. If the contract is not awarded the bid and bid bond will be returned to the bidder. This contract is for one year with two additional one year extensions allowed (2015 and 2016) if approved by the Assembly.

Sitka Tours submitted the lowest price per Revenue Generating Passenger. Sitka Tours also has the larger fleet of transit vehicles and a comprehensive operation plan. Our recommendation is to award the transit services contract to Sitka Tours.

Fiscal Note:

The funding for the contract is to come from the City of Sitka Commercial Passenger Excise Tax. The contractor will be paid an amount based on the Debarkation Rate (90%) X \$2.77 per Revenue Generating Passenger. The Revenue Generating Passenger number is based on the Certified Passenger Letter from the Cruise Ship. Ship's crew will be transported to and from the Old Sitka Dock at no cost.

- CPET Funding from 2013 season will be \$302,985.00
- Estimated cost of contract is 19,256 passengers X 90% X 2.77 = \$48,005
- Approximately \$85,000.00 per Year of CPET funds provides support for CBS services.

- With CBS receiving \$302,985.00, deducting the cost from CBS support services and the Transit Contract the surplus will be \$169,979.
- The CEPT Fund Balance is currently \$1,670,000.00

If no cruise ships dock at the Old Sitka Dock and no passengers are transported from the Old Sitka Dock then no payments will be made to the contractor.

Recommendation:

Take action to award or reject the bid proposal from Sitka Tours prior to April 10, 2014

**CONTRACT TO PROVIDE TO CITY AND BOROUGH OF SITKA TRANSIT SERVICES
BETWEEN OLD SITKA DOCK TO CENTENNIAL Hall or O'CONNELL BRIDGE PARKING
AREA**

On March 11, 2014, the City and Borough of Sitka Assembly approved the award recommendation, based on the response to the bid request, entitled. "Transit Services between Old Sitka Dock and Centennial Hall or O'Connell Bridge parking area, issued on January 27, 2014.

The City and Borough of Sitka (CBS) desires to hire Sitka Tours a licensed passenger transportation company (Contractor) to provide free cruise passenger and crew member transit services between Old Sitka Dock and Centennial Hall or O'Connell Bridge parking area for the 2014 cruise ship season. This Contract to provide transportation services for the City and Borough of Sitka between the Old Sitka Dock and Centennial Hall or O'Connell Bridge Parking Area ("Contract") is made and entered into by and between Owner and Contractor in consideration of the mutual promises contained in this Contract.

This Contract also consists of: Appendix A which includes the contractor submitted information to include:

1. Bid Form
2. A narrative describing the Contractor's experience with operating and maintaining a passenger transportation company.
3. Spreadsheet detailing transit vehicle fleet to include make, model, year, mileage, passenger capacity, and ADA capabilities of each vehicle. Table should include all available transit vehicles including subcontractors (if applicable).
4. Operational plan and proposed daily schedule.

SECTION 1. DEFINITIONS

For the purpose of this Contract, the terms used in this Contract shall have the following meaning:

- A. "Owner" shall mean the City and Borough of Sitka, Alaska.
- B. "Contractor" shall mean Sitka Tours a Partner, Associate, or any other person acting for and/or in behalf of the firm.
- C. "Owner's authorized representative" shall mean the person set forth in Section 21 (B)(2) of this Contract.
- D. "Days" shall mean calendar days.

SECTION 2. CONTRACT TIME

- A. This Contract becomes effective when signed and dated by both Parties.
- B. The contract time begins when signed and ends 30 days after the last cruise ship of the 2014 cruise ship season departs Sitka, Alaska.

- C. The contract may be extended for two (2) additional one year extensions for 2015 and 2016 respectively upon Assembly approval.
- D. Except as expressly allowed under this Contract, Owner need not grant Contractor any extension in the time provided to complete the work under this Contract. If Contractor's progress falls behind the project schedule, Contractor shall commit additional resources to the prosecution of the work, or take such other additional steps as are reasonably necessary to assure the completion of the work on schedule, all at no additional cost to Owner.

SECTION 3. RESPONSIBILITY OF CONTRACTOR

At all times during Contractor's performance of maintenance services under this Contract, Contractor shall possess and exercise the level of competence, knowledge and skill presently maintained by other practicing members of the profession in good standing in the same or similar localities.

SECTION 4. SCOPE OF SERVICE

The goal of CBS and Sitka Tours is to provide safe and efficient transit services for cruise passengers and crew members between Old Sitka Dock and Centennial Hall or O'Connell Bridge parking area. The services will be required continuously to and from Old Sitka Dock and Centennial Hall or O'Connell Bridge parking area throughout each day while a vessel is berthed at Old Sitka Dock. Designated pickup/drop off areas will be identified by CBS and Halibut Point Marine (HPM) at their respective properties. The Downtown drop-off location (Centennial Hall or O'Connell Bridge parking area) will be determined by the Harbormaster in consultation with the vessel agent. Typically the location will be the location not used by a lightering cruise ship. Contractor's shuttles must not block traffic to drop off or pick up passengers at non-approved locations. Contractor shall be required to keep an accurate count of both revenue passengers and crew members for each shuttle trip. Minimum level of service shall be as follows:

- The services will be required continuously to and from Old Sitka Dock and Centennial Hall or O'Connell Bridge parking area throughout each day while a vessel is berthed at Old Sitka Dock.
- Maximum cruise passenger and crew member waiting time shall not exceed 15 minutes at either location.
- The contractor shall provide ADA accessible shuttles and provide assistance to ADA passengers as needed to help load and unload the ADA passengers.
- The final shuttle departing from Centennial Hall or O'Connell Bridge parking area at the end of the day must arrive at Old Sitka Dock prior to the cutoff time specified by the ship. That time must be identified and posted in the front of each shuttle in plain sight at the start of each day.
- Contractor shall provide a customer support liaison at both the Old Sitka Dock and the Centennial Hall or O'Connell Bridge parking area to coordinate loading and unloading. The customer support liaison shall provide onshore support to organize the vehicle queuing and coordinate the passenger loading and unloading.

- While traveling to and from the Old Sitka Dock advertisement for third party tours and other third party activities are not allowed on the shuttle vehicles.
- The selected transportation company has 30 days to obtain State of Alaska and USDOT licenses required to operate an interstate passenger transport company. In the event of failure to obtain the required licenses within the 30 day time limit the City and Borough of Sitka (CBS) may declare the selected transportation company in breach of the agreement effected by the acceptance of the bid. The bid guarantee will be forfeit and the CBS may award the contract to the next lowest responsible bidder.
- Contractor shall provide a report of the number of passengers and crew transported each trip. The information shall be submitted to the Public Works Department no later than the 10th of the month for the previous month.

Penalties may be assessed for the Contractor's failure to meet the level of service requirements.

- \$50 per passenger that exceeds the maximum 15-minute waiting time.
- \$100 per passenger or crew member delayed by the Contractor from arriving at Old Sitka Dock by the cutoff time specified by the ship.
- \$1000 per passenger or crew member delayed by the contractor from arriving at the Old Sitka Dock prior to the ship sailing for any reason whatsoever. In addition to the \$1000 penalty the contractor is responsible for but not limited to all costs of lodging, cab fares, shuttle service, meals, and incidentals including a change of clothing and scheduled airline transportation of the passenger to the next port of call for the cruise ship.

If this is not possible due to airline schedule or Sitka was the last port of call of the cruise ship the passenger will be returned to the cruise ships final destination no later than the scheduled arrival by the cruise ship. If the arrival is delayed such that the passenger's connections are missed the contractor will pay for any additional costs associated with rescheduling the passenger to their final destination including but not limited to lodging, cab fares, shuttle service, meals and incidentals. The contractor is also responsible for collecting the passenger's luggage from the cruise ship and delivering it to the passenger prior to departure from the final cruise ship destination.

The services to be performed by Contractor shall include all services required to complete the tasks set forth above and in Appendix A, and shall be in accordance with all applicable statutes, Sitka General Code provisions, ordinances, rules, and regulations.

SECTION 5. OWNERSHIP OF DOCUMENTS

All plans, drawings, calculations, supporting data and specifications, originals and tracings, if created for this contract shall become the property of Owner. Such documents shall be transmitted to Owner prior to the time of final payment for the work under this Contract. Contractor shall be entitled to retain and reference record copies and electronic files of all documents.

SECTION 6. TERMINATION

This Contract may be terminated:

- A. By mutual consent of the Parties.
- B. For the convenience of Owner, provided that Owner notifies Contractor of its intent to terminate under this paragraph at least 10 days prior to the effective date of the termination.
- C. For cause, by either Party where the other Party fails in any material way to perform its obligation under this Contract; provided, however, that as a condition of the exercise of its right of termination under this subsection the terminating Party shall notify the other Party of its intent to terminate this Contract and state with reasonable specificity the grounds, and the defaulting Party shall have failed, within 30 days of receiving the notice, to cure the default.
- D. Termination pursuant to this section shall not affect the Parties' continuing obligations under this Contract.

SECTION 7. DUTIES UPON TERMINATION

- A. If Owner terminates this Contract for convenience, Owner shall pay Contractor the reasonable value of any services satisfactorily rendered prior to termination. Payment under this section shall never exceed the total compensation possible under Section 9. All finished and unfinished reports and materials prepared by Contractor shall become the property of Owner.
- B. If this Contract is terminated for cause, Owner shall pay Contractor reasonable value of the services satisfactorily rendered prior to termination less any damages suffered by Owner because of Contractor's failure to perform satisfactorily. Any finished or unfinished documents or materials shall become the property of Owner at its option. Under no circumstances shall payment under this section exceed the percentage value of work completed as defined by Appendix A and under Section 9. Under no circumstances shall payment under this section exceed the total compensation possible under section 9.
- C. If Contractor has received payments prior to termination in excess of the amount to which it is entitled under Subsection A or B of this section, Contractor shall remit such excess to Owner within 30 days after receipt of notice to that effect.
- D. Contractor shall not be entitled to compensation under this section until Contractor has delivered to Owner all documents, records, work products, materials, and equipment owned by City and Borough of Sitka, related to this Contract and requested by Owner.
- E. If Contractor's services are terminated, for whatever reason, Contractor may not claim any compensation under this Contract other than allowed under this section.
- F. The Owner need not recognize any claim by Contractor for reimbursable expenses or costs incurred after the time which Contractor receives notice of termination under this section.

SECTION 8. INDEMNIFICATION

- A. Contractor shall indemnify, defend, save, and hold Owner harmless from any claims, lawsuits, or liability, including attorney's fees and costs, arising from any wrongful or negligent act, error or omission of Contractor occurring during the course of or as a result of Contractor's performance pursuant to this Contract.
- B. Contractor shall not indemnify, defend, save, and hold Owner harmless from any claims, lawsuits, liability, or attorney's fees and costs, arising in wrongful or negligent acts, errors or omissions solely of Owner occurring during the course of or as a result of the performance of this Contract.
- C. Where claims, lawsuits, or liability, including attorney's fees and costs, arise from wrongful or negligent acts of both Parties, Contractor shall indemnify, defend, save and hold Owner harmless from only that portion of claims, lawsuits or liability, including attorney's fees and costs, which result from Contractor's wrongful or negligent acts occurring during the course of or as a result of Contractor's performance pursuant to this Contract.

SECTION 9. PAYMENT

- A. The Contractor will be paid on a monthly basis based on the number of revenue generating passengers arriving at Old Sitka Dock during the previous month. It will be the Contractor's responsibility to collect and provide CBS with the certified letter from each ship detailing the number of revenue passengers and provide the required passenger and crew member counts with each request for payment. If no cruise vessels berth at Old Sitka Dock, no payment will be made to the Contractor.
- B. The payment for the first year of the contract shall be based on the following formula:

Debarkation Rate (90%)	X	Number of Revenue Generation Passengers	X	Contractors Bid Price (\$2.77)	=	Payment to Contractor
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- C. If the contract is extended for the 2015 and 2016 the Debarkation Rate may be adjusted at the Assembly's discretion based on the previous year's actual debarkation rate.
- D. Contractor shall present an invoice(s) to Owner's authorized representative. Such invoice(s) shall enumerate the number of passengers for which it seeks payment. Invoices shall not be submitted more frequently than once every 30 days.
- E. Owner shall make payment on invoices within 30 days of the invoices' receipt and approval by Owner's authorized representative.
- F. Contractor shall be entitled to no compensation under this Contract beyond the amount of Owner's express obligation under subsection A above.
- G. The amount to be paid for additional services, at the option of Owner, shall be negotiated at the hourly fees submitted in Appendix A, by the Parties prior to the execution of amendments to this Contract for this work.

SECTION 10. AUDIT: ACCESS TO RECORDS

- A. Contractor shall maintain records of performances, communications, documents, correspondence and costs pertinent to this Contract. The Owner's authorized representatives shall have the right to examine such records and accounting procedures and practices.
- B. The Owner's authorized representative shall have the right to examine all books, records, documents and other data of Contractor related to the negotiation, pricing and performance Contract, and any change or modification for the purpose of evaluating the accuracy, completeness, and currency of the data submitted. The right of examination shall extend to all documents necessary to permit adequate evaluation of the data, computations, and projections used.
- C. The materials described in this section shall be made available at the business office of Contractor at all reasonable times for inspection, audit or reproduction, for a minimum of 3 years from the date of final payment under this Contract and for such longer period, if any, as may be required by applicable statute or other provisions of this Contract.
- D. If this Contract is completely or partially terminated, records relating to the services terminated shall be made available to Owner by Contractor for a minimum of 3 years from the date of any resulting final settlement.
- E. Records which relate to claims or litigation or the settlement of claims arising out of the performance of this Contract shall be made available to Owner by Contractor until such claims or litigation have been concluded.

SECTION 11. RELATIONSHIP OF PARTIES

Contractor shall perform its obligations under this Contract as an independent Contractor of Owner. Owner may administer the Contract and monitor Contractor's compliance with its obligations. Owner shall not supervise or direct Contractor other than as provided in this section.

SECTION 12. ASSIGNMENTS

Unless otherwise allowed by this Contract or in writing by Owner, any assignment by Contractor of its interest in any part of this Contract or any delegation of duties under this Contract shall be void, and any attempt by Contractor to assign any part of its interest or delegate duties under this Contract shall give Owner the right immediately to terminate this Contract without any liability for work performed.

The Owner reserves the right to approve all subcontractor contracts.

SECTION 13. NONDISCRIMINATION

- A. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex or marital status or mental or physical handicap. Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, national origin, ancestry, age, sex, or marital status or

mental or physical handicap. Such action shall include, without limitation, employment, upgrading, demotion or transfer, recruitment or recruiting, advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. Contractor agrees to post, in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions for this nondiscrimination clause.

- B. Contractor shall state, in all solicitations or advertisements for employees to work on jobs relating to this Contract, that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, age, or marital status or mental or physical handicap.
- C. Contractor shall include the provisions of subsection A in every subcontract or purchase order under this Contract, so as to be binding upon every such subcontractor or vendor of Contractor under this Contract.
- D. Contractor shall comply with all applicable Federal, State and City laws concerning the prohibition of discrimination.

SECTION 14. COPYRIGHTS AND RIGHTS IN DATA

All documents produced under this Contract are the property of Owner, including notes, drawings, reports and other technical information referred to as work products, except items which have pre-existing copyrights. Payments to Contractor for services include full compensation for all work products produced by Contractor and its subcontractors.

All such subject data furnished by Contractor pursuant to this Contract are instruments of its services in respect to this particular project. It is understood that Contractor does not represent such subject data to be suitable for reuse on any other project or for any other purpose. If Owner reuses the subject data without Contractor's specific written verification of adaption, such reuse will be at the risk of Owner, without liability to Contractor. Any such verification of adaption requested in writing by Owner at Owner's sole option will entitle Contractor to further compensation at rates agreed upon by the Parties.

SECTION 15. NOTICES

Any notice required pertaining to the subject matter of this Contract shall be in writing and either personally delivered or mailed by prepaid, first class, registered or certified mail, return receipt requested, to the following addresses:

OWNER:

City and Borough of Sitka
Department of Public Works
Attn: Stephen Weatherman, P.E.
100 Lincoln Street
Sitka, AK 99835

CONTRACTOR:

Sitka Tours
Attn Gene Prewitt
PO Box 1001
Sitka, AK 99835

SECTION 16. CLAIMS AND DISPUTES

If Contractor becomes aware, or reasonably should have become aware, of any act or occurrence which may form the basis of a claim, Contractor shall immediately notify in writing Owner's authorized representative. If the matter cannot be resolved within seven (7) days, Contractor shall, within the next fourteen (14) days, submit a written notice of the claim. Contractor shall, in presenting the claim, include the facts and circumstances surrounding the claim, the specific relief requested including any additional compensation claimed and the basis upon which it was calculated, and the provisions of this Contract under which the claim is made. This procedure covers all claims by Contractor for additional compensation or any extension of the time for performance or any dispute regarding a question of fact or interpretation of this Contract. Contractor agrees that unless these written notices are provided, Contractor shall have no entitlement to additional time nor compensation for such act, event or condition.

SECTION 17. SUCCESSORS AND ASSIGNS

The Parties bind themselves, partners, successors, assigns and legal representatives to the other Party to this Contract and to partners, successors, assigns and legal representatives of such other Party with respect to all covenants of this Contract.

SECTION 18. INSURANCE

- A. Contractor shall at all times during the term of this Contract, maintain in good standing the insurance described in subsection B. Before rendering any services under this Contract, Contractor shall furnish Owner with proof of insurance in accordance with subsection B in a form acceptable to the Risk Manager for Owner; such proof of insurance shall be incorporated into this Contract.
- B. Type of Coverage
 1. Worker's Compensation – Minimum Limits:
Employer's Liability and Worker's Compensation – Statutory as required by Alaska Worker's Compensation Statutes.
U.S. Longshoremen & Harbor Workers' (USL&H) if required
 2. Comprehensive General Liability – Minimum Limits:
Single Limit \$5,000,000
Aggregate \$10,000,000
 3. Comprehensive Automobile Liability – Minimum Limits:
Bodily Injury and Property Damage, including all owned, hired and non-owned vehicles - \$5,000,000
- C. Insurance Notes
 1. Owner shall be named as an additional named insured on the required general liability and automobile insurance policies. The Owner shall also be granted a full waiver of any rights of subrogation under all required policies including Workmen's Compensation policy. These requirements extend to all subcontractors.

2. Contractor is required to notify Owner if any policy is to be canceled, materially changed, or renewed, at least thirty days prior, by written notice sent by certified mail.

SECTION 19. PERMITS, LAWS AND TAXES

Contractor shall acquire and maintain in good standing all permits, licenses and other entitlement necessary to its performance under this Contract. All actions taken by Contractor under this Contract shall comply with all applicable statutes, ordinances, rules and regulations. Contractor shall pay all taxes pertaining to its performance under this Contract.

SECTION 20. NON-WAIVER

The failure of either Party at any time to enforce a provision of this Contract shall in no way constitute a waiver of the provision, nor in any way affect the validity of this Contract or any part, or the right of such Party to enforce each and every provision.

SECTION 21. AMENDMENT

- A. This Contract shall only be amended, modified or changed by a written amendment, executed by authorized representatives of the Parties, and such amendment shall be attached to this Contract as an appendix.
- B. For the purposes of any amendment, modifications or change to the terms and conditions of this Contract, the only authorized representatives of the Parties are:
 1. Gene Prewitt, Sitka Tours- For Contractor
 2. Mark Gorman, Municipal Administrator - For Owner
- C. Any attempt to amend, modify or change this Contract by either an unauthorized representative or unauthorized means, shall be void.

SECTION 22. SEVERABILITY

Any provision of this Contract decreed invalid by a court of competent jurisdiction shall not invalidate the remaining provisions of the Contract.

SECTION 23. JURISDICTION - CHOICE OF LAW

Any civil action arising from this Contract shall be brought in the Alaska Superior Court at Sitka. The laws of the State of Alaska shall govern the rights and obligations of the Parties under this Contract.

SECTION 24. INTEGRATION

This instrument and all appendices and amendments embody the entire Contract of the Parties. There are no promises, terms, conditions or obligations other than those contained in this Contract. This Contract shall supersede all previous communications, representations, or Contracts, either oral or written, between the Parties.

IN WITNESS WHEREOF, the Parties have executed this Contract in duplicate on the date and at the place shown below.

CITY AND BOROUGH OF SITKA

Mark Gorman, Municipal Administrator

Date: _____

Gene Prewitt, Owner / Operator

Date: _____

IRS TAX I.D. NO. _____

ATTEST:

Colleen Ingman, Municipal Clerk

Date: _____

LEGAL REVIEW:

Robin Koutchak, Municipal Attorney

Date: _____