




CITY MANAGER'S OFFICE MEMORANDUM

TO: Jim Scholl, City Manager

FROM: Mark Z. Finigan, Assistant City Manager 

DATE: December 29, 2010

SUBJECT: Contract with LifeStar Response of Alabama d/b/a Care Ambulance

ACTION STATEMENT:

This purpose of this resolution is to request City Commission approval of the attached Contract between the City of Key West and LifeStar Response of Alabama, d/b/a Care Ambulance, and to authorize the City Manager to execute such contract.

BACKGROUND:

City Commission selected via Resolution 10-340 the LifeStar Response Corporation (copy of Resolution 10-034 attached) as the exclusive 911 emergency transport provider for the City of Key West. Pursuant to said resolution the City Manager was authorized to enter into negotiations with LifeStar Response Corporation and if successful in negotiating a contract, bring said contract before the City Commission for approval. The resulting proposed contract is attached and presented to the City Commission for approval.

Unlike a Call for Bids in which selection is based on price and price alone, the City's 911 emergency transport provider requirement was solicited using a Request for Proposal (RFP) approach. The significance of the RFP is this solicitation type affords the City of Key West the ability to objectively select a provider on multiple selection factors important to the City, to include price, but not exclusively price. Negotiations were conducted with LifeStar Response of Alabama subsequent to selection by the Commission with a goal of having a contract agreeable to both parties come before the Commission for approval in early January 2011. All obligations, conditions and performance requirements required under the RFP have been incorporated into a resulting contract. Additional performance enhancements have been incorporated over what was required in the RFP as well as the addition of several legal terms and conditions requested by the City Attorney.

To follow are a few of the more substantive enhancements added:

- Language requiring the provider to offer employment in substantially similar positions to each employee currently employed by the incumbent provider. Such employment shall be at or above the employee's current base pay. However, it is recognized that all such current employees will be required to comply with all reasonable rules and regulations instituted by provider that are applicable to similarly situated employees. Employees hired by provider shall retain their original hiring date for seniority status and similar assignments. The provider has agreed to review other "conditions of employment", such as overtime, duty schedules and retirement/health packages; however, the provider is under no obligation to accept such conditions other than those stated above.
- Clearer financial reporting requirements which will enable the City to fully understand the cost of providing 911 emergency transport service to the citizens Key West, as a "stand alone" service area.
- Clarification of violations associated with arriving late for a multi unit response.
- Change to Evacuation Planning language that would ensure the City receive the provider's evacuation plan well in advance of the 2011 hurricane season.
- A stronger "assignment of contract" provision along with pre-suit mediation, language requested by the City Attorney.
- Added "Time of Essence", "No Third Party Rights" and "Waiver" provisions, all requested by the City Attorney.
- Though not a change, it was again reinforced with the provider this relationship is a no subsidy relationship, covering the full three year term of the contract.

The one area of interest to the Commission during the selection process was the discussion of a Letter of Credit (LOC) in lieu of a Surety Bond. The RFP does obligate the awardee to secure a \$1,000,000 surety performance bond; a requirement LifeStar is prepared to fulfill. However, LifeStar was asked if they would agree to a Letter of Credit in lieu of a surety bond. They represented they would. During negotiations LifeStar outlined the financial burden a LOC would place on their entire corporate financial structure. According to LifeStar, a \$1.0M surety bond will cost \$70K per year. A LOC for \$1.0M will require them to encumber \$1.0M of actual funds for the contract period, a cash flow restriction they could not accept. The 911 transport requirement was solicited on a \$1.0M surety bond requirement and their "no subsidy" proposal was predicated on such. It was not until after the proposal opening that discussions developed which called for a LOC as the preferred vehicle for ensuring performance. Quicker access to funds and less legal debate was the City's argument in favor of a LOC. LifeStar did represent a LOC would work, but I assume on second thought the encumbering of \$1.0M for three years is a major issue. Attached for your review is a synopsis of the major features of both a Surety Bond and a Letter of Credit.

So where does that leave us? Is a Letter of Credit superior to a Surety Bond for purposes of accessing? Yes, in my opinion. However, let's examine a little closer the "worst case" situation. LifeStar underestimates the costs to operate in Key West and cannot simply make a "go of it". Will they leave Key West under the cloak of darkness?

Doubtful. LifeStar, as with any of the other major 911 emergency transport players, would suffer irreparable market credibility. Through the mandatory financial reporting requirements built into the contract the City would know well in advance that LifeStar is financially failing in Key West and would immediately identify and be prepared to deploy another 911 emergency transport provider. Moreover, the contract calls for the provider to leave in place the ambulance units. However, in the event they pull out with their ambulance units, your consultant, SPC Tri Data, will tell you any of the major industry players could quickly react to the situation and deploy the 3-4 ambulance units along with the necessary leadership and infrastructure. Could it cost more in this worst case scenario – yes? We would finally start to understand the true costs to operate an effective 911 emergency transport system in Key West. In short, there are contingencies which could handle a situation in which LifeStar fails. Contingencies which would ensure the community has uninterrupted quality 911 emergency transport capability.

As for that Surety Bond, it would be in place and available for the City to recover costs incurred to mobilize another provider as well as any other financial damages the City can demonstrate.

RECOMMENDATION:

Approve the attached contract between the City of Key West and LifeStar Response of Alabama d/b/a Care Ambulance as the exclusive 911 emergency transport provider for the City of Key West, pursuant to the terms and conditions outlined in the contract.

Surety Bonds Versus Bank Letters of Credit

Definitions	
<p>Surety Bonds</p> <ul style="list-style-type: none"> • A three-party agreement among the surety, the <i>obligee</i> (the project owner), and the <i>principal</i> (the contractor). • A performance bond protects the owner from non-performance and financial exposures should the contractor default. • A payment bond, aka labor and material bond, protects certain subcontractors, laborers, and material suppliers against nonpayment by the contractor. 	<p>Bank Letters of Credit</p> <ul style="list-style-type: none"> • A bank letter of credit (LOC) is a cash guarantee to the owner, who can call on the LOC on demand. The LOC converts to a payment to the owner and an interest-bearing loan for the contractor. • The performance of the contract has no bearing on the bank's obligation to pay on the letter of credit.
Prequalification	
<p>Surety Bonds</p> <ul style="list-style-type: none"> • A surety company and producer assess the contractor's business operations, financial resources, experience, organization, existing workload and its profitability, and management capability to verify the contractor is capable of performing the contract. The purpose is to avoid default. 	<p>Bank Letters of Credit</p> <ul style="list-style-type: none"> • The banker examines the quality and liquidity of the collateral in case there is a demand on the letter of credit. If the banker is satisfied that the contractor can reimburse the bank if demand is made upon the LOC, there is no further prequalification.
Borrowing Capacity	
<p>Surety Bonds</p> <ul style="list-style-type: none"> • Performance and payment bonds are usually issued on an unsecured basis and are usually provided on the construction 	<p>Bank Letters of Credit</p> <ul style="list-style-type: none"> • Specific liquid assets are pledged to secure bank LOCs. Bank LOCs diminish the contractor's line of credit and appear on the

<p>company's financial strength, experience, and corporate and personal indemnity. The issuance of bonds does not diminish the contractor's borrowing capacity and may be viewed as a credit enhancement.</p>	<p>contractor's financial statement as a contingent liability. The contractor's cash flow in funding initial stages of construction and retention amounts throughout a contract term can be adversely affected.</p>
<h2 style="text-align: center;">Duration</h2>	
<p>Surety Bonds</p> <ul style="list-style-type: none"> • Surety bonds remain in force for the duration of the contract plus a maintenance period, subject to the terms and conditions of the bond, the contract documents, and underlying statutes. 	<p>Bank Letters of Credit</p> <ul style="list-style-type: none"> • An LOC is usually date specific, generally for one year. LOCs may contain "evergreen" clauses for automatic renewal, with related fees.
<h2 style="text-align: center;">How To Obtain</h2>	
<p>Surety Bonds</p> <ul style="list-style-type: none"> • The contractor obtains the bond through a surety bond producer. A list of surety bond producers is available through the National Association of Surety Bond Producers (NASBP) at www.nasbp.org. 	<p>Bank Letters of Credit</p> <ul style="list-style-type: none"> • The contractor obtains the LOC through a banking or lending institution.
<h2 style="text-align: center;">Cost</h2>	
<p>Surety Bonds</p> <ul style="list-style-type: none"> • Generally 0.5% to 2% of contract price. Bond is project specific, covers duration of contract. • Included in contractor's bid price. 	<p>Bank Letters of Credit</p> <ul style="list-style-type: none"> • Cost is generally 1% of the contract amount covered by LOC - e.g. if LOC covers 10% of contract, Cost = 1% x (10% x Contract Amount) x years of contract. • Included in contractor's bid price.
<h2 style="text-align: center;">Coverage</h2>	
<p>Surety Bonds</p>	<p>Bank Letters of Credit</p>

<ul style="list-style-type: none"> • Performance bond - 100% of the contract amount for project completion. • Payment bond - 100% of contract amount protects certain subcontractors, laborers, and materials suppliers and protects owner against liens. • At least 10% coverage for maintenance of defects the first year after completion. 	<ul style="list-style-type: none"> • The LOC may be obtained for any percentage of the contract, but 5% to 10% is typical. • No protection/guarantee that subcontractors, laborers, and materials suppliers will be paid in the event of contractor default. They may file liens on the project.
<h2>Claims</h2>	
<h3>Surety Bonds</h3> <ul style="list-style-type: none"> • If the owner declares the contractor in default, the surety investigates. • If the contractor defaults, the surety's options are to: <ul style="list-style-type: none"> • Finance the original contractor or provide support; • Takeover responsibility for completion (up to penal sum of bond); • Tender a new contractor; or • Pay the penal sum of the bond. • With payment bonds, the surety pays the rightful claims of certain subcontractors, laborers, and suppliers up to the penal sum of the bond. 	<h3>Bank Letters of Credit</h3> <ul style="list-style-type: none"> • The bank will pay on an LOC upon demand of the holder if made prior to the expiration date. • There is no completion clause in an LOC. The task of administering completion of the contract is left to the owner. • The owner must determine the validity of claims by subcontractors, laborers, and materials suppliers. If there is not enough money from the LOC to pay all of the claims, then the owner has to decide which claims will be paid and which will be rejected.

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For more information about surety bonding, please contact the:



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The National Association of Surety Bond Producers (NASBP) is the international organization of professional surety bond producers and brokers. NASBP represents more than 5,000 personnel who specialize in performance and payment bonding; provide performance and payment bonds for the construction industry; and other types of surety bonds, such as license permit bonds, for guaranteeing performance. NASBP's mission is to strengthen professional surety and to advocate its use worldwide.