

November 13, 2012

**Via Email (Nancy.locke@seattle.gov)
& U.S. Mail**

Ms. Nancy Locke, Director
City Purchasing and Contracting Services
PO BOX 94687,
Seattle, WA 98124-4687

*Re: Vehicle Impound Management Services (VIMS) RFP
ABC Towing, Inc. Bid Protest Supplement
Public Records Request*

Dear Ms. Locke:

On October 24, 2012, ABC Towing, Inc. ("ABC"), a woman-owned business enterprise ("WBE") and a bidder on the Vehicle Impound Management Services project (the "Project"), provided notice of its protest of the purported Round 4 "Short List" bidder selection. On Wednesday, November 7, 2012, ABC supplemented that protest by identifying additional grounds for protest discovered during ABC's brief review of its public records request. With the exception of a few documents that have yet to be produced, ABC has completed its public records review. As discussed below, as a result of this review, ABC has confirmed the protest bases included in its previous letters and discovered one other basis. For convenience purposes, all bases are provided below. Accordingly, the stay which ABC requested in its November 7, 2012 letter (allowing for review of the documents) is no longer necessary, and ABC looks forward to your determination.

ABC protests the City of Seattle's (the "City") determination of short listed bidders, which includes bidders Auto Return and UR VMS, on the following grounds:

- (1) The City's Purported Inclusion Plan "Counting" Approach Violates The City's Equity In Contracting Ordinance:** As set forth in ABC's October 24, 2012 letter, the City's approach to counting W/MBE participation, which does not provide W/MBE prime contractors any points for such participation violates the City's Equity in Contracting Ordinance. Rather, contrary to the City's position, the Ordinance does not preclude the City from crediting a WBE prime contractor but, instead encourages it. Therefore, the scoring for round three should be re-evaluated and ABC (a woman-owned business) should be afforded the appropriate score and placed on the short list.

- (2) The Public Records Reveal the City’s “Approach to Counting” Was Not Uniformly Applied to All Bidders:** Although ABC is a woman-owned business, ABC was issued the lowest score on its Inclusion Plan, the document which the City created to assure that bidders proposals’ are aimed at increasing WMBE participation in City contracts. As indicated above, in response, ABC was informed that, as part of the Inclusion Plan, it is the City’s “approach to ‘counting’” to issue points only for those contractors who use women and minority *subcontractors*—not a WMBE prime contractor. It appears, however, that other bidders were treated differently. For example, All Day Towing (“All Day”), who received a score of 55 on the subcontracting portion of the Inclusion Plan (50 more points than ABC) noted in its Inclusion Plan that while it intended to subcontract 20-30% of the contract to M/WBE’s, All Day is also a MBE so the percentage is “more like 50%.” In contrast, despite ABC’s commitment to subcontract with as many W/MBEs as possible, **ABC received a subcontracting score of a nominal 5.** Similarly, UR VMS, who received one of the highest scores on the subcontracting portion of the Inclusion Plan (60 out of 75), had one of the lowest percentages of anticipated W/MBE subcontracts. Therefore, the inescapable conclusion is that the evaluation criteria and scoring procedure was applied indiscriminately and varied from bidder to bidder—a violation of City ordinances and state law which require that all bidders’ proposal be evaluated in an even handed way.
- (3) UR VMS And Auto Return Are Not Registered RTTOs And, Thus, Are Precluded By Law From Completing The Contract As Proposed. Accordingly, Any Allowance By The City To Modify These Proposals Or Waive Compliance With The Regulations After Bid Opening Provides Those Bidders With A Competitive Advantage Not Enjoyed By Other Bidders.** Pursuant to RCW 46.55, *et seq.*, only Registered Tow Truck Operators (“RTTO”) are permitted to engage in the impounding, transporting, or storage of unauthorized vehicles or the disposal of abandoned vehicles in the state of Washington, and violation of this Chapter can result in criminal penalties. In this instance, two of the three “Short List” bidders (Auto Return and UR VMS) are **not** RTTOs. Therefore, these firms are precluded from operating a storage facility or legally auctioning abandoned vehicles. Nevertheless, in Auto Return and UR VMS’s proposals, these firms fail to assert that a subcontractor will perform these activities, meaning Auto Return and UR VMS, in violation of Washington law, will self-perform this work. Accordingly, as these two bidders are not legally capable or qualified to perform the contract work, these two nonresponsive proposals must be rejected. Further, pursuant to Washington law,¹ the City is prohibited from

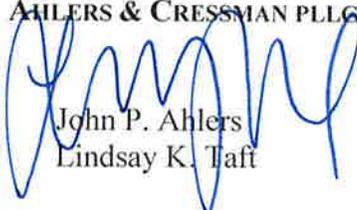
¹ As discussed in detail in ABC’s November 7, 2012 letter, it is well-established in Washington that a public agency is prohibited from providing a bidder with a **substantial advantage or benefit not enjoyed by other bidders**. *Gostovich v. West Richland*, 75 Wn.2d 583, 587, 452 P.2d 737 (1969). Accepting or allowing modification of material irregularities, such as AutoReturn and UR VMS’s assertions that they will perform the contract in violation

providing Auto Return, UR VMS, or any other bidder the opportunity to, after the fact, obtain the required registration or modify their proposals. To do so provides these bidders with a substantial advantage not enjoyed by other bidders.

- (4) UR VMS Failed A Portion Of Its Technical Response And, Therefore, Should Not Have Been Short Listed.** Finally, during the review of the public records, ABC discovered that although UR VMS failed to provide specific details and documentation of its “Storage Lot(s) and Release Facility,” UR VMS was “short listed” and selected to proceed to the next round (despite this critical omission). A copy of this document is enclosed. Similar to the analysis related to contractor registration, when a bidder fails to provide the information required by the RFP, its bid must be deemed nonresponsive and rejected. Here, UR VMS failed to provide the specific documentation required by the RFP and, therefore, by the City’s own scoring, received a “Fail” for that portion of its technical response. Accordingly, UR VMS should not have been advanced to the next round or “short listed.” The City’s erroneous determination should be reversed, and ABC, who received a “Pass,” should be advanced to the next round in UR VMS’s place.

As confirmed by ABC’s public records request, the City’s scoring of the bidders Inclusion Plan violated the Equity in Contracting Ordinance and was performed indiscriminately. Further, two of the three “short listed” bidders did not submit responsive proposals. Specifically, AutoReturn and UR VMS are not registered RTTOs and cannot legally perform the work they asserted they would perform. Therefore, AutoReturn and UR VMS’s proposal are nonresponsive and must be rejected for this reason. Finally, UR VMS “failed” to provide the required documentation necessary to demonstrate a complete technical response. This “Fail” also renders UR VMS’s bid nonresponsive and it must be rejected. In contrast, both Lincoln and ABC passed the Technical Response requirements and provided appropriate Inclusion Plans. **Therefore, it is ABC and Lincoln who should advance to the next round (i.e., the “short list”)—not UR VMS or AutoReturn.**

Very truly yours,

AHLERS & CRESSMAN PLLC

John P. Ahlers
Lindsay K. Taft

JPA: grl
cc: ABC Towing, Inc.

of RCW 46.55, *et seq.*, constitutes a substantial competitive advantage not enjoyed by other bidders. Further, pursuant to RCW 39.04.350, must “**at the time of bid submittal, have a certificate of registration in compliance with Chapter 18.27 RCW,**” which requires contractor registration (emphasis added).

Area	Element	Max. Points	ABC	All Day	AutoReturn	DTS	ET	Lang	Lincoln	UR VMS	Comments	
III. Technical Response	A. Ability to stay within the City's pre-established pricing schemes and fulfill the statement of work. B. Containment of costs to vehicle owners C. Additional costs or savings not reflected in the Pricing Response that the City might incur or realize through the contract	25	25	10	20	15	5	10	25	20		
		20	15	10	20	15	5	10	15	20		
		30	25	15	30	20	5	15	20	30		
	Subtotal	75	65	35	70	50	15	35	60	70		
SUBCONTRACTING	A. General approach to subcontracting and equitable distribution of work and mitigation of any perceived favoritism	25	25	12	20	10	0	12	10	15		
		25	25	12	20	10	0	12	10	15		
		60	55	35	60	45	15	35	60	60		
STORAGE LOT(S) AND RELEASE FACILITY	A. Clean, well-organized, secure, and effectively managed storage lot/release facility B. Storage lot/release facility accessibility C. Details on storage lot/release facility - specific documentation	40	40	10	30	30	10	10	40	40		
		PASS/FAIL	P	F	P	F	F	F	P	F	F	
		Subtotal	100	95	45	90	75	25	45	100	100	
	Grand Total	500	415	231	480	299	123	231	385	465		
NOTES												
Customer Service	Proposals receiving the highest scores included specific and more comprehensive information; less specific proposals received fewer points; AutoReturn proposed the lowest response time of any company; AutoReturn, UR VMS, and Lincoln had well-developed definitions of customer service; ABC provided a high level of detail on its complaint and problem resolution and management escalation plan											
Information Technology	Proposals receiving the highest scores satisfactorily described the use of technology in helping to manage an impound towing program and better understood the City's technology needs at this time; those companies with in-house technology capabilities (i.e., AutoReturn and UR VMS) earned higher scores											
Performance Measurement and Reporting	Proposals receiving the highest scores satisfactorily described the use of performance measures in helping to manage an impound towing program and better understood the City's need for receiving performance measurement reports on a regular basis; responses from AutoReturn, DTS, and UR VMS, which included examples of specific reports, earned higher scores											
Legal Issues	Proposals receiving the highest scores described holding the City harmless from damages, thefts, or losses under the contractor's or subcontractor's control; on following state and local laws, responses that showed a company's proactive approach (e.g., ABC and UR VMS) earned higher scores; proposals that stressed the importance of meeting with the City to keep open communication higher scored well on the section's last question											
Cost Issues	Proposals receiving the highest scores demonstrated a company's ability to stay within the fees and rates established by the City for certain services and a company's ability (e.g., AutoReturn and UR VMS) to make it as hassle-free as possible for a vehicle owner to redeem his/her vehicle; companies that did not cite additional costs to the City (e.g., ABC, AutoReturn, and UR VMS) received higher scores; given state law, the evaluation team was unsure of Lincoln's proposal sharing auctioned vehicle proceeds with the City											
Subcontracting	Proposals receiving the highest scores demonstrated a well-developed strategy to building a network of subcontracted towers (local, VMMBE, etc.) and a sound proposal for equitably distributing work among subcontractors; a distribution plan using a rotation did not seem as equitable to the evaluation team as other plans like using a zone system											
Storage Lot(s) and Release Facility	Proposals receiving the highest scores presented clear policies and procedures on storage lot/release facility management and addressed the accessibility of a lot/facility by describing access by public transit, etc.; ABC, Lincoln, and UR VMS all accomplished this while AutoReturn did not address accessibility by public transit; proposals where multiple lots are an option also received higher scores; the evaluation team failed five proposals on the section's third question because they did not provide the specific documentation requested, but this did not affect a company's scoring in the area											