

## City Council Report

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**File ID:** 2019-01069

August 13, 2019

**Consent Item 10**

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**Title: Suspend Competitive Bidding to Authorize an On-Call Request for Qualifications for the Tow Rotation Service Agreements (Two-Thirds Vote Required)**

**Location:** Citywide

**Recommendation:** Adopt a Resolution: 1) suspending competitive bidding in the best interests of the City in favor of an on-call Request for Qualifications (RFQ) process to allow tow companies to apply for and participate in the Sacramento Police Department's Tow Rotation Agreement; 2) authorizing the City Manager or the City Manager's designee to enter into agreements with tow service companies to provide tow services through December 31, 2020, with renewal options not to exceed five years; 3) authorizing the City Manager or the City Manager's designee to execute additional tow rotation agreements with qualified suppliers as needed throughout the contract period; and 4) increasing the daily storage fee from \$55 to \$60.

**Contact:** Mark Greenlee, Police Captain, Metro Division, (916) 808-0854, Police Department

**Presenter:** None

**Attachments:**

1-Description/Analysis

2-Resolution

3-Exhibit A – Regional Tow Agency Rates

## Description/Analysis

**Issue Detail:** The Sacramento Police Department (SPD or Department) has an operational requirement for tow services. On December 23, 2014, the SPD entered into 28 tow service agreements to allow tow companies to join the tow rotation list through the Request for Qualifications (RFQ) bidding process. The tow rotation list was designed to allow participating tow companies to be placed on the list where they will be selected based on their tow district location and through a random selection to service the SPD tow calls. As of June 19, 2019, 18 tow companies remained in the tow rotation list, causing a significant shortage of available tow companies in certain tow districts. Among the reasons for the decline in tow company participation include the closure and sale of businesses, retirements, and a higher cost of doing business in the current economic environment.

The SPD towed approximately 7,516 vehicles in 2015 and 8,742 vehicles in 2018 for various types of calls, including but not limited to: driving under the influence, no driver's license, vehicle accidents, vehicle left on highways, abandoned vehicles, arrests and a variety of other California vehicle code violations. The increased tow volume coupled with having 10 fewer tow companies on the tow rotation list have negatively impacted the number of tow units available throughout the City. For example, it causes an impact in several high demand districts where limited tow companies are available, leaving them without options but to delay in meeting SPD tow calls or unable to take the tow calls entirely. This delays the normal operation of SPD officers, limits our resources when dispatching officers to higher priority calls, and leaving vehicles stranded causing hazardous situations for the public. The SPD has determined it needs additional tow companies to keep up with the volume of tow requests on a continuous basis.

The City's current RFQ process does not allow the SPD to add new tow companies to an existing rotation after the RFQ closes and agreements are executed. This does not allow for replacement of tow companies that withdraw from the contract and/or address the increased demand for tow services. This limits the ability to dispatch tow companies needed for police services. The shortage of tow companies has caused the remaining rotation of tow companies to tow an increased number of vehicles in their assigned districts. Other impacts on the tow companies include the ability to store vehicles due to lack of property space and ability to respond to tow requests in a timely manner. All existing tow service agreements are scheduled to expire on December 31, 2019.

The tow and storage rates for class A and class B vehicles are set by the City and charged by tow companies. Currently, the tow rate is \$200, and the daily storage rate is \$55. SPD staff conducted research comparing other local agencies' daily storage rates and found that the average rate is \$60 (Exhibit A). The SPD requests approval for an increase of \$5 to the daily

storage rate from \$55 to \$60 to match the average of other local agencies (market value). While the City sets tow and storage rates, the City does not receive payment of these fees. Given that SPD is requesting authorization for an increase in the daily storage rate, the legal foundation should be explained. Specifically, towing and storage fees must be “reasonable,” and are presumptively reasonable if comparable to storage-related rates and fees charged by other facilities in the same locale. (Veh. Code, §§ 22651.07, subd. (g)(9); 22524.5, subd. (c)(2)(B).)

**Policy Considerations:** The SPD recommends the suspension of competitive bidding and use of an on-call RFQ process to evaluate and select experienced, qualified tow service companies to be placed on a rotation list with the authority to add new tow companies on a continuous basis. City Code Section 3.56.230(c) authorizes the City Council to suspend competitive bidding for any purchase or contract when, upon a two-thirds vote, the City Council determines it is in the best interests of the City to do so.

Proposition 26 was passed by the voters on November 2, 2010, amending Article XIII C of the state Constitution. According to the ballot measure, the intent of the measure is to ensure the effectiveness of Propositions 13 and 218 by providing a definition of a “tax” for state and local purposes “so that neither the Legislature nor local governments can circumvent these restrictions on increasing taxes by simply defining new or expanded taxes as ‘fees’.” Thus, under Proposition 26, a tax has been defined broadly to include any levy, charge or exaction of any kind imposed by a local government, except for seven specified categories of charges. Moreover, the City bears the burden of proving that a fee or charge is not a tax. The storage daily rate is not a ‘tax’ under Article XIII C, section 1, subdivision (e)(2) and/or (e)(5), because it is a charge imposed for tow companies to recoup the reasonable cost of providing its services as requested by SPD resulting from violations of law. The daily tow storage fees are directly paid by the registered vehicle owners to the tow companies.

**Economic Impacts:** None

**Environmental Considerations:** Not applicable

**Sustainability:** Not applicable

**Commission/Committee Action:** Not applicable

**Rationale for Recommendation:** Suspension of competitive bidding and the use of an on-call RFQ process is recommended in order to evaluate potential tow service providers on the following criteria: quality of the application, experience and references, prior contract compliance, tow truck vehicle compliance with California Highway Patrol (CHP) guidelines and

adequacy of facilities and drivers. All selected tow companies will be placed on a rotation list and will be contacted by the SPD when tow services are required.

The process for the on-call RFQ is as follows:

1. The SPD will post applicable requirements and the application on the Department's website ([www.cityofsacramento.org/police](http://www.cityofsacramento.org/police)).
2. The tow companies will have the ability to send/email/fax their applications to the SPD Tow Unit.
3. The SPD Tow Unit will review the applications and ensure all certifications/licenses are up to code and meet all SPD Tow Unit's requirements.
4. The SPD Tow Unit will notify the tow companies if they have been accepted on the tow rotation list or not.
5. Each tow company will sign the City of Sacramento's Non-Professional Services Agreement upon acceptance in the amount of \$0.
6. The SPD Tow Unit will accept any new tow company's application on an ongoing basis to accommodate the needs of the Department.

Because the SPD has lost ten tow companies from the tow rotation list, staff conducted research of other local law enforcement agencies' tow rates. It found that the daily storage rate of \$55 was below the local average by \$5. In order to adequately compensate tow companies and attract additional tow companies to the rotation, the SPD proposes to increase the daily storage rate to \$60.

**Financial Considerations:** There is no financial impact to the SPD budget. Currently the tow rate is \$200 and the daily storage rate is \$55 for class A and class B vehicles. The tow rate will remain unchanged at \$200, but the daily storage fee rate will increase by \$5 to \$60. The rate increase for daily storage resulted from the assessment conducted by the SPD to compare rates charged by other regional agencies (Exhibit A). Since the City sets the class A and class B tow rates and storage fees, participating tow companies are not allowed to raise them. These rates will provide adequate compensation to tow companies for increasing costs and account for inflation throughout the duration of the contract. There is no monetary value assigned to the agreements between the tow companies and the SPD.

**Local Business Enterprise (LBE):** The minimum LBE participation requirement will be waived as the City will suspend competitive bidding and utilized an alternate procurement method to select a vendor.

## RESOLUTION NO. 2019-

Adopted by the Sacramento City Council

August 13, 2019

### **SUSPEND THE COMPETITIVE BIDDING PROCESS FOR A REQUEST FOR QUALIFICATION (RFQ) PROCESS FOR THE TOW ROTATION AGREEMENT**

#### **BACKGROUND**

- A. The Sacramento Police Department (SPD) has an operational requirement for tow services. In 2018, the SPD towed approximately 8,700 vehicles for various types of violations. All existing tow service agreements are scheduled to expire on December 31, 2019.
- B. Suspension of competitive bidding and the use of an on-call Request for Qualifications (RFQ) process is recommended in order to evaluate potential providers on the following: quality of their applications, experience and references, prior contract compliance, tow truck vehicle compliance with California Highway Patrol (CHP) guidelines and adequacy of facilities and drivers. All selected tow companies will be placed on a rotation list and will be contacted by the City when tow services are required.
- C. City Code Section 3.56.230(c) authorizes the City Council to suspend competitive bidding for any purchase or contract when, upon a two-thirds vote, the City Council determines it is in the best interests of the City to do so. It is in the City's best interest to suspend competitive bidding for the Tow Rotation Agreement and use an alternate procurement method to ensure that tow companies can be added as operational needs increase on a continuous basis.
- D. The selected contractors will enter into agreements with the City to provide tow services through December 31, 2020, with renewal options not to exceed five years in total.
- E. The storage fee per day will be increased from \$55 to \$60 to provide adequate compensation to tow companies for the increasing costs throughout the duration of the contract. This will bring the fees up to the current market rate.

#### **BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:**

- Section 1. Competitive bidding is suspended in the best interests of the City in favor of an on-call RFQ process to allow tow companies to apply for and join the SPD's Tow Rotational Agreement.
- Section 2. The City Manager or the City Manager's designee is authorized to enter into agreements with tow service companies to provide tow services through December 31, 2020, with renewal options not to exceed five years.
- Section 3. The City Manager or the City Manager's designee is authorized to execute additional tow service agreements with qualified contractors as needed throughout the contract period.
- Section 4. The daily tow storage fee is increased from \$55 to \$60.

# Exhibit A - Regional Tow Agency Rates

<b>Agency</b>	<b>Storage Fee Per Day</b>
California Highway Patrol (South Sacto)	\$66.00
Elk Grove Police Department	\$60.00
Modesto Police Department	\$55.00
Rancho Cordova Police Department	\$60.00
Stockton Police Department	\$55.41
Turlock Police Department	\$65.00
<b>Average Rate</b>	<b>\$60.24</b>