

Jefferson County
Board of Commissioners
Agenda Request

To: Board of Commissioners
Philip Morley, County Administrator

From: Frank Gifford, Central Services Director *FY*

Agenda Date: May 27, 2014

Subject: Contract Award - Auctioneering Services, James G. Murphy, Inc.

Statement of Issue:

Award of contract for the administration of an onsite auction of surplus county property, including ER&R Fund assets and other property to be declared surplus by any county department.

Analysis/Strategic Goals/Pros & Cons:

No auction sale of ER&R Fund assets has been held for some time, leading to a backlog of vehicles and equipment awaiting sale. For this reason, Fleet Services determined that an on-site auction would be most feasible and used the vendor-list procedure to obtain quotes from three auctioneers to administer the auction.

Fiscal Impact/Cost Benefit Analysis:

James G. Murphy, Inc., proposed flat commission of 10% of gross sales. This, combined with their proposed buyer's fees, was the lowest quote received. These commissions are the only fees the auctioneer will receive from the sale, giving them strong incentive to maximize sales, 90% of the proceeds of which will be remitted to the county.

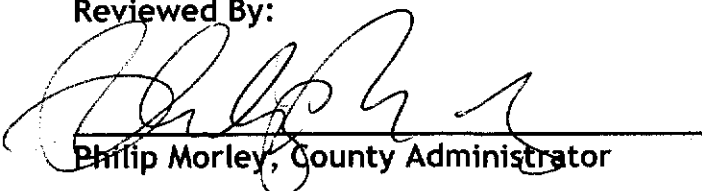
Recommendation:

Execute the attached contract.

Department Contact:

Matt Stewart, Manager of Fleet Services, 344-9713

Reviewed By:


Philip Morley, County Administrator

5/20/14
Date

PROFESSIONAL SERVICES AGREEMENT FOR

AUCTIONEER SERVICES

THIS AGREEMENT is entered into between the COUNTY OF JEFFERSON, a municipal corporation, hereinafter referred to as "the County", and JAMES G. MURPHY, INC., of Kenmore, Washington, hereinafter referred to as "the Auctioneer", in consideration of the mutual benefits, terms, and conditions hereinafter specified.

1. **PROJECT DESIGNATION.** The Auctioneer is retained by the County to provide auctioneering services, defined as everything necessary to administer and hold a sale by auction of vehicles, motorized and non-motorized equipment and various other surplus property at the County's Hadlock Shop facility, located at 371 Chimacum Road in Port Hadlock, Washington, except those services described in Exhibit "A" attached hereto as being provided by the County.
2. **SCOPE OF SERVICES.** Auctioneer agrees to perform the services, identified on Exhibit "A" attached hereto, including the provision of all labor.
3. **COUNTY'S TITLE TO GOODS.** County warrants that County has full authority to sell all goods furnished to the Auctioneer for sale and, further, that County make all necessary documents of title available a minimum of three working days prior to the scheduled date of the auction. County warrants that its title to the goods is free and clear of liens.
4. **NO PRIOR TRANSFER OF PROPERTY.** County agrees not to sell or in any manner dispose of any of property represented by the County to the Auctioneer as being planned to be furnished to the Auctioneer for sale at any time between the date of this agreement and thirty days after the scheduled date of the auction, except that the County may choose to withdraw property from the auction for any reason, including later sale.
5. **RETURN OF UNSOLD GOODS.** If the Auctioneer is unable to sell any goods, the County will withdraw the goods from the auction and will dispose of the goods as it chooses.
6. **AGENCY OF AUCTIONEER.** Auctioneer is hereby engaged by the County as the agent of the County for purposes related to the subject auction. The Auctioneer shall have authority to execute bills of sale to buyers at the auction and to receive, demand and collection auction sale proceeds.
7. **RISK OF LOSS.** County assumes all risk of loss of goods until risk of loss passes to the buyer at the time of execution of bill of sale. Auctioneer will not be held responsible for fire, theft, vandalism or other losses to the goods.
8. **GOODS SOLD AS-IS, WHERE-IS.** County makes no warrantee as to the safety, suitability or fitness of any auction goods for any purpose and furnishes the auction goods to the Auctioneer for sale as-is, where-is. Auctioneer agrees to sell all items as-is, where-is, and not to makes claims regarding the safety, suitability or fitness of any auction goods for any purpose.
9. **HAZARDOUS MATERIALS.** County assumes and shall indemnify Auctioneer from all risk and all liability (including costs, expenses, fines, liabilities and clean-up obligations) that may arise from the failure of any of the items sold or to be sold at auction to comply with federal, state or local law, statute or regulatory agency regulations and requirements, including but not limited to requirements related to environmental pollutants. The County shall pay all direct and indirect costs for the cleanup and removal of such goods and any other cost that may be incurred due to the existence of environmental pollutants either on or in the items sold or on the premises of the auction.
10. **TIME FOR PERFORMANCE.** Work under this contract shall commence upon the giving of written notice by the County to the Auctioneer to proceed. Auctioneer shall perform all services and provide all work product required pursuant to this agreement on the dates listed on Exhibit "A"

11. PAYMENT. The Auctioneer shall be paid by the County for completed work and for services rendered under this agreement as follows:

- a. Payment for the work provided by Auctioneer shall be made as provided on Exhibit "B" attached hereto, provided that the total amount of payment to Auctioneer shall not exceed \$25,000.
- b. The Auctioneer must submit a single invoice to the County following the conclusion of the auction at the time of the Auctioneer's payment of auction proceeds to the County. The amount invoiced by the Auctioneer to the County must be deducted by the Auctioneer from its payment of the auction proceeds to the County.
- c. Payment as provided in this section shall be full compensation for work performed, services rendered and for all materials, supplies, equipment and incidentals necessary to complete the work.
- d. The Auctioneer's records and accounts pertaining to this agreement are to be kept available for inspection by representatives of the County and state for a period of three (3) years after final payments. Copies shall be made available upon request.

12. OWNERSHIP AND USE OF DOCUMENTS. All documents, drawings, specifications and other materials produced by the Auctioneer in connection with the services rendered under this agreement shall be the property of the County whether the project for which they are made is executed or not. The Auctioneer shall be permitted to retain copies, including reproducible copies, of drawings and specifications for information, reference and use in connection with Auctioneer's endeavors.

13. COMPLIANCE WITH LAWS. Auctioneer shall, in performing the services contemplated by this agreement, faithfully observe and comply with all federal, state, and local laws, ordinances and regulations, applicable to the services to be rendered under this agreement.

14. HOLD HARMLESS AND INDEMNIFICATION. The Auctioneer shall comply with all Federal, State, and local laws and ordinances applicable to the work to be done under this Agreement. This Agreement shall be interpreted and construed in accord with the laws of the State of Washington and venue shall be in Jefferson County, WA.

The Auctioneer shall indemnify and hold the County, and its officers, employees, and agents harmless from and shall process and defend at its own expense, including all costs, attorney fees and expenses relating thereto, all claims, demands, or suits at law or equity arising in whole or in part, directly or indirectly, from the Auctioneer's negligence or breach of any of its obligations under this Agreement; provided that nothing herein shall require a Auctioneer to indemnify the County against and hold harmless the County from claims, demands or suits based solely upon the conduct of the County, its officers, employees and agents, and; provided further that if the claims or suits are caused by or result from the concurrent negligence of: (a) the Auctioneer's agents or employees; and, (b) the County, its officers, employees and agents, this indemnity provision with respect to claims or suits based upon such negligence, and/or the costs to the County of defending such claims and suits, etc., shall be valid and enforceable only to the extent of the Auctioneer's negligence, or the negligence of the Auctioneer's agents or employees.

Claims against the County shall include, but not be limited to assertions that the use and transfer of any software, book, document, report, film, tape, or sound reproduction of material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, or otherwise results in an unfair trade practice or an unlawful restraint of competition.

The Auctioneer specifically assumes potential liability for actions brought against the County by Auctioneer's employees, including all other persons engaged in the performance of any work or service required of the Auctioneer under this Agreement and, solely for the purpose of this indemnification and defense, the Auctioneer specifically waives any immunity under the state industrial insurance law, Title 51 R.C.W. The Auctioneer recognizes that this waiver was specifically entered into pursuant to provisions of R.C.W. 4.24.115 and was subject of mutual negotiation.

15. **INSURANCE.** Prior to commencing work, the Auctioneer shall obtain at its own cost and expense the following insurance from companies licensed in the State with a Best's rating of no less than A: VII. The Auctioneer shall provide to the County Risk Manager certificates of insurance with original endorsements affecting insurance required by this clause prior to the commencement of work to be performed.

The insurance policies required shall provide that thirty (30) days prior to cancellation, suspension, reduction or material change in the policy, notice of same shall be given to the County Risk Manager by registered mail, return receipt requested, for all of the following stated insurance policies.

If any of the insurance requirements are not complied with at the renewal date of the insurance policy, payments to the Auctioneer shall be withheld until all such requirements have been met, or at the option of the County, the County may pay the renewal premium and withhold such payments from the moneys due the Auctioneer.

All notices shall name the Auctioneer and identify the agreement by contract number or some other form of identification necessary to inform the County of the particular contract affected.

- a. The Auctioneer shall procure and maintain for the life of the contract, Workers Compensation Insurance, including Employers Liability Coverage, in accordance with the laws of the State of Washington.
- b. The Auctioneer shall procure and maintain for the life of the contract General Commercial Liability Insurance with a minimum limit per occurrence of one million dollars (\$1,000,000) and an aggregate of not less than two million dollars (\$2,000,000) for bodily injury, death and property damage unless otherwise specified in the contract specifications. The County shall be named as an additional insured party under this policy. This insurance coverage shall contain no limitations on the scope of the protection provided and indicate on the certificate of insurance the following coverage:
 1. Broad Form Property Damage with no employee exclusion;
 2. Personal Injury Liability, including extended bodily injury;
 3. Broad Form Contractual/Commercial Liability including completed operations (auctioneers only);
 4. Premises - Operations Liability (M&C);
 5. Independent Auctioneers and Subcontractors; and
 6. Blanket Contractual Liability.
- c. The Auctioneer shall procure and maintain for the life of the contract Commercial Automobile Liability Insurance with a minimum limit per occurrence of \$1,000,000 for bodily injury, death and property damage unless otherwise specified in the contract specifications. The County shall be named as an additional insured party under this policy. This insurance shall indicate on the certificate of insurance the following coverage:
 1. Owned automobiles;
 2. Hired automobiles; and,
 3. Non-owned automobiles.

Any deductibles or self-insured retention shall be declared to and approved by the County prior to the approval of the contract by the County. At the option of the County, the insurer shall reduce or eliminate deductibles or self-insured retention or The Auctioneer shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

The Auctioneer shall include all subcontractors as insured under its insurance policies or shall furnish separate certificates and endorsements for each subcontractor. All insurance provisions for subcontractors shall be subject to all of the requirements stated herein.

Failure of The Auctioneer to take out and/or maintain any required insurance shall not relieve The Auctioneer from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the obligations concerning indemnification.

It is agreed by the parties that insurers shall have no right of recovery or subrogation against the County (including its employees and other agents and agencies), it being the intention of the parties that the insurance policies so affected shall protect both parties and be primary coverage for any and all losses covered by the above described insurance. It is further agreed by the parties that insurance companies issuing the policy or policies shall have no recourse against the County (including its employees and other agents and agencies) for payment of any premiums or for assessments under any form of policy. It is further agreed by the parties that any and all deductibles in the above described insurance policies shall be assumed by and be at the sole risk of the Auctioneer.

It is agreed by the parties that judgments for which the County may be liable, in excess of insured amounts provided herein, or any portion thereof, may be withheld from payment due, or to become due, to The Auctioneer until such time as the Auctioneer shall furnish additional security covering such judgment as may be determined by the County.

The County reserves the right to request additional insurance on an individual basis for extra hazardous contracts and specific service agreements.

Any insurance coverage for third party liability claims provided to the County by a "Risk Pool" created pursuant to Ch. 48.62 RCW shall be non-contributory with respect to any policy of insurance the Auctioneer must provide in order to comply with this Agreement.

If the proof of insurance or certificate indicating the County is an "additional insured" to a policy obtained by the Auctioneer refers to an endorsement (by number or name) but does not provide the full text of that endorsement, then it shall be the obligation of the Auctioneer to obtain the full text of that endorsement and forward that full text to the County.

The County may, upon the Auctioneer's failure to comply with all provisions of this contract relating to insurance, withhold payment or compensation that would otherwise be due to the Auctioneer.

16. **INDEPENDENT AUCTIONEER.** The Auctioneer's relation to the County shall be at all times as an independent contractor, and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, and any and all employees of the Auctioneer or other persons engaged in the performance of any work or service required of the Auctioneer under this Agreement shall be considered employees of the Auctioneer only and any claims that may arise on behalf of or against said employees shall be the sole obligation and responsibility of the Auctioneer.

17. **ASSIGNMENT.** The Auctioneer shall not sublet or assign any of the services covered by this contract without the express written consent of the County or its authorized representative. Assignment does not include printing or other customary reimbursable expenses that may be provided in an agreement.

18. **COVENANT AGAINST CONTINGENT FEES.** The Auctioneer warrants that he has not employed or retained any company or person, other than a bonafide employee working solely for the Auctioneer, to solicit or secure this contract, and that he has not paid or agreed to pay any company or person, other than a bonafide employee working solely for the Auctioneer, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this contract. For breach or violation of this warranty, the County shall have the right to annul this contract without liability or, in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

19. **DISCRIMINATION PROHIBITED.** The Auctioneer, with regard to the work performed by it under this agreement, will not discriminate on the grounds of race, color, national origin, religion, creed, age, sex or the presence of any physical or sensory handicap in the selection and retention of employees or procurement of materials or supplies.

20. **NON WAIVER.** Waiver by the County of any provision of this agreement or any time limitation provided for in this agreement shall not constitute a waiver of any other provision.

21. TERMINATION.

- a. The County reserves the right to terminate this agreement at any time by giving ten (10) days written notice to the Auctioneer.
- b. In the event of the death of a member, partner or officer of the Auctioneer, or any of its supervisory personnel assigned to the project, the surviving members of the Auctioneer hereby agree to complete the work under the terms of this agreement, if requested to do so by the County. This section shall not be a bar to renegotiations of this agreement between surviving members of the Auctioneer and the County, if the County so chooses.

22. NOTICES. Notices to the County of Jefferson shall be sent to the following address:

Fleet Services Division
 Department of Central Services
 Jefferson County
 PO Box 1200 / 371 Chimacum Rd
 Port Hadlock, WA 98339

Notices to Auctioneer shall be sent to the following address:

James G. Murphy, Inc.
 PO Box 82160 / 18226 68th Ave NE
 Kenmore, WA 98028

23. INTEGRATED AGREEMENT. This Agreement together with attachments or addenda, represents the entire and integrated agreement between the County and the Auctioneer and supersedes all prior negotiations, representations, or agreements written or oral. This agreement may be amended only by written instrument signed by both County and Auctioneer.

DATED this _____ day of _____, 20_____.

JAMES G. MURPHY, CO., INC.

JEFFERSON COUNTY
BOARD OF COMMISSIONERS

TODD MEYERS
 Auctioneer's Representative (Please print)

John Austin, Chair

[Signature]
 (Signature)

Phil Johnson, Member

Vico Pasquari
 Title

David W. Sullivan, Member

May 15, 2014
 Date

Approved as to form only:
David Alvarez 5/14/14
 David Alvarez Date
 Deputy Prosecuting Attorney

ATTACHMENT "A"

SCOPE OF WORK

Auctioneer Responsibilities

1. Sell the County's surplus property, process payment from buyers.
2. Preparation, advertising, determination of lots, conduct of the sale including all terms of sale, determination of qualification of bidders and completion of all matters related to the auction, all of which shall be solely within the discretion and control of the Auctioneer.
3. Process transfer of title and other required documentation of sale.
4. Furnish by corporate check to the County the full amount of gross auction proceeds less the payments by the County to the Auction as specified by this contract, which must be furnished to the County within ten business days of the conclusion of the auction.
5. Sell the auctioned good with no minimum or reserve prices and without guaranteeing the County any selling price.
6. Collect sales tax from buyers as required under state law and remit such sales tax to the state.
7. Accept multiple forms of payment from buyers, including but not limited to cash; personal and corporate checks of limited amount from residents of and businesses located within Jefferson County; personal and corporate checks of any amount when accompanied by a letter of bank guarantee; and credit cards from at least two major providers (VISA, MasterCard, Discover or American Express).
8. Restrict buyers to a time period of one hour following the final sale to make all payments in full; and a further time period of one hour during which all sold items must be removed from County property by their respective buyers.
9. Ensure that the Auctioneer and the individual auctioneers working for the Auctioneer are licensed and bonded as required by the laws of the State of Washington for providing such services.
10. Use the County's inventory of auction items to advertise the auction and to ready its auction-management computer system.
11. Within the several days preceding the auction, must furnish the County a sketch of its preferred layout of the auction items and support equipment on an overhead photo or drawing of the County's facility.
12. Report to the County the auction results in sufficient detail to permit the County's allocation of costs and proceeds among the disparate County agencies and departments furnished items for auction based on actual sales amounts allocated to each of those entities.

County Responsibilities

1. Furnish the county shop facility located at 371 Chimacum Road in Port Hadlock, Washington, with small parking area (additional parking to be on roads) and a defined area for auction event that is closed to normal county business beginning one days before the auction (the preceding Thursday) at 4:30 PM, including necessary utilities such as power, water, ordinary conveniences and reasonable access to the Auctioneer rent-free for such period as is necessary to prepare, conduct and complete the auction.
2. Provide an inventory of auction items, including all known information (description, year, make, model and condition, where applicable), subject to update between the date of this agreement and the planned date of auction.
3. Prepare the goods for auction, including testing, cleaning, improving and reconditioning, to the extent chosen by the County under advisement by the Auctioneer.
4. Furnish digital pictures of all auction items.
5. Prepare an overhead photo or drawing of the County's facility with County's suggested overall event layout.
6. Create and display signage in front of the County shop facility advertising the date of the auction to passers-by.
7. Sweep the auction-area pavement prior to setup.

8. Provide and operate a forklift for the duration of the auction event to move goods for sale and for removal by buyers.
9. Set up facility with lots arranged according to Auctioneer's directions.
10. Staff public viewings of auction goods the day prior to the auction and the morning of the auction.
11. Provide portable bathroom facilities onsite for the duration of the auction day and their cleaning/collection.
12. Provide garbage and recycling cans and the collection and disposal of collected refuse.
13. Close and secure the remainder of the county facility during the event.
14. Provide 110-volt power for use by the Auctioneer for the duration of the auction day.
15. Provide a single phone line for use by the Auctioneer with payment-processing equipment.
16. Provide a sheriff's deputy for the duration of the auction day to provide general event security.
17. Provide mechanical staff for the duration of the auction event to aid in keeping vehicles/equipment running and to operate the forklift to load sold items.
18. For display with each applicable item, provide printed copies of maintenance/repair history of all vehicles and equipment for which such history is available.

ATTACHMENT "B"

COMPENSATION

The total fees, charges and costs charged by the Auctioneer to the County (deducted from the auction proceeds paid to the County) and to the buyers (added to the amount invoiced to each buyer) will be calculated by application of the amounts detailed below to the final auction sales amounts, per the Auctioneer's quote to the County submitted on May 5th, 2014, which is attached and made a part hereof.

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|---|-----|
| 1. Commission*: Percentage charged to County on gross auction proceeds, paid in the form of deduction from the auction proceeds paid by the Auctioneer to the County: | 10% |
| 2. Buyer's Fee: Percentage charged to buyers on the gross proceeds from each auctioned item, payable in the form of an added fee on each buyer's invoice: | 10% |

* The total Commission deducted from the auction proceeds (item #1 below) when calculated on the final auction results must not exceed \$25,000; if the auction sales results in a calculated total charge to the County in excess of \$25,000, the County's entire obligation to the Auctioneer and, therefore, the Auctioneer's deduction from the auction proceeds will be limited to \$25,000. This cap on the Auctioneer's deduction from the auction proceeds will apply to the entire auction proceeds even when those proceeds are accrued separately to various county departments and agencies.