

BILL NO.: 4728

ORDINANCE NO.: _____

Introduced by: Council Present

**AN ORDINANCE OF THE CITY OF BERKELEY, MISSOURI, AUTHORIZING THE
MAYOR TO EXECUTE THE ATTACHED SMEAL FIRE APPARATUS LLC AGREEMENT**

Now, Therefore, Be it ordained by the City Council of the City of Berkeley, Missouri, as follows:

Section 1. The Mayor is hereby authorized to enter into and execute the attached Smeal Fire Apparatus Agreement for pumper fire apparatus according to Bid #889.

Section 2. The attached agreement is hereby incorporated herein and made a part of this ordinance, as if fully set out herein.

Section 3. This Ordinance shall be in full force and effect from and after its passage.

1st Reading this _____ day of _____ 2019

2nd Reading this _____ day of _____ 2019

3rd Reading, PASSED and APPROVED, this _____ day of _____ 2019

Theodore Hoskins, Mayor

ATTEST:

Deanna L. Jones, City Clerk

Approved As To Form:
Donnell Smith, City Attorney

Final Roll Call:

Mayor Hoskins	Aye	___	Nay	___	Absent	___	Abstain	___
Councilwoman Hoskins	Aye	___	Nay	___	Absent	___	Abstain	___
Councilwoman Mitchell	Aye	___	Nay	___	Absent	___	Abstain	___
Councilwoman Williams	Aye	___	Nay	___	Absent	___	Abstain	___
Councilwoman-at-Large Greene	Aye	___	Nay	___	Absent	___	Abstain	___
Councilman Hindeleh	Aye	___	Nay	___	Absent	___	Abstain	___
Councilwoman Anthony	Aye	___	Nay	___	Absent	___	Abstain	___

STANDARD
PROJECT AGREEMENT

THIS AGREEMENT made this _____ day of _____, 2019, by and between Smeal Fire Apparatus LLC; 907 7th Avenue North, Brandon, SD 57005-2003. (A corporation organized and existing under the laws of the State of Missouri) hereinafter called the "CONTRACTOR" and The City of Berkeley, Missouri.

WITNESSETH, that the Contractor and the City of Berkeley, Missouri for the considerations stated herein agree as follows:

STATEMENT OF WORK: The Contractor shall furnish all supervision, technical personnel, labor, materials, machinery, services, materials, supplies, etc. needed to perform and complete all work required for the **BID # 889 "PUMPER FIRE APPARATUS"**, and an _____ y and all required supplemental work for completion of the project in accordance with the Plans, Specifications, and all Contract Documents.

The City of Berkeley will pay the Contractor for the performance of the contract in current funds, for the total quantities of work performed at the unit prices stipulated on the attached bid for the several respective items of work completed subject to additions and deductions mutually agreed upon by both parties of this agreement.

Payments will be made within 30 days after the City approves the final inspection of the project, and the contractor submits a final invoice. The final invoice shall not be deemed as received until after the City approves the completion of the project.

CONTRACT: The executed Contract documents consist of all documents furnished to each bidder and the successful Contractor for this project.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed in two (2) original copies on the day and year first above written.

Contractor: **Smeal Fire Apparatus LLC.**

City of Berkeley, Missouri

By: _____

By: _____

Title: _____

Title: Mayor

Street: _____

Street: 8425 Airport Road

City: _____

City: Berkeley, MO 63134

Attest:

Attest:

By: _____

By: _____

Title: _____

Title: _____

MEMORANDUM



TO: Honorable Mayor Theodore Hoskins &
Honorable City Council Members

THRU: Debra Irvin, City Manager

FROM: Fire Chief James Linhardt, Berkeley Fire Department

DATE: August 13, 2019

SUBJECT: Bid No. 889 – New firefighting apparatus to replace a 2003 model year Fire Engine.

Recommendation: The Fire Department has reviewed all aspects contained in the New Pumper Fire Apparatus bid received from the Leo Ellebracht Co. The bid that was received adhered to the Berkeley Fire Department specifications with no major exceptions and is National Fire Protection Association (NFPA) 1901 compliant. The new fire engine will be custom built per the Berkeley Fire Department's needs and specifications. The new engine will be delivered within 390 calendar days from the contract award date.

Background: The City of Berkeley posted a Request for Bids for a new pumper fire apparatus. The current engine that is proposed to be replaced was placed in service in 2003. The unit has over a 139,000 miles and over 13,000 hours. This unit's body has begun to deteriorate in recent years and maintenance and repair costs continue to rise, while replacement parts are becoming increasingly difficult to find. In the last few years this unit has experienced increased out of service time due to breakdowns from normal wear and tear. National Fire Protection Association (NFPA) standard 1901 states that apparatus should remain in front line service for approximately 10 years then function in a reserve status for another 5-10 depending on the condition of the apparatus. This guideline was established due to the major advances in safety, reliability and operational effectiveness that are instituted in new apparatus during that time period.

The fire department has the legal right to specify the fire apparatus based on the following:


The Fire Department (for the remainder of this section referred to as the “specifier”) chooses to exercise its Legal Right to Specify as determined by the U.S. Supreme Court’s affirmation of the decision handed down in the case of Whitten Corp. vs. Paddock, by the U.S. District Court of Massachusetts, the First Federal District Court, which in effect states: 1) That as trained professionals, specifiers make informed judgments on products that they feel best serve their needs. Also, that proprietary specification (if chosen) DO NOT violate any antitrust laws. Technically, very few brands of material or equipment are exactly alike, and if the specifier wants to limit the specification to one source, he/she has the right to do so and enforce it. 2) Only the specifier has the responsibility and judgment for determining whether a proposed substitution is an “or equal”. 3) That from start to finish in the purchasing process, only the specifier can ultimately decide if another desirable product is available in lieu of the specification. 4) Finally, that the courts concluded “the burden is on the supplier or manufacturer, who has NOT been specified, to convince the specifier that their product is equal for the purpose of a particular project”. The specifier has determined that this product specification shall represent the product to which all offerings shall be compared. Due to the fact that firefighting is an ULTRAHAZARDOUS, UNAVOIDABLY DANGEROUS activity, only trained Fire Department personnel with specific knowledge in the area of fire apparatus and equipment shall be allowed to make the final determining decision on the selection of the appropriate product to serve the Fire Department’s needs.

A fire department apparatus committee consisting of members from every rank in the department was established and has met for almost a year on this project. That committee developed detailed specifications for the apparatus and unanimously support the bid that was received.

Supporting Documents: See attached bid package and bid and drawings.

Potential Objection: None foreseen as adequate funds are available in the fire department equipment line item and have been budgeted for.

Staff Reference: If you have any questions please feel free to contact me at (314) 400.3602 or email Linhardt@ci.berkeley.mo.us

		Name of Bidder:	Name of Bidder:	Name of Bidder:	Name of Bidder:	Name of Bidder:
		Smeal Fire Apparatus Co.				
		Bid Bond: Yes ___ No ___	Bid Bond: Yes ___ No ___	Bid Bond: Yes ___ No ___	Bid Bond: Yes ___ No ___	Bid Bond: Yes ___ No ___
Pg.No.	Item Description					
5	BID FORM	X				
6	PROJECT AGREEMENT					
9	AFFIRMATIVE ACTION STATEMENT	X				
10	AFFIRMATIVE ACTION/PRIME VENDOR QUESTIONNAIRE	X				
11	EXHIBIT- AFFIDAVIT OF WORK AUTHORIZATION	X				
	DETAILED TECHNICAL SPECIFICATIONS	X				
	Total Bid	\$676,946.00				
	NO. of Copies	4				



610 WEST 4TH ST. P.O. BOX 8
SNYDER, NEBRASKA 68664

smeal.com
(402) 568 2224

WE BUILD RESPECT.

PROPOSAL (General)

Date: 08/02/19

TO: City of Berkeley Fire Department
8401 Airport Road, Berkeley, MO 63134

Dear Sirs:

We hereby propose and agree to furnish, after your acceptance of this proposal and the proper execution and approval of award of bid, the following apparatus and equipment:

One (1) Smeal Pumper Fire Apparatus on Spartan Gladiator/Smeal Sirius Chassis

For the sum of: Six Hundred Seventy-Six Thousand, Nine Hundred Forty-Six Dollars

Dollars \$ 676,946

All of which are to be built in accordance with the Smeal proposed specifications attached, and which are made a part of this proposal agreement, to deliver same 390 calendar days after date of receipt and approval of all submitted documents affiliated with order placement with Smeal Fire Apparatus Co., properly executed, subject to all causes beyond our control.

Payment in full is due at the time of final inspection and acceptance at the Smeal factory.

The amount named in this proposal shall remain firm for a period of 90 days from the date of same. All state and local taxes are included in above figure. Any and all additional applicable taxes are to be paid by customer upon registration and licensing of vehicle. It is understood by both the Seller and the Buyer that *Change Orders* executed after contract acceptance may delay delivery. It is understood by both the Buyer and the Seller that *Change Orders* executed after contract acceptance may increase or decrease the price. The purchase price herein is based upon all applicable state and federal manufacturing law, regulations, orders, mandates and standards in effect as of the date of this Agreement (hereinafter "Standards") such as, for example, the Standards mandated by the National Fire Protection Association, tentative interim amendments to the National Fire Protection Association Standard, Underwriters Laboratories of Canada, and the Environmental Protection Agency. The purchase price shall be subject to increase due to any state or federal Standards that are adopted, issued or mandated following the date of this Agreement that require the apparatus(es) described above to be manufactured and/or delivered in compliance with such Standard(s).



610 WEST 4TH ST. P.O. BOX 8
SNYDER, NEBRASKA 68664

smeal.com
(402) 568 2274

WE BUILD RESPECT.

PROPOSAL (General)

This Proposal Document, in order to be effective and binding upon Seller must be signed and accepted by an authorized officer of Seller. The effective date of this Proposal Document will be the date it is signed and accepted by the Seller.

All checks must be made payable to Smeal Holding LLC only and delivered to Seller at its offices in Snyder, Nebraska. Under no circumstances shall payment be made to a dealer or anyone else as Seller's agent. Smeal Holding LLC. is the only authorized payee. Any representation that payment is to be made to any other party is absolutely unauthorized.

Official ownership documents shall remain property of the seller until the purchase price is paid in full. Upon receipt of payment, ownership documents shall be forwarded to purchaser.

Respectfully submitted,

x Lloyd DeWald

We agree to accept the above proposal:

x _____

SMEAL HOLDING LLC

C/O: Leo M. Ellebracht Co.

C/O: Lloyd De Wald

(Printed Name)

Date: 08/02/19 (mmddyy)

Date: _____ (mmddyy)

Bid Form

Project no. **"BID 889 PUMPER FIRE APPARATUS"**

Proposal has: Smeal Fire Apparatus LLC (HEREINAFTER CALLED "BIDDER")

TO: The City of Berkeley, 8425 Airport Road, Berkeley, MO. 63134

The bidder, in compliance with your invitation for bid **"BID 889 PUMPER FIRE APPARATUS"** for having examined the specifications with related documents and being familiar with all of the conditions surrounding the proposed project including the availability of materials and labor, hereby proposes to furnish all equipment, labor, materials, and supplies, and to complete the project in accordance with the specifications, within the time set forth therein, and at the prices stated below:

ITEM NO.	DESCRIPTION	UNIT PRICE
1. Bid 888	Pumper Fire Apparatus	\$676,946

The above unit price shall include all labor, materials.

The bidder shall supply 4 (FOUR) copies of the **"BID 889 PUMPER FIRE APPARATUS"** for our review and decision.

Bidder understands that the owner reserves the right to reject any or all bids, or any combination thereof, and to waive any informality in the bidding.

The bidder agrees that this bid shall be good and may not be withdrawn for a period of 90 (Ninety) calendar days after the scheduled closing time for receiving bids.

Lloyd DeWald April 2, 2019
SIGNATURE DATE
Lloyd DeWald, Sales Representative
Smeal Fire Apparatus LLC, A subsidiary of Spartan Motors, Inc.

907 7th Avenue North, Brandon, SD 57005-2003

ADDRESS / CITY / STATE / ZIP

Marie Therese DeWald
ATTEST

PREPAYMENT DISCOUNTS FOR CITY OF BERKELEY PUMPER BID

The following chassis prepayment discount and prepayment interest earnings are available from Smeal on this bid.

CHASSIS PREPAYMENT DISCOUNT

The chassis prepayment discount is available if the chassis is paid for when it is complete (approximately 120 days before completion of the apparatus). Smeal will issue an invoice when the chassis is complete and it must be paid within five business days to receive the discount. The discount is applied to the final invoice on the apparatus.

The chassis prepayment discount would be \$ 8386 on a chassis payment of \$ 281,119.

100% PREPAYMENT AT TIME OF CONTRACT

100% prepayment at the time of contract incorporates the chassis prepayment discount plus interest earnings on the prepayment amount. The bid proposal amount is \$676,946. The discount for 100% prepayment at the time of contract is \$12,983. The discount is applied at the time of contract resulting in a net due at time of contract of \$663,963.

If you have any specific questions please do not hesitate to contact Lloyd DeWald, Smeal Sales Representative at 314-914-1081.