

24. Re: Tenders for Towing Services 1972-1975  
(Item 20, Report No. 70, October 30, 1972)

The above subject was discussed at the last Council meeting. A motion was made that a 30 day termination clause which could be exercised by the Municipality for any reason, be inserted in the Agreement. This motion was tabled and the matter referred to the Manager to investigate the various matters raised by Council.

The Manager has discussed the various points raised with Mr. Ed Mundie and the attached reply dated November 3, 1972 was received from Mr. Mundie's solicitor, Mr. Harrison Doig of Doig, Guthrie and Baily. Also attached to Mr. Doig's letter are the pertinent clauses of the Agreement including new clauses 30 and 35 which had been suggested and submitted to Mr. Mundie for consideration.

In the event that this company's tender is not accepted by Council, the following information may be of assistance in consideration of this matter:

1. Kaban Bros. Service Station Ltd.

This company is located on property known as 6963 Buller Avenue; Zoned M-4 - Legal Non-Conforming Use, - Licenced as a Storage and Towing Yard.

The holders of this licence also have a Trade's Licence to operate a Service Station; Kingsway and Imperial.

2. Buster's Auto Towing Service Ltd.

This firm intends to operate from 4696 S.E. Marine Drive (Nelson and Marine). This property is Zoned M-3. Current licence to Pioneer Auto Salvage Ltd., Conforming Use, however present use is on a year to year licence basis. Council is currently considering a proposal which if adopted would require this property for road and park development.

This firm has its telephone number also listed under Towing Service under Clarke Simpkins.

3. B.C. Auto Towing (1968) Ltd.

This firm is located at 6626 E. Hastings; the storage facility is licenced to Geo. W. Edwards, 6624 E. Hastings Street. Legal Non-Conforming Use; also licenced on this property is B.C. Collision Ltd. - Auto Body Repairs.

To summarize, it would be contrary to the conditions of the contract documents to recommend Kaban Bros. Service Ltd., or B.C. Auto Towing (1968) Ltd., unless they too made changes to be conforming to the terms of the Agreement. The facility as described by Buster's Towing, in our opinion, is far removed from the public, and the zoning is not resolved.

RECOMMENDATION:

THAT the lowest tender being that of Mundie's Towing, Storage and Services Limited for both Burnaby North and Burnaby South for November 1, 1972, to October 31, 1975 be accepted without amendment.

ITEM 24

MANAGER'S REPORT NO. 72

COUNCIL MEETING Nov. 6/72

DOIG, GUTHRIE & BAILY

BARRISTERS & SOLICITORS

TELEPHONE 521-6011

HARRISON DOIG  
FRANK M. BAILY

ROBERT J. GUTHRIE  
DALE B. HARDER

7297 KINGSWAY

BURNABY 1, B.C.

REPLY ATTENTION Harrison Doig

November 3rd, 1972.



NOV 3 1972

MUNICIPALITY OF BURNABY  
OFFICE

Municipality of Burnaby,  
4949 Canada Way,  
BURNABY, B. C.

ATTENTION: M. Shelley,  
Municipal Manager.

Dear Sir: re: Municipal Towing Contract -  
Mundie's Towing, Storage &  
Service Ltd.

The following information is forwarded to you pursuant to our telephone conversation of November 2nd, 1972, for the purposes of answering existing questions of municipal authorities with respect to the above matter.

For the purposes of this letter, Mundie's Towing, Storage & Service Ltd. will hereinafter be referred to as "Mundie's Towing".

Question #1: Does Mundie's Towing now have towing units which are capable of removing and towing a vehicle over 72,000 G.V.W. as prescribed by tender specifications, paragraph 2(d)?

Answer: It is the opinion of Mundie's Towing that they now have two vehicles capable of handling vehicles in excess of 72,000 G.V.W., namely G.M.C. 960 Twin Boom Wrecker and G.M.C. 630 Diesel Twin Boom Wrecker,

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as set out in the list of equipment submitted with their tender.

In the event that an extremely heavy or difficult situation should occur, which would require a jumbo tandem type of towing unit, this is available to Mundie's Towing through a commitment from a towing firm. It is very unlikely that a situation would occur where towing or removing with the nineteen vehicles listed in Mundie's Towing tender could not be handled. For example, Mundie's Towing has handled all the municipal vehicles for the past six years with substantially the same equipment listed without any difficulty.

In the event that proposed regulations for tow trucks are accepted by the Superintendent of Motor Vehicles, then Mundie's Towing undertakes to purchase a tandem wrecker if the same would be required to comply with the proposed regulations.

Question #2: Is it acceptable to Mundie's Towing that, although a fair wage clause was not included in the specifications for tender, a fair wage clause now be inserted in the towing contract? (a copy of the fair wage clause is affixed to this letter)

Answer: As the fair wage clause was not in the specifications for tender, it is now unfair to request this amendment. Notwithstanding this, if the municipal authorities feel the insertion of this clause is an absolute

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necessity, then as it constitutes a change in the tendering specifications, Mundie's Towing requires that their bid be changed as follows to cover any eventuality which may occur because of the insertion of this fair wage clause:

All towing prices tendered would be increased by \$1.50.

Question #3:

Is it acceptable to Mundie's Towing to have a 'notice to quit' clause inserted in the towing contract when the same was not included in the tendering specifications? (a copy of this clause is set out on Page 15 and is attached hereto)

(Clare 35)

Answer:

This clause should not be inserted in the towing contract for several reasons, including the following:

- (a) It is a substantial change from the specifications for tender;
- (b) It is extremely unfair to expect a towing contractor to incur the amount of expense and investment required to adequately serve the needs of the municipality for towing services and in turn place him at the jeopardy of cancellation of his contract upon one month's notice. For example, the land and equipment necessary to perform the terms of the towing contract proposed represents an investment substantially in excess of \$150,000.00;
- (c) Adequate protection for termination of a contract is provided to the municipality

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in Section 27 of the proposed contract in the event that Mundie's Towing should not be performing the towing contract to the satisfaction of the Municipality of Burnaby; i.e. seven (7) days' notice in writing to be given by the Municipality for any contract deficiencies - if deficiencies or violations persist, then termination may take place upon thirty (30) days' notice in writing being given by the Municipality.

Question #4: Are the 1948 and 1949 vehicles listed capable of performing the duties intended?

Answer: The 1948 Ford Single Boom Wrecker and the 1949 Ford Single Boom Wrecker are both completely capable of performing the duties intended. They are presently in continual day-to-day operation and are found to be completely reliable. They are all tested through the Provincial Government testing station in Burnaby. Obviously, if they are not mechanically fit and are continually breaking down, this would result in a loss to the towing company.

Question #5: Telephone listing - yellow pages.

Answer: It is common practice in the automotive industry for bodyshops and garages to list an emergency number for towing services to provide towing services on a twenty-four hour basis. Two of the largest towing firms in Vancouver have their telephone numbers listed as a towing service with

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garages and bodyshops. However, in the next edition of the telephone directory, Mundie's Towing is willing to list their telephone number completely in accordance with the directions of the Municipality.

Question #6: What financial or contractual obligations, if any, does Mundie's Towing have which are detrimental to the Municipality of Burnaby?

Answer: Mundie's Towing has no financial or contractual obligations to any bodyshop or vehicle repair business, neither directly or indirectly.

One-half of their storage lot and facilities located on Kingsway is being leased from a Mr. and Mrs. Don Barnes but there is in existence an option to purchase in favour of Mundie's Towing for this property. The other one-half of the property on which these facilities are located on Kingsway is registered in the name of Mundie's Towing.

If the Municipality requires, Mundie's Towing can, within ten days, exercise their option to purchase so that there would not even be a lease for the premises on Kingsway from any company or person related to a vehicle repair or body shop business.

The storage yard and facilities in North Burnaby are being least from a Paul Marche.



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Question #7: Accessibility to bus service?

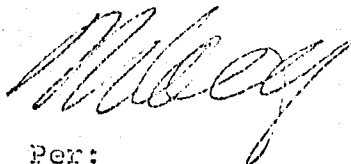
Answer: The Kingsway location obviously is immediately adjacent to a bus service and the North Burnaby storage service has a bus stop within one block; i.e. corner of Norland Avenue and Douglas Road.

We have, as of this date, delivered a letter to Mr. Shaw, Municipal Clerk, asking to be heard to answer further and explain any of the above information, and we would now also ask yourself, as Municipal Manager, for permission to answer any other reports submitted in connection with this proposed towing contract at the next Council meeting to be held Monday evening, November 6th, 1972.

If you have any further enquiries with respect to this matter, feel free to contact the writer or Mundie's Towing at your convenience.

Yours very truly,

DOIG, GUTHRIE & BAILY



Per:

hd:jvs  
Attach.

Prior to commencement of supplying service hereunder, the Contractor shall file with the Corporation a certified copy of each insurance policy and receipts showing that the premiums for all policies have been paid in full. All such insurance shall be maintained until completion of the contract.

Should the Contractor neglect to obtain and/or maintain insurance as aforesaid, or deliver such policy or policies to the Corporation, then it shall be lawful for the Corporation to obtain and/or maintain such insurance and the Contractor hereby appoints the Corporation his true and lawful attorney to do all things necessary for this purpose. All monies expended by the Corporation for insurance premiums under the provisions of this clause shall be charged to the Contractor.

27. The Contractor covenants and agrees with the Corporation that if at any time during the currency of this Agreement the services of the Contractor required by the Corporation hereunder are not being performed or carried out by the Contractor to the satisfaction of the Corporation, and in all respects in conformity with this Agreement, the Corporation shall notify the Contractor in writing that it is not satisfied with the performance of the Contractor and its reason therefore, and if seven (7) days after receipt of notice by the Contractor the Contractor continues to carry out the terms of this Agreement in a manner not to the satisfaction of the Corporation, then the Corporation, in order to complete the remainder of this Agreement, may have any vehicles, equipment or vehicle bodies required to be removed pursuant to this Agreement removed by such other automobile towing service or services as it may select at such price or fee as may be charged by such automobile towing service or services and shall be entitled to recover from the Contractor or its surety by set off or otherwise any difference in the price or fee the Corporation may be obliged to pay for such service over the charges set out herein, during the remainder



of this Agreement. Notwithstanding the foregoing, if the Contractor shall persist in violating any of the terms of this Agreement or if the Corporation, in its opinion, considers that the Contractor cannot carry out the terms of this Agreement in a workmanlike manner, then the Corporation may terminate this Agreement at any time by giving the Contractor thirty (30) days notice in writing without being liable to pay any compensation or damages to the Contractor for so terminating this Agreement.

28. Notwithstanding Clause 27, it is understood and agreed between the parties hereto that the Contractor shall not be held responsible for damages caused by delay or failure to perform its undertakings hereunder when such delay or failure arises by reason of strikes or by lockouts of the Contractor's employees. It is further understood and agreed that this Agreement shall be suspended during the period of such strikes or lockouts and that the Corporation may have the vehicles, equipment or vehicle bodies required to be removed pursuant to this Agreement, removed by such other automobile towing service as it may select during the said period; PROVIDED HOWEVER, that if a strike or lockout continues for a period in excess of sixty (60) days then the Corporation may terminate this Agreement forthwith at any time after the expiration of the sixty-day period, provided such strike or lockout is still in progress, by giving the Contractor written notice of such termination, without being liable to pay any compensation or damages to the Contractor for so terminating this Agreement.

29. If the Contractor is unable to provide adequate storage at the Towing Firm Yard at any time, the Contractor will provide forthwith at its own expense other storage places in substitution therefor. No substituted storage places shall be used by the Contractor for the purposes of this Agreement without the consent in writing of the Purchasing Agent and the Officer-in-Charge. The location and adequacy of the substituted storage places shall be to the satisfaction of the Purchasing Agent and the Officer-in-Charge.

30. The Contractor shall, during the term of this Agreement, pay all workmen, mechanics, artisans, and labourers in the employ of the Contractor, Sub-Contractor, or other person doing or contracting to do the whole or any part of the services herein provided for, such wages and remuneration as are generally accepted by the Provincial Government pursuant to the "Public Works Fair Wages and Conditions of Employment Act" and which are generally current in each trade for competent workmen in the Municipality; provided, however, that where current union rates for any trade or occupation are in excess of those generally accepted by the Provincial Government pursuant to the "Public Works Fair Wages and Conditions of Employment Act" and which are generally current for competent workmen in the Municipality, then the Contractor shall pay or cause to be paid to all workmen, mechanics, artisans, and labourers aforesaid engaged in any such trade or occupation the current union rates thereto and therefor.

The Contractor shall comply with all laws and regulations in any way affecting those engaged or employed in the work or the conduct of the work and shall protect and save harmless the Corporation from and against all claims, or demands arising out of or based on the violation of any such laws or regulations.

31. The Contractor shall between \_\_\_\_\_ A.M. and \_\_\_\_\_ P.M. allow the owners of vehicles, equipment and vehicle bodies and insurance adjusters, repair shop estimators, Police Officers and employees of the Corporation reasonable access to the Towing Firm Yard.

32. The Contractor shall not solicit any business while at the scene of any motor vehicle accident.

33. The Contractor shall not carry on a body shop or vehicle repair business nor have a financial or contractual obligation to any body shop or vehicle repair business either directly or indirectly.

34. All notices which are required to be given or made pursuant to this Agreement shall be given or made in writing and shall be served personally or mailed by prepaid, registered mail in the case of the Corporation delivered or addressed to the Municipal Clerk, Municipal Hall, 4949 Canada Way, Burnaby 2, B.C., and in the case of the Contractor addressed to \_\_\_\_\_

or at such other addresses as the parties may from time to time advise the other signatories hereto by notice in writing. The date of receipt of any such notice shall be deemed to be the date of delivery of such notice if served personally, or if mailed as aforesaid on the second juridicial day next following the date of such mailing.

35. The Corporation may upon one (1) month's notice in writing to the Contractor terminate this Agreement.

36. This Agreement shall not be assigned by the Contractor without the consent of the Corporation first had and received.

37. This Agreement shall enure to the benefit of and be binding upon the parties hereto, as well as the successors and permitted assigns of the Contractor.

IN WITNESS WHEREOF the Corporation has caused these presents to be sealed with the Corporate Seal of The Corporation of the District of Burnaby and signed by the Mayor and Clerk, and the Contractor has caused these presents to be executed under the hands of its proper officers duly authorized in that behalf, as of the day and year first above written.

THE CORPORATE SEAL OF THE CONTRACTOR WAS HEREUNTO AFFIXED IN THE PRESENCE OF:

\_\_\_\_\_

THE CORPORATE SEAL OF THE CORPORATION WAS HEREUNTO AFFIXED IN THE PRESENCE OF:

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CLERK