

FILED
12-05-2023
Anna Maria Hodges
Clerk of Circuit Court
2023CV009079
Honorable Brittany C.
Grayson-16
Branch 16

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

CITY OF WEST ALLIS
7525 West Greenfield Ave
West Allis, WI 53214,

Plaintiff,

v.

SEAGRAVE FIRE APPARATUS, LLC
105 East 12th Street
Clintonville, WI 54929,

Defendant.

Case No. 23-CV-_____
Case Code: 30303
Other - Contracts

SUMMONS

THE STATE OF WISCONSIN, To each person named above as a Defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within 20 days of receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is 901 North 9th Street, Milwaukee, WI 53233 and to Kail

Decker, Plaintiff's attorney, whose address is 7525 West Greenfield Avenue, West Allis, WI 53214. You may have an attorney help or represent you.

If you do not provide a proper answer within 20 days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 5th day of December, 2023.

CITY OF WEST ALLIS



Kail Decker
City Attorney
State Bar No. 1063074
Attorney for Plaintiff

7525 West Greenfield Avenue
West Allis, WI 53214
(414) 302-8450 – Phone
(414) 302-8444 – Fax
kdecker@westalliswi.gov

FILED
12-05-2023
Anna Maria Hodges
Clerk of Circuit Court
2023CV009079
Honorable Brittany C.
Grayson-16
Branch 16

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

CITY OF WEST ALLIS
7525 West Greenfield Ave
West Allis, WI 53214,

Plaintiff,

v.

Case No. 23-CV-_____
Case Code: 30303
Other - Contracts

SEAGRAVE FIRE APPARATUS, LLC
105 East 12th Street
Clintonville, WI 54929,

Defendant.

COMPLAINT

Plaintiff, City of West Allis, by City Attorney Kail Decker, for its Complaint against the Defendant, Seagrave Fire Apparatus, LLC, alleges as follows based upon information and belief:

PARTIES

1. City of West Allis (“City”) is a municipal corporation organized under Wis. Stat. Ch. 62, with its principal office located at 7525 West Greenfield Avenue, West Allis, Wisconsin 53214.

2. Seagrave Fire Apparatus, LLC (“Seagrave”) is a foreign limited liability company organized in the State of Delaware and registered to operate in the State of Wisconsin, with its principal office located at 105 East 12th Street, Clintonville, Wisconsin.

JURISDICTION AND VENUE

3. This Court has personal jurisdiction over Seagrave pursuant to Wis. Stat. § 801.05(1)(d) and 801.05(5)(c) because Seagrave is engaged in substantial and not isolated activities within this state and this matter arises out of a promise by Seagrave to deliver or receive within this state or to ship from this state goods, documents of title, or other things of value.
4. Venue is appropriate in Milwaukee County pursuant to Wis. Stat. § 801.50(2)(a) and by stipulation of the parties under Wis. Stat. § 801.52.

FACTUAL BACKGROUND

5. On or about June 10, 2021, Seagrave provided to City a proposal to sell to City a firefighting apparatus known as a Custom Marauder II pumping engine, Model TB50CA, Numbered S.O. 78L80 (“Engine”).
6. The Engine is a custom-built piece of firefighting equipment that is unique to the City’s specifications.
7. On July 13, 2021, the common council for City adopted Resolution R-2023-0415, which authorized the purchase of the Engine under the terms of the purchase agreement.
8. No later than September 22, 2021, the parties, through authorized representatives, executed an agreement that stated City would acquire the Engine from Seagrave for \$684,997.00 and the Engine was to be ready for delivery within 420 calendar days after receipt of the complete defined order. A copy of the purchase agreement is attached and marked **“Exhibit A.”**

9. The parties mutually agreed to specifications, change order documents, and approval drawing signed by the authorized representative of City on or before November 17, 2021.
10. City has substantially complied with all relevant provisions of the purchase agreement and intends to accept the Engine and make payments as they become due.
11. According to Section 3 of the purchase agreement, Seagrave had a duty to deliver the Engine to the West Allis Fire Department at 7332 West National Avenue, West Allis, Wisconsin, no later than January 12, 2023.
12. As of the date of filing, Seagrave has not delivered the Engine to the City.
13. In a letter dated May 2, 2023, Seagrave has declared an intention to delay performance on the contract unless City pays an additional \$102,750 above the listed contract price. A copy of the letter is attached and marked “**Exhibit B.**”
14. At no time did the City indicate to Seagrave that it intended to pay the additional \$102,750.
15. Despite Seagrave stating in May 2023 an intention to not timely perform as specified the contract, on September 28, 2023, Seagrave notified the City that the production start date for the Engine is late October 2023 with delivery expected in January 2024.
16. On September 29, 2023, despite indicating on the prior day that production wouldn't start until late October, Seagrave sent pictures to the City indicating that its Engine was already under construction.
17. In the morning of October 12, 2023, Seagrave sent additional pictures indicating that the City's Engine cab is progressing in its manufacturing.
18. In the afternoon of October 12, 2023, the City staff reminded Seagrave that no additional payment was approved by its common council and stated that the City was looking forward

to taking delivery in January 2024, which is about a year later than the deadline contemplated within the purchase agreement.

19. On October 16, 2023, Seagrave responded to the City by saying “Seagrave will place a ‘STOP ORDER’ on the production of the West Allis, WI Pumper” as a result of the City declining to pay the additional surcharge in excess of the original contract price.
20. The October 16 email from Seagrave also stated that unless some compromise is reached between the parties “the components and cab will then be used to manufacture another customers apparatus.”
21. No change orders, strikes, failures to obtain materials, or other causes beyond Seagrave's control have occurred that would justify a delay in delivery beyond the 420 calendar days.
22. Seagrave has the ability to produce and deliver the Engine but is refusing to do so unless City pays an extra \$102,750 above the contract price.
23. Seagrave has produced and delivered, and continues to produce and deliver, similar apparatuses to other customers.
24. City executed this contract to acquire the Engine for the purpose of replacing an outdated 2003 Pierce pumping engine.
25. City has attempted to mitigate damages by devoting substantial time and money to keeping the outdated Pierce pumping engine running longer than its expected useful service life.
26. City has suffered damages as a result of Seagrave failing to timely deliver the Engine including, but not limited to, direct and indirect costs to maintain the outdated Pierce pumping engine.
27. Since January 12, 2023, the expenses incurred to maintain the outdated Pierce pumping engine are reasonable expenses incident to Seagrave’s delay in delivering the Engine and

such damages were reasonably foreseeable at the time the contract was entered into as probable if the contract were broken.

28. Due to the time delay between ordering and receiving a custom-built pumping engine, the City is not able to timely procure substitute goods under Wis. Stat. § 402.712 as a result of Seagrave's breach.

FIRST CAUSE OF ACTION

BREACH OF CONTRACT

29. Paragraphs 1 to 28 are incorporated as though fully set forth.
30. Seagrave breached performance of a duty under the purchase agreement by failing to deliver the Engine to the City as promised by the due date.
31. Performance of the contract by the delivery date was intended to be of vital importance to City, and failure of Seagrave to perform on time constitutes a breach of contract.
32. Even if a failure to deliver the Engine strictly by the delivery date is not a breach of contract, the extent of time that has passed since the delivery date is more protracted than a reasonable time for delivery to occur, constituting a breach of contract.

SECOND CAUSE OF ACTION

BREACH OF DUTY OF GOOD FAITH

33. Paragraphs 1 to 32 are incorporated as though fully set forth.
34. Seagrave had an obligation to deal in good faith when contracting to produce and deliver the Engine within 420 days.
35. Seagrave breached the contract's good faith obligation by indicating that the City's Engine was being actively manufactured under the incorrect assumption that the City would pay the additional \$102,750 and then indicating that the partially manufactured Engine will be

sold to another customer when the City reminded Seagrave that no additional payment was approved.

36. Seagrave presented a partially assembled apparatus to City as though it was constructed from the beginning for City, but that apparatus was generically assembled to induce City into paying the additional requested amount.
37. Seagrave's failure to act in good faith has had the effect of injuring the rights of City to receive the benefits of the contract.
38. Other third parties who agree to amend their contracts to more favorable terms for Seagrave are receiving their equipment first.

DEMAND FOR RELIEF

Wherefore, Plaintiff, City of West Allis, requests that the Court enter judgment as follows:

- A. An order for specific performance of the contract by requiring Seagrave to manufacture and deliver the Engine as soon as practicable for the agreed upon price.
- B. An order for incidental damages resulting from Seagrave's breach in an amount equal to the reasonable expenses incident to the delay or other breach.
- C. If specific performance is not ordered, an order for damages for nondelivery or repudiation consistent with Wis. Stat. § 402.713.
- D. If specific performance is not ordered, an order for damages for loss of expectation in the amount which will compensate the City for the difference between the price paid to obtain a different pumping engine and the price of the Engine originally established within the contract with Seagrave.
- E. An order allowing the City to deduct all or any part of the damages awarded in this matter from any part of the price still due under the same contract.

F. An award of all litigation costs incurred by City in this action, including the reasonable fees of its attorneys.

G. Such other and further relief as the Court deems appropriate and just.

Dated this 5th day of December, 2023.

CITY OF WEST ALLIS

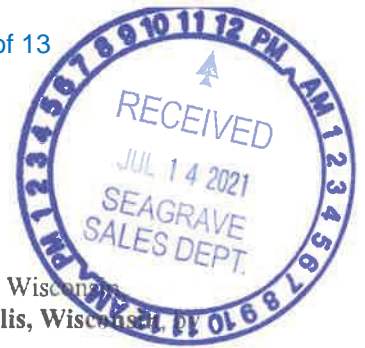


Kail Decker
City Attorney
State Bar No. 1063074
Attorney for Plaintiff

7525 West Greenfield Avenue
West Allis, WI 53214
(414) 302-8450 – Phone
(414) 302-8444 – Fax
kdecker@westalliswi.gov

EXHIBIT A

CONTRACT



THIS AGREEMENT; made by and between **Seagrave Fire Apparatus, LLC** of Clintonville, Wisconsin, hereinafter referred to as the "Seller", and **West Allis Fire Department of Wisconsin, West Allis, Wisconsin**, its authorized representative, hereinafter referred to as the "Purchaser".

1. The Seller hereby agrees to furnish **one (1) unit of Seagrave model TB50CA Marauder Pumper**, hereinafter referred to as "Apparatus and Equipment", according to the mutually agreed specifications and change order documents hereto attached and made a part of this contract, and to deliver the same as hereinafter provided.
2. The Seller guarantees that all material and workmanship in and about the Apparatus and Equipment shall comply with the mutually agreed specifications and change orders. In the event there is any conflict between the City Bid Specifications and the Seagrave Bid Proposal, the mutually agreed specifications and change orders will prevail. The standard Seagrave Limited Warranty will apply as provided for in the mutually agreed specifications and change orders. Minor details of materials and construction, not otherwise specified, shall be left to the decision of the Seller who shall be solely responsible for the design, engineering and construction of all features of the Apparatus and Equipment. Any changes to the contract or purchase order must be approved in advance through the issuance of a written change order by the Seller. The Seller will not assume responsibility for performing any change requested but not approved by the Purchaser within five (5) days of the change order submission for approval.
3. The Apparatus and Equipment shall be ready for delivery from Clintonville, Wisconsin, within **420** calendar days after the receipt of the (i) mutually agreed specifications, (ii) change order documents and (iii) approval drawing signed by the authorized representative of the Purchaser. The mutually agreed specifications and change order documents and approval drawing shall be delivered to the Purchaser for their signature in not more than 31 days from contract receipt at Seagrave or not more than five days from pre-construction meeting, if so provided. Delays due to change orders, strikes, failures to obtain materials, or other causes beyond Seagrave's control will be just cause for delay in delivery. The completed Apparatus and Equipment shall be delivered to the Purchaser at:

**West Allis Fire Department
7332 West National Ave.
West Allis, WI 53214**
4. A competent representative shall, upon request, be furnished by the Seller to demonstrate said Apparatus and Equipment for the Purchaser and to familiarize the Purchaser's employees in the operation and handling of the Apparatus and Equipment.
5. The Purchaser purchases and agrees to pay for the Apparatus and Equipment, the sum of **Six Hundred Eighty-Four Thousand, Nine Hundred Ninety-Seven Dollars (\$684,997.00)**, state, federal, FET, or local taxes not included. Payment of any such taxes are the responsibility of the Purchaser. **Progress payments shall be made as follows: The first payment shall be 25% of the purchase price, made at arrival at the Factory of the major components. The second payment shall be 25% of the purchase price, made at chassis laydown. The third payment shall be 25% of the purchase price, made at completion of the chassis. The fourth payment shall be 20% of the purchase price, made upon completion of the Final Inspection at the Factory, prior to shipment. The fifth and final payment shall be 5% of the purchase price and shall be made upon delivery to and acceptance by the Purchaser.**

5.1 All payments shall be made payable to Seagrave Fire Apparatus, LLC and shall be overnight delivered directly to:

*Seagrave Fire Apparatus, LLC
7285 Solutions Center
Chicago, IL 60677-7002*

5.2 The Apparatus and Equipment must be paid in full prior to being placed in fire service.

5.3 If more than one piece of Apparatus and Equipment is covered by this Contract, the above terms of payment shall apply to each piece, and an invoice covering each piece shall be rendered in the proper amount.

6. In the case that no final inspection is made by the Purchaser at the factory prior to shipment and the Purchaser desires to test the Apparatus and Equipment upon receipt, such test shall be made within three (3) days after arrival at the delivery destination specified above. A written report of such test shall be delivered forthwith to the Seller at its principal office at Clintonville, Wisconsin. If no such test be made, or if no such report be made by the Purchaser within three (3) days after arrival, then the Apparatus and Equipment shall be considered as fully complying with the contract specifications.
7. It is agreed that the Apparatus and Equipment covered by this contract shall remain the property of the Seller until the Apparatus and Equipment is delivered and accepted by the Purchaser, such acceptance shall not be unreasonably withheld or delayed. In case of any default in payment the Seller may take full possession of the Apparatus and Equipment, or of the piece or pieces upon which default has been made, and any payments that have been made shall be applied as rent in full for the use of the Apparatus and Equipment up to date of taking possession.
8. In the event that any applicable Federal or State Regulations (DOT, FMVSS, EPA, etc.), National Fire Protection Association Standards or import tariffs which are enacted during the course of this contract, and which requires a change in the contract specifications and purchase price in order for the Apparatus and Equipment to comply with such regulation, the parties will execute a change order describing the change in the specifications and increasing the purchase price by an amount equal to the increase in the costs of producing the Apparatus and Equipment.
9. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin without regard to principles of conflict of laws. Each party hereby consents that the exclusive venue for any dispute of claim relating to this Agreement shall be in the state courts sitting in Milwaukee County, Wisconsin.
10. Seller and Purchaser Indemnifications:
 - 10.1. Seller Indemnification. Seller herein agrees to indemnify and hold Purchaser, its elected officials, employees, agents and volunteers free and harmless from any liability for losses, claims, injury to or death of any person resulting from the negligent acts or omissions in the design, engineering and manufacture/assembly of the Apparatus and Equipment.
 - 10.2. Purchaser Indemnification. Purchaser herein agrees to indemnify and hold the Seller, its officers, employees, directors, shareholders, agents and lenders free and harmless from any liability for losses, claims, injury to or death of any person arising out of or resulting from the Purchaser's, its elected officials', employees', agents' and volunteers' use, operation or possession of the Apparatus and Equipment, but only to the extent caused by the negligent acts or omissions of the Purchaser, its elected officials, employees, agents and volunteers.

10.3. Mutual Indemnification Survival Provision. The indemnification provisions provided in this Section 10. shall survive the performance of this Agreement, including delivery of the Apparatus and Equipment by the Seller and payment by the Purchaser.

- 11. Risk of loss shall pass to the Purchaser upon delivery and acceptance of the Apparatus and Equipment.
- 12. To be binding the contract must be signed and approved by an Officer of Seagrave Fire Apparatus, LLC. This contract and mutually agreed specifications and change order documents take precedence over all previous negotiations, and no representations are considered as entering into this contract except as are contained herein or in the mutually agreed specifications and change order documents included herein.

IN WITNESS WHEREOF, the said parties have caused these presents to be executed and the Purchaser has caused its corporate seal to be hereunto affixed, and attested by its authorized representatives, on this 6 day of July 2021.

WEST ALLIS FIRE DEPARTMENT OF WISCONSIN ("Purchaser")

By Jason Schaak 

Title Assistant Chief
Purchaser

By Rebecca N. Hill

Title July 13, 2021
Purchaser

SEAGRAVE FIRE APPARATUS, LLC ("Seller")

By 
Ulisses D. Parmeziani

Title: **President and Chief Executive Officer**
Seller

Date of Acceptance: 09/22/2021

**EXHIBIT B****SEAGRAVE FIRE APPARATUS, LLC**

May 2, 2023

RECEIVED**MAY 05 2023****WEST ALLIS
FIRE DEPARTMENT**

West Allis Fire Department
Attn: Jason Schaak, Assistant Chief
7332 West National Avenue
West Allis, WI 53214
Email: jschaak@westalliswi.gov

Re: Contract for One (1) Custom Fire Apparatus Model TB50CA and Numbered
S.O. 78L80 (the "Apparatus")

Dear Chief Schaak:

We are reaching out to advise you that the manufacture and delivery of your Apparatus at the original quoted price has become commercially impracticable. We have experienced severe shortages of materials and labor and severe increases in costs for materials, freight, and labor. These shortages, increases and related disruptions have occurred and persisted to a degree that could not have been reasonably anticipated at the time your Apparatus was priced.

Seagrave greatly values your business and is committed to manufacturing custom fire apparatus of the highest quality. We want to work with you to achieve the best possible result under these unprecedented conditions. We ask that you accept a material price increase in the amount of \$102,750 over the contract price.

The decision to request your acceptance of a material price increase has come only after much consideration and extensive efforts to mitigate the impact of these unprecedented disruptions in the supply chain and the labor market.

Dennis Warren, Director – National Sales, or Todd Fell, Regional Sales Manager, will reach out to you to discuss this request and address questions or concerns you may have. We will be glad to provide additional information to help you with this decision.

We kindly ask for your response to this request within 30 days from this letter. After this time, we will assume that you are electing to wait longer for your unit to be produced.

We thank you in advance for your cooperation to help us complete the build of your unit as quickly as possible.

Sincerely,

Seagrave Fire Apparatus, LLC

Ulisses Parmeziani
President & CEO

cc: Dennis Warren, Director - National Sales
Brett Romberg, Sales Representative

105 E 12th St • Clintonville, WI 54929-1518
PHONE: 715-823-2141 • www.seagrave.com