

**Follow Up to Questions  
from the November 17, 2015, Board of Trustees Meeting  
Re: ServiceMaster Contracts**

**Question:** Do the contracts with ServiceMaster have the appropriate termination clauses in the event that we continue to experience custodial service issues?

**Answer:** Yes, all of the standard terms and conditions of the District solicitation documents contain clauses for termination due to default and for convenience. Below are the standard solicitation clauses relating to the terms of the contract. The relevant sections are highlighted.

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**2.0 Terms of Contract:**

- 2.1 The District shall have the authority to disapprove or reject unsatisfactory work, services or equipment. If required by the District, the vendor shall promptly, as directed, correct all unsatisfactory work and replace all defective equipment, and shall bear all direct, indirect and consequential costs of such correction.
- 2.2 The vendor shall be held responsible for and shall make good, without expense to the District, any and all damage, injury or loss due to the execution of his work. The vendor shall protect all finished building surfaces from damage and shall repair any damage to the building or property caused by delivery or installation of product.
- 2.3 The vendor agrees to indemnify and hold harmless the District against all claims or alleged claims or demands for damages, including all expenses incurred, arising from accidents to employees of either party hereto or to the public, or from claims or alleged claims of damages to the property of the District or to adjoining property caused directly or indirectly by said vendor, by any of his subcontractors, or by anyone directly or indirectly employed by either of them in connection with the performance of this contract.
- 2.4 The vendor shall not sell, assign, transfer or convey this contract, in whole or in part, without the prior written consent of the District.

- 2.5 This bid, when properly accepted by the District, shall constitute a contract equally binding between the vendor and the District. No different or additional terms shall become a part of this contract with the exception of a Change Order processed through the Purchasing Department.
- 2.6 The contract shall remain in effect until contract expires, completion and acceptance of work, or is terminated by either party with a thirty (30) day written notice prior to any cancellation, except for breach of contract. Notice of termination must be transmitted via certified mail to the other party's designated representative. Notification must state reason for cancellation. The District reserves the right to award cancelled contract to the next responsible low bidder or to purchase the service elsewhere as it deems most advantageous to the District.
- 2.7 The District reserves the right to enforce the performance of this contract in any manner prescribed by law and deemed to be in the best interest of the District in the event of breach or default of this contract. The District reserves the right to terminate the contract immediately in the event the vendor fails to meet schedules or otherwise perform in accordance with these specifications. Breach of contract or default authorizes the District to purchase the services from the next low bidder or rebid and charge the difference in cost to the defaulting vendor.
- 2.8 The District may terminate a contract, in whole or in part, whenever the District determines that such termination is in the best interest of the District, without showing cause, upon giving written notice to the vendor. The District shall pay all reasonable costs incurred by the vendor up to the date of termination. However, in no event shall the vendor be paid an amount, which exceeds the bid price for the work performed. The vendor shall not be reimbursed for any profits which may have been anticipated but which have not been earned up to the date of termination.
- 2.9 Neither Contractor nor the District shall be liable to the other for any delay in, or failure of performance, of any requirement included in any PO resulting from this bid caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such part could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.

- 2.10 The District reserves the right to audit the records and performance of vendor during the term of the contract and for three years thereafter.
- 2.11 This contract shall be governed by the laws of the State of Texas. Should any portion of this contract be in conflict with the laws of the State of Texas, the State laws shall invalidate only that portion. The remaining portion of the contract shall remain in effect. This contract is performable in Collin County, Texas.
- 2.12 A purchase order(s) shall be generated by the District and issued by an individual in the Purchasing Department with authority to obligate District funds. **Vendors supplying goods or services without a valid purchase order do so at their own risk. The District does not guarantee payment of any goods or services provided without a valid purchase order.**
- 2.13 **Invoices:** Unless otherwise notified, one copy of all invoices must be sent to the Accounts Payable Department at the address listed above. Invoices must show the item(s) shipped and the purchase order number applicable to the transaction in order to insure prompt payment.
- 2.14 Payment will be made in accordance with Texas Government Code, Subchapter B. Payments and Interest, Chapter 2251.021 (b). If your company provides a discount for early payment, please indicate in the space provided on the signature page of this request. This will not be considered an evaluation factor in the award of the bid(s).
- 2.15 The District will not make a prepayment, down payment or partial payment for goods. Components that are considered to be a part of a single line item shall not be invoiced separately. A single line item is not considered complete until all components needed to render the item complete are received. Payment will be made, per statutory requirements, after the later of:
- 2.15.1 the date the District receives the goods under the contract;
  - 2.15.2 the date the performance of the service under the contract is completed; or
  - 2.15.3 the date the District receives an invoice for the goods or service.
- 2.16 The District is by statute a **Tax-Exempt** public institution; therefore, the proposal price shall not include taxes.
- 2.17 The Board of Trustees has approved funds for payment for purchases under this contract for the current fiscal year. The State of Texas statutes prohibit the obligation and expenditure of public funds beyond the fiscal year for which a budget has been approved; therefore, anticipated

obligations that may arise past the end of the District's current fiscal year shall be subject to Board approval. Failure by the Board of Trustees to appropriate funds to the District, or withdrawal of funding from a granting agency or other appropriate governmental entity, sufficient to make such payment shall relieve the District from the obligation to make such payments during the term of the non-appropriation. The District's decisions as to whether sufficient appropriations are available shall be accepted by the supplier and shall be final and binding.

- 2.18 When unit price differs from extended price, the unit price prevails.
- 2.19 Bidders taking exception to the specifications shall do so at their own risk. By offering substitutions, bidder shall state these exceptions in the section provided in the request or by attachment. Exception/substitution, if accepted, must meet or exceed specifications stated therein. The District reserves the right to accept or reject any and/or all of the exception(s)/substitution(s) deemed to be in the best interest of the District.
- 2.20 All equipment, supplies, materials and work furnished under this contract shall comply with applicable laws, ordinances and regulations. The Vendor shall obtain and pay for such permits and inspections as are required for the legal performance of this work. The bidder shall not hire or work any illegal alien.
- 2.21 The apparent silence of any part of the specification as to any detail or to the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of the specification shall be made on the basis of this statement.
- 2.22 Vendor shall not offer or accept gifts or anything of value nor enter into any business arrangement with any employee, official or agent of the District.
- 2.23 The District hereby notifies all vendors that in regard to any contract entered into pursuant to this bid, Disadvantaged Business Enterprises (DBEs) will be afforded equal opportunities to submit bids and will not be discriminated against on the grounds of race, color, sex, disability, or national origin in consideration of an award.
- 2.24 **Document/Site Familiarity:** At the time of the receipt of bids, each respondent shall be presumed to have inspected the sites (if applicable) and to have read and to be thoroughly familiar with the contract requirements. No plea of ignorance of conditions that exist or may hereafter exist or of difficulties that may be encountered in the execution

of the intent of this contract, as a result of failure to make necessary investigations and examinations will be accepted as an excuse for any failure or omission on the part of the vendor to fulfill all the requirements of this contract.

- 2.25 Price Reduction: If during the life of the contract, the vendor's net prices to its customers for the same product(s) and/or services shall be reduced below the contracted price, it is understood and agreed that the District shall receive such price reduction.
- 2.26 Pricing shall remain consistent during the initial term of the contract for listed items. Percentage discounts shall remain consistent through the entire term of the contract. The District may consider a price redetermination at the anniversary date of the contract. All requests for price redetermination shall be in writing and shall include documents supporting price redetermination such as Manufacturer's direct cost, postage rates, Railroad Commission rates, Federal/State minimum wage law, Federal/State unemployment taxes, F.I.C.A., Insurance Coverage Rates, etc. The offeror's past performance of honoring contracts at the offered price will be an important consideration in the evaluation of the lowest and best offer. The District reserves the right to accept or reject any/all of the price redetermination as it deems to be in the best interest of the District. All other terms and conditions remain the same for the duration of the contract.
- 2.27 Estimated quantities are given for each item. Approximate usage does not constitute an order, but only implies the probable quantity the District will use based on past history. Items will be ordered on an as-needed basis.