



Legislation Text

File #: RES 15-1201, **Version:** 2

Approving review of municipal contracting provisions.

WHEREAS , the Mayor and the Saint Paul City Council are committed to fair contracting principles and promoting the most cost-effective use of taxpayer dollars and city resources in its contracting and solicitation processes, and

WHEREAS, the City of Saint Paul is committed to ensuring fair and equal access to business opportunities throughout the City in keeping with its values as well as complying with Minn. Stat. § 471.345, and Saint Paul's Administrative Code Chapters 82, 83-84 and 86.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Saint Paul will review and consider the following provisions of a contract when determining whether to approve, amend or reject the contract:

Scope of Services

The scope of work shall specify all the criteria of a contract between a service provider (vendor) and the City. It must clearly document the project requirements and define all terms in the contract. When applicable, it shall clearly articulate performance measures or include an appendix with such specific measurements.

Time for Completion/Term/Renewal

The term section shall clearly state the time for the beginning and the end of a contract. Terms of renewal shall be disfavored and only be allowed in limited circumstances and only by mutual assent.

Billings and Payment

All contracts shall clearly define required billings and payment. For contracts in which payments are based on a percentage of gross revenue or other measure, contracts shall require vendors to make their books and records available for audit upon written notice from the City.

Project Management

Contracts shall require all vendors to assign a project manager. Removal of any principal project manager without replacement by equally qualified individuals or without the prior written approval of the City shall be grounds for termination. All service contracts shall include an annual right for the City to review actual vendor performance.

Work Products, Records, Data Practices

Contracts shall provide that the vendor will maintain all business records related to the performance of the contract in such a manner as will readily conform to the terms of the contract and make such materials available at its office for audit for six years from the date of the final payment under the contract. All contracts shall provide a clear understanding that all business records are subject to the Minnesota Data Practices Act.

Nondiscrimination

Contracts shall provide that the vendor will not discriminate against any employee or applicant for employment, or deny any services or access to accommodations during the term of the contract based on race, creed, religion, color, sex, sexual or affectional orientation, national origin, ancestry, familial status, age, disability, marital status, or status with regard to public assistance.

Compliance with Applicable Law

Contracts must provide that the vendor will comply with all federal, state, and local laws or ordinances.

Conflict of Interest

Contracts must provide that acceptance of the contract indicates vendor compliance with state law and Chapter 24.03 of the Saint Paul Administrative Code.

Insurance

Contracts shall provide that the vendor shall be required to carry insurance coverage of the kind and in the amounts articulated in the contracts.

Contracts shall provide that the City reserves the right to review the vendor's insurance policies at any time to verify that City requirements have been met.

Independent Contractor

Contracts must provide that the relationship of the vendor/staff to the City is that of an independent contractor and not that of an employee or agent.

Subcontracting

Contracts shall provide that the provider agrees not to enter into any subcontracts for any of the work without obtaining prior written approval of the City.

Hold Harmless

Contracts shall provide that the vendor shall defend and indemnify the City for claims or suits resulting from any negligent act or omission of the vendor in carrying out the terms of the contract.

Assignment

Contracts shall provide that neither party may assign its interest without the express written consent of the other.

Termination, Vendor Default and City's Remedies

Contracts shall provide that the City may terminate the contract for any reason upon reasonable notice. In addition, contracts shall provide that the City reserves the right to immediately terminate the contract with cause if the vendor does not fulfill the terms of the contract. If the City exercises its right to withhold payment and/or terminate the contract, the contract shall provide that the City shall submit written notice to the vendor and the date upon which such withholding or termination becomes effective. The contract shall clearly state the limited circumstances in which a vendor has an opportunity to cure said breach.

For illustrative purposes, and not by limitation, contracts shall also include clear vendor "events of default" or "material breach" such as failure to pay rent on time, bankruptcy or violations of the law.

Contracts shall also provide that the City is entitled to all rights and remedies described in the contract and afforded by law and equity, and to recover its costs and attorney's fees associated with initiating actions against the vendor or defending an action from a vendor.

When applicable, contracts shall provide personal guarantees and a confession of judgment in the event of vendor default, and shall also provide for a performance bond for the management/execution of the contract.

Limited Vendor Remedies

Where appropriate, contracts shall provide that the City is liable only for specific performance and not

liquidated or consequential damages if the City defaults and does not cure the default.

Amendment or Changes to Agreement

Contracts must provide that no amendment is valid unless in writing and duly executed by the parties.

Notices

All contracts shall provide that all communications must be in writing and deemed to have been properly given if directed to the project manager and/or department director.

Waiver

Contracts shall provide that any fault of a party to assert any right under the contract shall not constitute a waiver or a termination of that right.

Survival of Obligations

Contracts shall provide that if a provision within the contract is declared unlawful, the remainder of the contract shall continue in effect if practical.

Interpretation of Agreement and Venue

Contracts shall provide that the contract shall be interpreted and construed according to the laws of the State of Minnesota and all litigation related to the contract shall be resolved in Ramsey County District Court.

Force Majeure

All contracts shall provide that neither party is responsible for performance if it is prevented by acts of God, ~~-including severe weather, natural occurrences, power failures, strikes or labor unrest.~~

Entire Agreement

Contracts shall provide that the contract supersedes all oral agreements and negotiations between the parties relating to the subject matters therein.

BE IT FURTHER RESOLVED, that the City Council of the City of Saint Paul shall evaluate such contracts for approval, renewal or amendment on a case-by-case basis and the totality of the circumstances. City staff and the City Attorney's Office are directed and authorized to consider all of the provisions stated above together with such additional provisions that may be pertinent to each contract when drafting and negotiating contracts on behalf of the City. Should a contract deviate from the provisions stated above, City staff and the City Attorney's Office shall provide the Council with a written explanation for such deviations.