STAFF REPORT NO. 191-15

TO: Mayor and City Council
FROM: Eric Holmes, City Manager
DATE: 12/21/2015

Subject: Revised Contract for Janitorial Maintenance Services

Key Points:
• Contract was originally awarded on September 21, 2015 via Staff Report No. 138-15
• Clauses in the Agreement had to be changed

Objective: To approve a revised contract for Janitorial Maintenance Services and authorize the City Manager or his designee to execute the Contract with ABM Onsite Services West Inc. of Vancouver, WA.

Present Situation: On September 21, 2015, Council awarded this Janitorial Maintenance Services contract to ABM Onsite Services West Inc. via Staff Report 138-15. This was the result of ITB #15-18. This contract was for a period of three (3) years with the option to extend the contract for up to two (2) additional years for a total cost not to exceed $3,325,000.00. During the execution of the contract, staff noticed and determined that certain terms and conditions of the contract needed to be changed. Those changes are listed below:

1. The original contract states that the City may or may not use the contract. The contract is for routine janitorial services plus some as-needed services. This revised contract clarifies that the City will use the contract, but for as-needed work, may perform the services itself or through others.

2. The original contract mistakenly states that the City will hold back a 5% retainage from payments. Retainage applies to construction contracts, not maintenance. The revised contract removes the retainage language.

3. The following language has been added as Section 17 (Ratification):
   Acts taken pursuant to this Contract but prior to its effective date are hereby ratified and confirmed.

Advantage(s): The changes will more accurately reflect the City’s management of this project.

Disadvantage(s): None

Budget Impact: None. These changes do not have any budget impact, as these services have been budgeted through the General Fund and other departmental budgets.

Prior Council Review: Award approval of original contract on September 21, 2015 via Staff Report 138-15
Action Requested: Approve the revised contract for Janitorial Maintenance Services and authorize the City Manager or his designee to execute a contract with ABM Onsite Services West Inc for a period of 3 years with an option to extend the contract for up to two (2) additional years for a total cost not to exceed $3,325,000.00. Also authorize the City Manager or his designee to amend the cost, services provided or locations to be serviced by the contract, as needed.

Attachment(s): Janitorial Maintenance Services Contract
THIS CONTRACT, effective this 1st day of October, 2015 is entered into by and between ABM Onsite Services West Inc, 12609 NE 95th St, Vancouver, WA 98682, hereinafter referred to as the Contractor, and the City of Vancouver, a municipal corporation of the State of Washington, hereinafter referred to as the Owner.

1. **Contractor's Obligation**: The Contractor, for and in consideration of the sum to be paid to it by the Owner in the manner and at the times provided, hereinafter and in the Specifications, and in consideration of the covenants and agreements herein contained, which documents are incorporated into and made a part of this contract, hereby agrees to furnish all materials, labor, tools, machinery and implements of every description necessary for construction and installation of the following improvements:

Provide Janitorial Maintenance Services and related services for the City buildings and sites listed all in accordance with the Proposal and Contract Documents for Bid #15-18 issued by the City during June, 2015 and amendments thereto, the Contract Plans and Specifications for 2015 Janitorial Maintenance Services dated June, 2015 (collectively the “Contract Documents”) these Contract Provisions, all of which are incorporated herein and made a part of this Contract by this reference.

The City reserves the right to perform work using this contract, or using City staff, or other contractors, or through any mechanism available to the City. This contract is for the convenience of the City and does not carry any estimates as to how much could be spent.

The City intends to award one contract for an initial period of three (3) years, with an option to renew for up to two (2) additional years. Renewal will be done via an amendment process.

The period of this Bid and its prices shall be for one (1) year, commencing on the effective date of the contract.

In consideration of market conditions, the City will allow increase/decrease of the actual cost of the product. The adjusted price will be approved at the beginning of each year's extension at the sole discretion of the City, and must be firm for the remainder of the contracted period. Contractors shall provide justification for the price adjustments.

Rates charged or credited for Parts Mark Up, Overhead/Profit, Parts Discount, and Rental Equipment Markup shall remain unchanged throughout the period covered by this contract. No changes will be permitted.

All work shall be done in accordance with the Contract on file with the City of Vancouver, and in accordance with such alterations or modifications as may be made by the Owner. The Contractor agrees to do the work and furnish the materials in a most
substantial and workmanlike manner and within the time limits stated in the Contract. The Contractor agrees that it will make all necessary arrangements for the obtaining of permits from the United States, State of Washington, and/or any of its agencies as may be necessary to do the work required and covered by this Contract.

2. **E-Verify Program:** Contractor shall register and enter into a Memorandum of Understanding (MOU) with the Department of Homeland Security E-Verify program within sixty (60) days after execution of this Contract. Contractor shall ensure all Contractor employees and any sub-contractor(s) assigned to perform work under this Contract are eligible to work in the United States. Contractor shall provide verification of compliance upon City request. Failure by Contractor to comply with this subsection shall be considered a material breach.

3. **Subcontractor Responsibility:** The Contractor shall include the language of this section in each of its first tier subcontracts, and shall require each of its subcontractors to include the same language of this section in each of their subcontracts, adjusting only as necessary the terms used for the contracting parties. The requirements of this section apply to all subcontractors regardless of tier.

At the time of subcontract execution, the Contractor shall verify that each of its first tier subcontractors meets the following bidder responsibility criteria:

1. Have a current certificate of registration in compliance with chapter 18.27 RCW, which must have been in effect at the time of subcontract bid submittal;
2. Have a current Washington Unified Business Identifier (UBI) number;
3. If applicable, have:
   a. Have Industrial Insurance (workers’ compensation) coverage for the subcontractor’s employees working in Washington, as required in Title 51 RCW;
   b. A Washington Employment Security Department reference number, as required in Title 50 RCW;
   c. A Washington Department of Revenue state excise tax registration number, as required in Title 82 RCW;
   d. An electrical contractor license, if required by Chapter 19.28 RCW;
   e. An elevator contractor license, if required by Chapter 70.87 RCW.
4. Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065 (3).
5. For public works projects subject to the apprenticeship utilization requirements of RCW 3.0.04.320, not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one-year period immediately preceding the first date of advertising for the project.

4. **Owner's Obligation:** In consideration of the promises and agreements of the Contractor as set forth herein, and in consideration of the faithful performance and furnishing of the
work and materials required by this Contract to the satisfaction of the Vancouver City Council, the Owner agrees to pay to the Contractor in the manner and at the times provided hereinafter and in the Contract Documents, and in accordance with the ordinances of the City of Vancouver and the laws of the State of Washington, the following sum as indicated:

Including 8.4% Washington State Sales Tax (if applicable)

Two Million One Hundred Seventy Five Thousand Dollars and 00/100

***$2,175,000.00***

The amount finally to be paid is, however, variable upon the work actually done and final payment will be made upon the basis of the amount of work done and the materials furnished and at the lump sum or unit prices fixed in the Contractor's Proposal or as modified by any or all approved Change Orders.

5. **Contractor's Insurance:** The Contractor agrees to procure and maintain throughout the duration of this Contract insurance coverage as specified in the Bid Documents.

6. **Employment of Labor:** The Contractor agrees that all persons employed in it and by any of its subcontractors in work done pursuant to this Contract shall not be employed in excess of 8 hours in any one day, except as provided or allowed by law.

7. **Payment of Labor:** The Contractor agrees that all laborers, workers, or mechanics employed by it or by any subcontractor in the work of this Contract will be paid not less than the prevailing rate of wage for an hour’s work in accordance with the provisions of Ch. 39.12, RCW and all such rules and regulations as may be promulgated thereto by the Washington Department of Labor and Industries.

The applicable effective date for establishing prevailing wages rates for this Contract shall be the effective date of the contract. Prevailing wage rates shall be updated annually on the anniversary date of this Contract and paid at the updated rate to employees for all work performed under this Contract from that date.

If a Contract extension is executed, the applicable prevailing wage rates shall be updated. The effective date of the applicable prevailing wage rates to be paid during the period covered by the Contract extension shall be those rates in effect on the anniversary date of this Contract and shall be paid for all work performed. In case any dispute arises as to what the prevailing rate of wage for work of a similar nature are and such dispute cannot be adjusted by the parties involved, the matter shall be referred to the Director of the Department of Labor and Industries of the State of Washington for arbitration and the director’s decision therein shall be final and conclusive and binding on all parties involved in the dispute.
The Contractor and its subcontractors may be required to submit weekly/bi-weekly Certified Payrolls to the City of Vancouver, Procurement Services upon request. The Contractor and its subcontractors are required to keep Certified Payrolls on file for a minimum of three years.

8. **Payment to the Contractor:** Payment to the Contractor of the Contract price by the Owner shall be made by check drawn on the fund provided therefore. Payment shall be in the manner provided below unless another manner has been specified in Special Provisions.

Payments to the Contractor shall be made within 30 days of receipt of the signed progress payment request, as approved by the Owner, for work completed during the previous month.

No payment shall be made to the Contractor, however, until the Contractor and all subcontractors who have performed work shall have filed, with Procurement Services, the Labor and Industries executed Statement of Intent to Pay Prevailing Wage as required by Revised Code of Washington 39.12.040. Said Contractor and all subcontractors shall also keep accurate payroll records for three years from the date of acceptance as described in WAC 296-127-320 Payroll. A Contractor and all subcontractors shall, within ten days after it receives a written request, as defined by RCW 39.12.010(4) file a certified copy of the payroll records with the Owner. A contractor’s noncompliance with this section shall constitute a violation of RCW 39.12.050.

9. **Indemnification:** Contractor agrees to indemnify, defend, save and hold harmless the City, its officials, employees and agents from any and all liability, demands, claims, causes of action, suits or judgments, including costs, attorney fees and expenses incurred in connection therewith, or whatsoever kind or nature (including patent infringement or copyright claims) arising out of, or in connection with, or incident to, the performance of services pursuant to this Contract, PROVIDED that this clause shall have no applicability if the damages were caused by or resulted from the sole negligence of the City, AND PROVIDED FURTHER that if the damages were caused by or resulting from the concurrent negligence of (i) the City or the City’s agents or employees, and (ii) the Contractor or the Contractor’s agents or employees, Contractor shall indemnify and defend only to the extent of the Contractor’s negligence, AND PROVIDED FURTHER, that this indemnity and hold harmless shall include any claim made against the City by an employee of Contractor or subcontractor or agent even if Contractor is thus otherwise immune from liability pursuant to the workers’ compensation statute, Title 51 RCW.

Contractor specifically acknowledges that the provisions contained herein have been mutually negotiated by the parties and it is the intent of the parties that Contractor provide the broadest scope of indemnity permitted by Chapter 4.24.115 RCW. Contractor is an independent contractor and responsible for the safety of its own employees and its subcontractors and their employees.
10. **Ownership of Records and Documents – Public Disclosure:** All materials, writings and products produced by the Contractor in the course of performing this Contract shall immediately become the property of the City. In consideration of the compensation provided for by this Contract, the Contractor hereby further assigns all copyright interests in such materials, writings and products to the City. A copy may be retained by the Contractor. In the event the City receives a public record request for such materials, writings of products the City may, in its discretion, notify the Contractor of such request and withholds disclosure of such information for not less than five (5) business days to permit the Contractor to seek judicial protection of such information, provided that the Contractor shall be responsible for attorney fees and costs in such action and shall save and hold harmless the City from any costs, attorney feels, or penalty assessment under Ch.42.56 RCW.

11. **Assignment:** This Contract is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstances, be assigned or transferred by either party without express written authorization.

12. **Termination for Convenience:** The City, at its sole discretion, may terminate this Contract for convenience at any time for any reason deemed appropriate. Termination is effective immediately upon notice of termination given by the City.

13. **Cooperative Purchasing:** The Washington State Inter-local Cooperation Act, Ch. 39.34 RCW, authorizes public agencies to cooperatively purchase goods and services if all parties agree. By having executed this Contract, the Contractor agrees that other public agencies may purchase goods and services under this solicitation or contract at their own cost and without the City of Vancouver incurring any financial or legal liability for such purchases. The City of Vancouver agrees to allow other public agencies to purchase goods and services under this solicitation or contract, provided that the City of Vancouver is not held financially or legally liable for purchases and that any public agency purchasing under such solicitation or contract file a copy of this invitation and such contract in accordance with RCW 39.34.040.

14. **Entire Contract:** The Proposal and Contract Documents for Bid 15-18 issued by the City during June, 2015 and amendments thereto, the Project Specifications (collectively the “Contract Documents”), and these Contract Provisions, are incorporated herein and made a part of this Contract by this reference.

15. **Contract Documents:** The Contract documents consist of the following and any inconsistency in the parts of the Contract documents shall be resolved by the following this order of precedence:

1. Amendment to the Contract or Purchase Order
2. Contract or Purchase Order
3. Addenda,
4. Request for Quotation,
5. Special Provisions,
6. Contract Plans
7. Small Works Contract,
8. Permits from Outside Agencies,
9. Amendments to the Standard Specifications,
10. Standard Specifications,
11. Standard Plans

Change Orders, force accounts, supplemental agreements and approved revisions to the Drawings and Specifications will take precedence over Project Specification.

16. **Notices**: Whenever in this written Contract written notices are to be given or made, they may be sent by certified mail to the following people at the addresses as shown herein unless a different address is designated in writing or delivered to the respective party hereto:

Owner: Kevin Yin  
City of Vancouver  
415 W 6th St  
P O Box 1995  
Vancouver WA  98668-1995

Contractor: Leonard Carder  
ABM Onsite Services NW Inc  
12609 NE 95th St  
Vancouver, WA 98682

17. **Ratification**: Acts taken pursuant to this Contract but prior to its effective date are hereby ratified and confirmed.

Original signed at Vancouver, Washington, on the dates listed below.

**OWNER: CITY OF VANCOUVER,**  
a municipal corporation

**CONTRACTOR:**  
ABM Onsite Services NW Inc.

____________________________________  
Eric Holmes, City Manager, Date  
Sign By Proprietor, Partner, or President

Attest:  
Lloyd Tyler, City Clerk  
By: Carrie Lewellen, Deputy City Clerk  
Printed Name  
Title  
Date

Approved as to form:

____________________________________  
E Bronson Potter, City Attorney  
Date

**BID 15-18: 2015 Janitorial Maintenance Services Contract**  
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