Third Party Vendors: Cautions and Analysis

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The following are the 'generalities' that WSA recommends contractors evaluate when considering the price at which third party work should be bid — or when deciding whether or not to even bid on a project.

Like with most situations, not all third party companies (sometimes called 'national service providers') may operate via any or all of the ways discussed below; however, most all have been shown to operate using some of the manners outlined. Included in this analysis are the insights gained from speaking to — and providing assistance to — a number of contractors on this topic over the past months and years.

Introduction

First off, there is no question that 'acquisition and maintenance costs' with third party work are generally higher than with direct bid contracts. Time and again I've heard stories about how a number of third party companies have nickel-and-dimed the contractors doing work for them. Unless you go into these relationships with a complete understanding of everything involved, 'a little here and a little there' can add up to you working for FREE — or even paying for the 'privilege.'

The following are the major points you need to consider when deciding about working for any particular national service provider:

Not paying the full amount of invoices

Reasons given include (often undocumented) alleged long-past complaints about work effort; alleged reporting missteps of some type by the contractor; alleged non-receipt of faxed invoices, required photos or log-in/log-out on the company's vendor app; adding of hidden service charges, etc. Stories abound documenting the many and sundry ways third party companies have found to not pay invoices, or to not pay them fully.

Not paying invoices in a timely manner

Many third party companies are notoriously slow paying. Many times I have heard of third party companies NOT paying within the timeframe they agreed to on their contract. When they do, it is sometimes the result of you agreeing to a significant discount if they pay in a timely manner. As a general rule, third party companies take much longer to pay than do direct-bill customers.

Providing a faulty or incomplete scope of work prior to the bid

There is a clear pattern of third party representatives explaining a work scope — on which many contractors provide a bid because they're told "the actual contract isn't available yet" — then having a significantly different scope actually contained in the contract once it's received by the contractor. In a significant number of cases, the contract is received by the contractor only after sweeping has commenced and the vendor knows the contractor will be loathe to create any waves.

Included in this section should be that contracts received after work has commenced often contain clauses that were not discussed or that have been added. Again, some contractors won't read the contract; instead, they will assume it is the same as what they were told initially. Other contractors will just sign the contract, hoping the onerous clauses or too strict scope of work won't be enforced down the line. This course of (in)action can definitely result in big trouble.

Requiring onerous and/or expensive reporting processes

This is a several-fold problem. One is the time it takes to learn a particular third party vendor's required reporting system and then having you and your employees consistently following the procedure such that $$ deductions aren't taken periodically. Another cost to the contractor, in some instances, is the expense of having to have 'work completed satisfactorily' paperwork signed by the property manager, from daily to weekly. Some third party vendors even require photos to be taken and submitted during every sweep. Without all such requirements being done correctly each and every time a number of third party vendors withhold invoice payments for the work performed.

Some third party organizations have mandated a per invoice charge of some dollar amount. On top of that, some have required that each service performed is invoiced separately — and each carries the invoice fee.

Others require expensive company background checks. We have even heard about a third party vendor that contacted sweeping and other maintenance companies to report that they were "finalizing a large chain store account in your area" and that to get on the bid list the contractor needed to pay $75 and fill out the required paperwork. The punch line: The third party vendor didn't even have the account and the $75 was non-refundable!

Finally, include in any bid the extra time it may take to invoice through the company's invoicing system, if such is required. For example, one contractor reported that it takes up to *two hours per day* for his assistant to do a particular third party vendor company's invoicing!

Expect a comparatively high level of complaints

Not used to getting complaints about your work? With some third party vendor work that situation will change. Here's why:

Most third party accounts pay less than would ordinarily be the case for the same scope of work without the vendor in the middle. Then, after the contract starts, there are sometimes hidden fees and losses the contractor didn't count on. In addition, the frequency of sweeps is often not what it actually should be to keep the property clean.

As a result, there is a higher incidence of customer dissatisfaction, along with a general inability of the contractor to provide the quality of work product that would normally be performed and still remain profitable. This increases the complaint cycle from the property managers although their hands are tied by corporate as to the sweeping frequency. In these situations, individual lessees on the property are sometimes the ones who call to complain, with or without the encouragement of the property manager or anchor tenant.

It appears that some third party companies have alleged complaints in order to not pay for work. This can be an especial problem since many, if not most, third party vendor contracts actually require ZERO contact with your actual client, insisting that all communication be done through them. We've heard stories of currently invoiced money being withheld because of an alleged property manager complaint that occurred as far back as six months previously.

Onerous contracts increase potential liability and losses to contractors

The wording of third party vendor contracts is notoriously slanted against the contractor(s) performing the actual services. Many contractors are not sophisticated enough to understand the implications embedded in the contract's fine print. For example, unwitting contractors have found themselves locked out of significant business simply because the third party vendor was changed and their previous contract had a non-compete. Or, as was the case some years ago with Oxford Property Services' bankruptcy surrounding its DDR properties, the contract stated the contractor could not pursue payment directly from the property owner.

The vast majority of third party contracts should NOT be signed as received. However, contractors (rightly) assume that if they cross out sections of a contract when they submit their bid, their bid may not be accepted (at least as long as another contractor was willing to accept the original contract terms). I've heard a number of horror stories from contractors who either didn't realize what the contract actually said, or 'assumed' the contract provisions would never be enforced. Some of these were fatal mistakes, costing the contractor their livelihood and their business.

An example, in addition to the non-compete referenced above, includes 'eyes-and-ears' wording that actually makes the contractor liable for all manner of injury that might occur on the property, because they have signed a contract that says that part of their job is to notify either the property manager or third party vendor about all manner of defects on the property. Many of these types of clauses are included in order to shift liability from the property owner to the sweeping contractor.

When asked why his/her company provided such a one-sided contract, one third party vendor representative I spoke with told me: "We had our standard contract drawn up by a very high-powered legal group. On the other hand, many contractors don't even have an attorney. If they sign the contract as received, then we have a variety of clauses we can invoke in our favor if the need arises. If they have sense enough to cross out some of those clauses, though, we usually accept the revised agreement. Like anyone else, we conduct our business in the way that will stand to bring us the most benefit."

Loss of up to three months of previously invoiced work

When you bid on a third party contract, understand that the third party vendor in all likelihood will, at some point, lose its contract. When that occurs, there have been many reported instances of non-payment of whatever invoices were currently outstanding.

A number of third party vendors have simply quit paying their contractors when they lose the account. They are well aware that the legal fees required by each individual contractor to recoup their invoiced amounts might well outweigh the money owed — especially since most all of these contracts require that any legal action be pursued in the state where the third party vendor is located. So, when you bid the initial contract this likelihood is something that should definitely be factored in.

Unrealistic pricing structure created by third party salesperson

A familiar refrain is the following... "I'd been sweeping the (fill in name of box store) for $65/sweep. The third party sales guy said that to be competitive I'd have to be in the ballpark of $28/sweep, well under my cost to do the work. But, figuring I had to be REALLY competitive to get the job, I came in at $35/sweep, even though that was way under what I would have otherwise bid."

Many third party salespeople have been trained to offer up a truly low **$$** number, knowing it will spur contractors to bid much lower than they would otherwise. Sometimes, given all the factors already discussed, the amount will end up being lower than they should be bidding to make a normal profit. In addition to the fact that contractors are finding themselves in unsustainable contracts, there is another, somewhat hidden factor created by the proliferation of third party vendors.

These truly lame-brained, er, low-ball bids effectively lower the value of the sweeping and other services provided across the board. The value of sweeping is brought down to an unsustainable level, one that may never again rise to a realistic price when the third party vendor is fired at some point in the future. The box store or other client may well fire the third party vendor; however, they will seldom be willing to go back to the previous competitive level of pricing.

Another common fallout from taking jobs with unrealistic pricing is that other, direct clients with similar properties will learn — and believe me when I say that property managers tend to be a tight-knit group that talk together often — that another property is being swept for $35/sweep and yet they are paying the same contractor $65/sweep. When they find that out, you can count on getting a call... unless they bypass you because they think you've been ripping them off and just call the other contractors in your market area behind your back for a re-bid.

The cost — to your company's reputation and otherwise — can be enormous

Because they did not fully recognize some or all of the problem areas discussed above, many contractors have found themselves locked into an agreement to provide a level of services they simply cannot perform for the agreed-upon price. Unfortunately, what a number have then reported doing is to skimp on the actual services they provide: They don't show up on one or two of the nights they're supposed to sweep. Or, if they do, it's just to change out the trashcan liners and quickly grab any large items from the parking lot. Or, they give only 25 minutes to an account that needs 40 minutes a night in order to stay looking good. The result? The contractor's reputation declines, since it becomes apparent that the property being swept is not being kept up well.

Another cost to your company is that you'll no longer be able to afford to replace your wear items, or even your worn-out sweepers themselves. Without a normal profit margin, you won't be able to train your employees as you should, which means they will do a less cost-effective job for you as well as not treat your equipment as well as they would otherwise. You'll probably have a higher rate of employee turnover; most people don't want to be part of an organization that isn't 'on the level.' You'll find you have to cut down on things like safety training, uniforms, routine maintenance, advertising, community service and much more. Vacations will become a thing of the past, let alone the prospect of you being able to retire at a reasonable point in the future.

Not providing the level of service you contracted for, or providing what a property actually needs to be kept at its best, is a slippery slope that will end in tragedy for your organization. It's bad for all kinds of important things, like morale and profit and reputation. Over time, it's a treadmill a hamster couldn't sustain.

The bottom line

I want to make it plain that what you have read, above, is NOT legal advice. However, it *is* advice and analysis from a graduate level economist with over three decades of experience working with with many hundreds of power sweeping contractors. Make no mistake: a vitally important part of my advice is that if you're going to be working with third party vendors you need to get competent legal advice, about any contract provisions or any other requirements you don't completely understand, before you attach your signature to the bottom of them.

It's not up to me or anyone else to tell you what to charge for your services or who to do work for. You're the one who needs to know your costs and how to run the most cost-effective operation possible. You also need to keep up with the latest advances in sweeper types and technologies that are tailored for every type of work you're doing. Added to all that, you need to actually perform to a satisfactory level of any work you have agreed to do, which is the only way to build a professional company that will stand the test of time. Then, with a little luck, lots of hard work and a few sleepless nights here and there, I'm convinced that the power sweeping industry can still provide what you need to grow, prosper and retire in a style in which you'd like to become accustomed.

Cut too many corners, though — or make a habit of agreeing to sweep for too little money under a contract that has the potential for taking it all away from you — and you'd be better off quitting now and going to work for someone who won't make the same kind of mistakes.

Finally, I strongly recommend that no power sweeping contractor should take on work for a national service provider before reviewing the ratings and ongoing comments about the company available at the World Sweeping Association website under the category of 'Third Party Vendors.'

At the site, WSA Members have access to ratings and comment information on over 25 national providers. **Access to information on specific third party vendors in this group will also be provided to property managers upon request.**

If I can be of assistance in any way on the topic of power sweeping, let me know.

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