

Memo

City of Morgantown

Department of Public Works and Engineering

To: Jeff Mikorski, City Manager
From: Terry Hough, Director *YTH*
Subject: Bid Call 2013-03
Elevator Maintenance Services for City of Morgantown Facilities
Date: May 1, 2013

Bids were opened and read aloud on March 12, 2013 at 3:00 p.m. for Bid Call 2013-03 Elevator Maintenance Services for City of Morgantown Facilities. The results are as follows:

<u>NAME</u>	<u>COST</u>
ThyssenKrupp Elevator	\$176.91/month/elevator
Kone Elevators and Escalators	\$120.00/quarter/elevator \$160.00/month/elevator

It should be noted that Kone Elevators and Escalators submitted two bid numbers, one for quarterly inspections and one for monthly inspections. The technical specifications requested that a bid be submitted such that all current codes are met with respect to elevator inspections and maintenance. Elevators are required to be inspected a minimum of once a quarter. The City of Morgantown has had monthly inspections performed in the past. Given that, Kone also submitted a bid for a monthly inspection per elevator as detailed above.

A comprehensive comparison of the two bids was performed in order to evaluate them on the same fair and equitable merits of the proposed services provided by each bidder. The services provided, with the exception of the monthly vs. quarterly time frame, were comparable for both bidders. Submitted references were also checked in order to determine the company's reliability and overall performance.

Both bidders are reputable companies that come with excellent references. Given this, I recommend that the Elevator Maintenance Services Contract be awarded to Kone Elevators and Escalators as the lowest, responsible, responsive bidder.

If you have any questions or need any additional information, please do not hesitate to contact me.



SCOPE OF SERVICES

KONE will perform maintenance visits to examine, maintain, adjust, and lubricate the components listed below. In addition, unless specifically excluded below, KONE will repair or replace the components listed below if the repair or replacement is, in KONE's sole judgment, necessitated by normal wear and tear. Unless specifically included elsewhere in this Agreement or unless Purchaser has separately contracted with KONE for the work, all other work related to the equipment is Purchaser's responsibility.

HYDRAULIC ELEVATORS

✓ **RELAY LOGIC CONTROL SYSTEM**
All control system components.

MICROPROCESSOR CONTROL SYSTEM
All control system components. System performance examinations will be conducted to ensure that dispatching and motion control systems are operating properly.

✓ **POWER UNIT**
Pump, motor, valves, and all related parts and accessories.

HYDRAULIC SYSTEM ACCESSORIES
Exposed piping, fittings accessories between the pumping unit and the jack, jack packing, hydraulic fluid, and any heating or cooling elements installed by the original equipment manufacturer ("OEM") for controlling fluid temperature.

CAR EQUIPMENT
All elevator control system components on the car.

WIRING
All elevator control wiring and all power wiring from the elevator equipment input terminals to the motor.

✓ **HOISTWAY AND PIT EQUIPMENT**
All elevator control equipment and buffers.

RAILS AND GUIDES
Guide rails, guide shoe gibs, and rollers.

✓ **DOOR EQUIPMENT**
Automatic door operators, hoistway and car door hangers, hoistway and car door contacts, door protective devices, hoistway door interlocks, door gibs, and auxiliary door closing devices.

✓ **MANUAL FREIGHT DOOR EQUIPMENT**
Switches, retiring cams, interlocks, guide shoes, sheaves, rollers, chains, sprockets, tensioning devices, and counter-balancing equipment.

POWER FREIGHT DOOR EQUIPMENT

Controller, relays, contactors, rectifiers, timers, resistors, solid state components, door motors, retiring cams, interlocks, switches, guide shoes, sheaves, rollers, chains, sprockets, and tensioning devices.

SIGNALS AND ACCESSORIES

Car operating panels, hall push button stations, hall lanterns, emergency lighting, car and hall position indicators, car operating panels, fireman's service equipment and all other signals, and accessory facilities furnished and installed as an integral part of the elevator equipment. Re-lamping of signal fixtures is included only during KONE's maintenance visits. Service requests for re-lamping of signal fixtures will be billed separately at KONE's then current labor rates.

HOURS OF SERVICE

All services described above will be performed during the regular working hours of the regular working days of the elevator or escalator trade in the location where the services are performed, unless otherwise specified in the Agreement.

SERVICE REQUESTS (CALLBACKS)

In addition to the work described in the Scope of Services section, this Agreement covers requests for service during the regular working hours of the regular working days of the elevator trade. Service requests are defined as services that require immediate attention and that are within the scope of services and not excluded from the scope of services as provided below. Service requests outside the scope of services will be billed separately at KONE's then current labor rates and material prices plus mileage and incidentals. Any rates and lump sum amounts are not subject to audit. Service requests that require more than one technician or more than two hours to complete will be treated as a repair and scheduled in accordance with the Hours of Service section above. Purchaser agrees that KONE may perform service requests made by any person that KONE believes is authorized by Purchaser to make such requests.

If Purchaser requests service on overtime, Purchaser will be charged only for the difference between KONE's hourly billing rate and KONE's hourly overtime billing rate for each overtime hour.

TESTS

KONE will perform the following tests on the Equipment. KONE is not liable for any property damage or personal injury, including death, resulting from any test.

HYDRAULIC ELEVATOR

A pressure relief test and a yearly leakage test as required by applicable code.



REPORTING SERVICES

KONE may provide Purchaser with access to KONE's online reporting tool. Based on the Purchaser's user access, Purchaser can view information about the performance and service of the Equipment. KONE may provide Purchaser with automatic email notifications that provide information on work performed.

EXCLUSIONS

The following are excluded from the scope of services.

GENERAL

KONE is not obligated to: perform safety tests other than those specified herein; perform any work required by new or retroactive code changes; perform tests required or correct outstanding violations or deficiencies identified prior to the effective date; removal of water or excessive debris from the pit; make replacements or repairs necessitated by fluctuations in the building power systems, adverse machine room or environmental conditions (including without limitation temperature variations below 50 degrees or above 90 degrees Fahrenheit) or humidity greater than 95% relative humidity, prior water exposure, rust, fire, explosion, acts of God, misuse, vandalism, theft, acts or mandates of government, labor disputes, strikes, lockouts, or tampering with the equipment by any person other than a KONE representative, negligence or acts or omissions of the Purchaser or any third party, or any other cause beyond KONE's direct control.

KONE agrees to maintain the existing performance as designed and installed. KONE is not required under this Agreement to make changes in operation and/or control, subsequent to the date of this Agreement.

OBSOLESCENCE

A component may become obsolete during the term of this Agreement. Obsolete components are not covered under this Agreement. KONE will provide Purchaser with a separate quotation for the price to replace obsolete components. Equipment modifications necessary to accommodate replacement of obsolete components will also be at the Purchaser's expense.

Components include without limitation any part, component, assembly, product, or firmware or software module. A component is obsolete when it can no longer be economically produced due to the cessation of consistent sources for materials, a loss or termination of a manufacturing process occurs, product reliability analysis shows that it is not economically feasible to continue to produce the component, escalation of component costs beyond acceptable industry expectations drive alternative equipment upgrades, the support of product safety programs or conformance to codes or

standards mandates that use of a component be discontinued in its entirety, or the OEM designates the component as obsolete. No exception to the above will be made for a component designated as obsolete because it can be custom made or acquired at any price. KONE will not be required to furnish reconditioned or used components. The component that replaces the obsolete components is covered under this Agreement.

ELEVATOR

Refinishing, repairing, replacing, or cleaning of the: car enclosure; gates or door panels; door pull straps; hoistway enclosure; rail alignment; hoistway doors; door frames; sills; hoistway gates; flooring; power feeders, switches, and their wiring and fusing; car light diffusers; ceiling assemblies and attachments; smoke or heat sensors; fans; fireman's phone devices; intercoms; telephones or communication devices; phone lines; music systems; media displays; card-readers or other security systems; computer monitoring systems; light tubes and bulbs; pit pumps; emergency power generators; hydraulic cylinder; unexposed piping; or disposal or clean-up of waste oil or contamination caused by leaks in the hydraulic cylinder or unexposed piping. KONE is not be obligated to perform or keep records of firefighter's service testing, unless specifically included in this Agreement.

REMOTE MONITORING

If the Equipment is equipped with remote monitoring capabilities, Purchaser gives KONE the right to utilize this functionality and the phone line to the Equipment to collect data related to the use and operation of the Equipment.

SAFETY

Purchaser will provide a safe workplace for KONE personnel and safe access to the equipment, property and machine room areas and keep all machine rooms and pit areas free from water, stored materials and debris; remove and dispose of any hazardous materials, water or waste according to applicable laws and regulations; post any and all instructions and warnings related to the use of the equipment. Purchaser will be solely responsible for proper use, for supervising the use of the equipment, and for taking such steps including but not limited to providing attendant personnel, warning signs and other controls necessary to ensure the safety of the user or safe operation of the equipment.

Notwithstanding anything to the contrary contained in this Agreement, if in KONE's sole judgment the equipment presents a safety hazard to the riding public or KONE's technicians (including but not limited to Purchaser's act of creating or allowing unsafe practices or conditions or Purchaser's failure to authorize necessary repairs or upgrades), KONE may immediately terminate this Agreement in its entirety upon written



notice. To the extent that KONE provides Purchaser with any oral or written account, report, information, or other statement identifying a safety issue with the equipment that is the subject of the Agreement or otherwise makes any recommendation or proposal to make a safety improvement or to address a safety issue related to such equipment, and Purchaser does not immediately approve KONE's proposal or recommendation, Purchaser agrees to indemnify, defend, and hold KONE harmless for any claims arising out of Purchaser's failure to comply with KONE's recommendations and proposals, and any obligation on the part of KONE to indemnify or defend Purchaser with regard to such claim shall be null and void.

NOTICE OF MALFUNCTION OR INJURY

As to any elevator or escalator equipment that is the subject of the Agreement, Purchaser will: (i) immediately shut down any such equipment that presents a potential safety hazard; and (ii) provide prompt verbal notice to KONE's Service Center of such hazard. Purchaser will immediately notify KONE's Service Center of any injury or accident in or about such equipment, followed by prompt written notice of such injury or accident. Any indemnity of Purchaser provided by KONE under the Agreement becomes null and void and will not be considered in interpreting the Agreement if Purchaser does not take the action or provide the notice required by this provision.

THIRD PARTY SERVICES

All services within the scope of this Agreement must be performed by KONE or its subcontractors, if any. If Purchaser causes or permits a third party to perform the same or substantially the same services required by this Agreement, Purchaser waives all claims against KONE arising from or related to a third party's performance of such services.

If Purchaser determines that it requires any services outside the scope of this Agreement, Purchaser will provide KONE with an opportunity to provide a quotation for such services or to meet any offer from a third party. If KONE agrees to meet a third party offer, Purchaser will enter into a separate contract with KONE for such services. If Purchaser elects to have a third party perform the services, KONE reserves the right to adjust the price of this Agreement.

If a third party works on the equipment during the term of this Agreement, KONE reserves the right to inspect the equipment and may determine that re-work, different or additional work is required. Purchaser will re-imburse KONE for the cost the inspection and any additional work required. If Purchaser declines to have KONE perform the additional work, KONE reserves the right to cancel the Agreement upon written notice to Purchaser.

NON-KONE EQUIPMENT

If the equipment covered under this Agreement was not manufactured by KONE (or a company acquired by KONE), Purchaser will: (i) provide KONE with a complete set of as-built wiring diagrams and (ii) Purchaser will procure and pay for replacement parts or proprietary diagnostic devices from the OEM, if requested by KONE. KONE will reimburse Purchaser for the actual cost paid by Purchaser for OEM parts acquired at KONE's request. KONE is not responsible for any delays, damages, cost, or claims arising from or in connection with Purchaser's failure to provide OEM parts or proprietary diagnostic devices in a timely manner. Purchaser authorizes KONE to produce single copies of the EPROM and/or ROM chips for each unit for the sole purpose of an archive backup of the embedded software to allow for replacement of a defective or damaged chip. These will be stored on the building premises and the Purchaser retains possession.

TERM AND TERMINATION

This Agreement will commence on the effective date and continue for an initial period of ONE (1) year. This Agreement will thereafter automatically renew for successive terms of ONE (1) year. Either party may terminate this Agreement at the end of the initial ONE (1) year term or at the end of any subsequent ONE (1) year term by giving the other party no less than ninety (90) days nor more than one hundred twenty (120) days written notice, via certified mail, prior to the expiration date of the then current term of the Agreement.

If a party materially breaches the Agreement, the other party may provide written notice of the breach and a reasonable time under the circumstances to cure the breach, but in no event less than a thirty (30) days cure period. If the breaching party fails to cure the breach within the specified time period, the non-breaching party may terminate the Agreement upon fifteen (15) days written notice to the other party. If KONE notifies Purchaser of a material breach pursuant to this paragraph, KONE may temporarily suspend services under this Agreement during the specified cure period.

CANCELLATION

If Purchaser cancels or otherwise terminates the Agreement in any way inconsistent with the termination provisions of the Agreement, such cancellation will constitute a material breach of the Agreement. In such case, Purchaser will pay as a cancellation fee an amount equal to fifty percent (50%) of the balance of the total price owed for the remaining term of the Agreement. Notwithstanding anything to the contrary in the Agreement, the cancellation fee will be paid by Purchaser immediately upon receipt of KONE's invoice. Purchaser will reimburse KONE for all costs of collection, including without limitation court costs and reasonable attorneys' fees.



ASSIGNMENT

Either party may assign the Agreement to a third party upon thirty (30) days prior written notice to the other party subject to the terms of this provision. If Purchaser transfers ownership of the premises on which such equipment is located to a third party, Purchaser will promptly provide KONE with new owner's contact information and take all such actions as are necessary to assign the Agreement to the third party. Purchaser will promptly provide KONE with a copy of such assignment.

PRICE ADJUSTMENTS

If the term of the Agreement exceeds one (1) year, KONE may automatically adjust the price annually effective on the first maintenance invoice in each new calendar year. This adjustment will be equal to the percentage increase or decrease in KONE's straight time hourly labor cost. KONE's straight time hourly labor cost equals the sum of the straight time hourly rate plus the cost of fringe benefits and applicable taxes, including without limitation welfare, pension, vacation, paid holidays, insurance and other union contributions, paid to personnel where the Equipment is located. KONE reserves the right to add annual surcharges to the price of the Agreement, including without limitation, adjustments for the then current price of fuel and charges for disposal or other environmental requirements, such surcharges to be specified by KONE in its sole discretion and invoiced by KONE and paid annually by Purchaser.

PAYMENT TERMS

Payment is due net thirty (30) days from the date of the invoice. A charge of the greater of: (i) one and one half percent (1½%); or (ii) the maximum rate permitted by applicable law, will be applied to the unpaid balance. Purchaser will reimburse KONE for all costs of collection, including without limitation court costs and reasonable attorneys' fees.

SUSPENSION OF SERVICE

If Purchaser fails to pay any invoice within the specified payment terms or if Purchaser breaches any material provision of the Agreement, KONE may stop work or suspend its services under any and all contracts with the Purchaser until all invoices are current or Purchaser cures the breach.

Any requests for service during the period of suspension of service or repairs necessitated by the lack of maintenance service will be invoiced by KONE and paid separately by Purchaser.

If Purchaser fails to make timely payment, any indemnity provided by KONE under the Agreement is null and void as to any damages that arise during the period of non-payment.

Purchaser waives all claims against KONE arising from or related to suspension of service pursuant to this provision.

TAXES

Purchaser is responsible for the payment of all federal, state, or local taxes applicable to the services or materials provided under the Agreement.

INDEMNIFICATION

To the extent permitted by law, each party will indemnify, defend, and hold the other party harmless from and against any and all claims, demands, actions, suits, proceedings, judgments, damages, loss, liabilities, costs, or expenses, including without limitation court costs and reasonable attorney's fees, arising from or related to the indemnifying party's sole negligence or willful misconduct in performance of the Agreement. Each party is responsible for its share of any comparative or contributory negligence without indemnity by the other party. Each party's indemnity obligations are expressly conditioned on the indemnified party: (i) giving the indemnifying party prompt written notice of each claim; (ii) promptly tendering to the indemnifying party the defense or settlement of each claim; and (iii) cooperating with the indemnifying party at the indemnified party's expense in defending or settling each claim. If an indemnified party does not comply strictly with the terms of this provision, the indemnifying party's indemnity obligations will become null and void and will not be considered in interpreting the Agreement.

LIMITATION OF LIABILITY

Notwithstanding anything to the contrary in this Agreement, KONE's total liability to Purchaser under the Agreement is limited to the total amount paid by Purchaser to KONE during the calendar year in which the liability occurred.

In no event will either party be liable to the other party for indirect, incidental, consequential, special, exemplary, or punitive damages of any kind or nature arising from or related to performance of the Agreement, including without limitation loss of profits, loss or inaccuracy of data, or loss of use damages, even if the party has been advised of the possibility of such damages and even if under applicable law such damages would not be considered for indirect, incidental, punitive, special, or consequential damages. Each party hereby waives its rights to such damages to the fullest extent permitted by applicable law. If there is any litigation between the parties with respect to this Agreement or the subject matter hereof, the prevailing party in such litigation shall be entitled to collect all of its costs and expenses in such litigation, including reasonable attorney's fees and court costs, from the other party.

KONE will provide Purchaser with an Owner's and Contractor's Protective Liability (OCPL) policy.

Any waiver of claims, damages, or other rights, whether such rights arise under the Agreement or by law or in equity,