M E M O R A N D U M

DATE: June 8, 1999

TO: Becky Shoemaker, Council Archivist

FROM: Aaron Brondyke, Assistant to the Director of REM

RE: Disposition of Resolution No. 98-2639

This resolution was withdrawn from consideration.

REM sent this item to the REM Committee in hopes of extending the existing contracts for the provision of diesel fuel. However, the REM Committee rejected this proposal in hopes of obtaining a lower price through competitive bidding. [See Resolution No. 98-2703]

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO EXTEND CONTRACTS WITH DEVIN OIL CO., INC. AND STEIN OIL CO., INC. FOR PURCHASING DIESEL FUEL UNTIL JUNE 30, 1999	))))))	RESOLUTION NO. 98-2639 Introduced by Mike Burton, Executive Officer

WHEREAS, The Metro Council authorized the Executive Officer to execute multi-year contracts with Devin Oil Co., Inc. and Stein Oil Co., Inc.; and

WHEREAS, These contracts provided for extension of the contracts to provide additional work for which unit prices were provided, at Metro's discretion; and

WHEREAS, As described in the accompanying staff report, it is in Metro's best interest to extend the contracts for an additional one-year period; and

WHEREAS, Per Resolution No. 95-2073A, such extensions require Council approval prior to Metro's exercise of its option to extend the existing agreements; and

WHEREAS, As a result of these extensions, Metro will continue to realize savings of at least twenty four cents per gallon; and

WHEREAS, This resolution was submitted to the Executive Officer for consideration and was forwarded to the Metro Council for approval; now therefore,

BE IT RESOLVED,

That the Metro Council authorizes extension of the contract terms for Devin Oil Co., Inc. and Stein Oil Co., Inc. until June 30, 1999.

ADOPTED by the Metro Council this _________ day of _______________, 1999.

WITHDRAWN
Jon Kvistad, Presiding Officer

Approved as to Form:

____
Daniel B. Cooper, General Counsel
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EXECUTIVE SUMMARY
RESOLUTION 98-2639
EXTEND DIESEL FUEL CONTRACTS WITH DEVIN OIL CO., INC. AND STEIN OIL CO., INC.

PROPOSED ACTION

- Adopt Resolution No. 98-2639 to authorize the Executive Officer to extend the existing agreements for the purchase of diesel fuel for use in the Waste Transport Services contract until June 30, 1999.

WHY NECESSARY

- The fuel contracts are necessary for Metro to purchase the fuel for the transport of waste and to take advantage of excise tax savings.
- The contracts were signed in April 1995, and contain the provision that Metro can extend the contracts at its discretion, without permitting an increase in the Contractor's margins, for three years, in one-year increments. These extensions are necessary to preserve what has been a very good deal for Metro, since it has enjoyed both excise and fuel price savings without increased costs.

ISSUES/CONCERNS

- As requested at the last committee hearing in 1997 regarding extension of these contracts, staff has investigated the potential savings available from both re-bidding the project as well as alternative arrangements.
- Our analysis of market conditions concluded that the margins obtained in 1994 were very competitive, and that since no adjustments have been made for inflation, they are now considered very good. Since market conditions have not changed, it is unlikely that enough savings could be obtained at this time to justify the procurement costs of a re-bid.
- We also considered an option for Metro to establish its own cardlock near the Portland fuel terminals. A new fuel price, a provision of the Waste Transport Services Contract, a provision of the fuel purchase change order, and the location of the transporter's staging area would likely have to be altered before pursuing this alternative.
- Metro has extended the current contracts twice already, and must re-bid the contracts in 1999.

BUDGET/FINANCIAL IMPACTS

- These extensions should have no impact on the budget, since the margins should not increase during the extension.
- Metro will continue to enjoy a $0.24 per gallon savings in Federal Excise Tax, as well as any savings due to lower fuel prices than anticipated. Such savings have averaged an additional $0.06 per gallon during the first eight months of the current fiscal year.

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 98-2639 FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO EXTEND CONTRACTS WITH DEVIN OIL CO., INC. AND STEIN OIL CO., INC. FOR PURCHASING DIESEL FUEL UNTIL JUNE 30, 1999.

Date: April 14, 1998 | Presented by: Bruce Warner, Jim Watkins

PROPOSED ACTION

Adopt Resolution No. 98-2639 to authorize the Executive Officer to extend the existing agreements for the purchase of diesel fuel for use in the Waste Transport Services contract, until June 30, 1999.

FACTUAL BACKGROUND AND ANALYSIS

In April 1994, Metro began purchasing diesel fuel required to transport waste from Metro facilities to the Columbia Ridge Landfill per Change Order No. 15 to the Waste Transport Services Contract. Since Metro purchases the fuel, the federal excise tax of approximately 24 cents per gallon is avoided. These savings accrue to Metro on each of the approximately 1.4 million gallons purchased annually. In addition, Metro currently secures additional savings, since the price of fuel is lower than that negotiated with the Waste Transport Services Contractor. The current supplier agreements to purchase fuel began in April 1995 and will expire June 30, 1998.

The existing contracts contain a provision to extend their terms for a period of up to three additional years in one-year increments at the discretion of Metro. Metro has extended the contracts twice already. The extension requested herein would extend the expiration dates for an additional one-year period, ending June 30, 1999. This is the last extension available to Metro at its sole discretion. We must re-bid the contract at the conclusion of this final extension.

As requested by a member of the Regional Environmental Management (REM) Committee during last year's review of extensions, staff has conducted a more thorough review of price and available competition than we have in the past. The review focused exclusively on supply market conditions on the eastern end of the transporter's trip, since over 98% of the fuel is purchased there. Metro purchases and supplies fuel at both the eastern end of the transporter's trip (through Devin Oil) and at the western end of the transporter's trip (through Stein Oil).

This review has included a series of correspondence exchanges (Attachments 1-4) with a vendor advocating re-bid of the eastern Oregon supply contract; contact with a cardlock owner in the Metro area; communication with Tri-Met's diesel fuel purchasing agent; communication with the Gilliam County Road Department; and a review of our current supplier's (Devin Oil) terminal prices and markups.

The price in the current Devin Oil contract is based upon the price of fuel at the fuel terminal, with set markups allowed. The supplier (in this case, Chevron) establishes the terminal price at a published "jobber" price. Devin has no control over this terminal price, which remains competitive due to competition from other name brand suppliers. Devin then receives a markup for overhead and one for freight as contained in their original proposal of 1995. These markups have not increased since the original contract was signed.

Staff investigated whether these markups have remained reasonable, examined market conditions for the entrance of new suppliers, and evaluated Devin's performance. Staff found that freight costs have generally increased over time, due in large part to increased demand for these services in the current economy. In fact, all of the industry experts contacted expressed surprise that our freight costs had not increased since 1995 (the competing vendor applauded us for this).

The firm's overhead markup of $0.015 per gallon appears to be extremely competitive. The Metro-area cardlock owner contacted by considers the fuel "a steal" at that markup. As can be seen in the series of letters appended as Attachment #1, the competing vendor's own calculations show that the price is below that which would be expected from the original bid. This difference is due to the fact that Devin Oil has absorbed the Superfund tax that was originally included as a markup. It is likely that when the contract is re-bid, these markups will increase (Devin Oil has stated directly that contractual obligations are the only reason that Metro is receiving such a low price). The western supplier, Stein Oil, likewise has had no increase in its original markups.

It does not appear that new suppliers are available from the time the original proposals were submitted according to the local road department (the competing vendor does contend however that his multiple locations are essentially additional available suppliers). The Waste Transport Services Contractor was contacted regarding Devin's performance. It was characterized as very good.

The conclusion of the staff review is that the current contract provides Metro with a very competitive price and good service. Staff believes that it is quite likely that prices will increase if this contract is re-bid.

An additional request from last year's hearing was that staff examine the whole transport, transfer and disposal system to see if significant savings are available in relation to the purchase of fuel. The most interesting opportunity seems to be for Metro to establish its own cardlock at a staging area at the western end of the trip. Metro would access fuel at a Portland terminal price, which does not include the additional transport costs up the Gorge. These savings would be offset by higher labor and freight costs in the metropolitan area, but may be great enough to produce some marginal savings. Such an approach would require relocating the staging area from the eastern to the western end of the trip. This option has been discussed with the Waste Transport Services Contractor.

Apart from price, the following issues would need to be resolved prior to pursuing this alternative approach: 1) a provision in the Waste Transport Services Contract that the contractor make best faith efforts to purchase supplies from local vendors in Gilliam County; 2) a provision of the fuel purchase change order requiring that fuel be made available in a manner acceptable to the transport contractor; and finally, 3) the relocation of the transporter's staging area from near Gilliam County to the Portland area. Staff will be exploring these issues and this approach, as well as the original approach of utilizing commercial cardlocks during the coming year if the extensions are granted.

The requested extensions would authorize additional work for which unit prices were submitted, consistent with the requirements of Metro Code 2.04.058(a)(1) for contract extensions. Metro Council approval is needed for this extension per Resolution 95-2073A, which required Council approval for extensions of the fuel purchase agreements.

BUDGET IMPACTS

Metro would continue to save the avoided federal excise tax, as well as savings due to low fuel prices. Since the margins on these contracts have not changed, future budget impacts are limited to the cost of fuel at the terminals from which it is purchased.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Resolution No. 98-2639.

JW:gbc
S:\SHARE\GEYE\MISC\DEISAL\982639.stf

Attachments

1) Letter from J.D. Hattenhauer to Chuck Geyer, dated 3/2/98

2) Letter from Chuck Geyer to J.D. Hattenhauer, dated 4/7/98

3) Letter from J.D. Hattenhauer to Chuck Geyer, dated 4//98

4) Letter from Chuck Geyer to J.D. Hattenhauer, dated 4/14/98 (with attachments)

ATTACHMENT #1

****** FAX TRANSMITTAL ******

HATTENHAUER DISTRIBUTING CO.
110 UNION - P.O. BOX 499
THE DALLES, OR. 97058

FAX NO. (541) 296-1426
PHONE NO. (541) 296-3515

FROM: Doug

DATE: 3/3/98

RECEIVED

APR 3 1998

METRO REGIONAL ENVIRONMENTAL MANAGEMENT

TO: Chuck Geyer Sent Planning

COMPANY: Metro

FAX NO.: 503-797-1650 (1797) 2nd No. 8

SUBJECT:

MESSAGE:

Enclosed copy of my opinions on providing fuel for Metro at Arlington, Oregon

Please share fax copy with

Mr. Watkins
Mr Kvistad
Mr Burton

Hopefully our company will have an opportunity that has been denied.

This fax contains this cover and 3 page(s). If you do not receive all pages or have any problems with receiveing, call Doug at HATTENHAUER DISTRIBUTING CO. (541) 296-3515.

3/2/98

RECEIVED
APR 3 1998
METRO REGIONAL
ENVIRONMENTAL MANAGEMENT

CHUCK GEYER
SENIOR PLANNER
METRO
600 N.E. GRAND AVE.
PORTLAND, OR. 97232

DEAR MR. GEYER,

IN 1995 YOUR AGENCY WENT OUT FOR BIDS FOR SUPPLYING FUEL AT ARLINGTON, OREGON FOR YOUR EXCLUSIVE USE FOR FUEL TO BE PROVIDED TO JACK GRAY TRANSPORT WHO HAULS GARBAGE FROM PORTLAND, OREGON TO THE ARLINGTON LANDFILL (#94R-35-SW). HAULER HAS CHANGED NAMES OR COMPANIES. AS YOU ARE AWARE OUR COMPANY WAS NOT SUCCESSFUL BIDDER AND SINCE THAT TIME YOU HAVE EXTENDED THIS BID TWICE TO THE SAME COMPANY (DEVIN OIL).

IN YOUR REQUEST FOR PROPOSALS THERE WAS NOTHING IN BID PROCESS THAT SAID BIDS COULD BE EXTENDED. HOWEVER THROUGH METRO THEY CHOSE TO EXTEND BIDS BY A PROCESS THAT I THINK MAY NOT BE APPROPIATE IF NOT ILLEGAL. THIS IS BASED ON THE DOLLAR AMOUNT OF BID AND THE REQUIREMENT TO BE ANNUAL IF IT IS NOT SPELLED OUT ON ORIGINAL BID PROCESS. YOU DID NOT SPELL THIS OUT ON ORIGINAL PROPOSAL AND THUS IS VIOLATION OF PROCESS.

WHEN YOU AWARDED BIDS OUR COMPANY WAS OFF BY ONLY $9000.00 BY YOUR MARCH 7, 1995 MEMO. YOU ALSO GAVE DEVIN A BETTER RATING BECAUSE HE HAD ALREADY HAD THE EXPERIENCE OF SUPPLYING JACK GRAY. YOU HAVE DISCRIMINATED ONE COMPANY OVER ANOTHER BASED ON AN EXPERIENCE RATING THAT IN PAST YOU HAD NEVER GIVEN OUR COMPANY THE OPPORTUNITY. IN EMERGENCY SITUATIONS JACK GRAY HAD FUELED AT OUR SITE IN ARLINGTON WHEN DEVIN SITE HAD PROBLEMS. THUS THIS PROCESS WAS UNFAIR AND AFTER LOOKING OVER BID SUBMITTED THERE WERE A LOT OF CHANGES ON DEVIN'S BID WHICH I HOPE WAS NOT DONE BY YOUR AGENCY.

BASED ON DEVIN'S BID FORMULA AS OF TODAY, HE WOULD BE CHARGING YOU $.5490 PER GALLON AT ARLINGTON CARDLOCK SITE. THIS IS FORMULA DEVIN PROVIDED FOR HIS BID PROCESS ON YOUR ORIGINAL REQUEST. PRICE IS BASED ON PORTLAND RACK PRICE AS OF 3/2/98 AT WILLBRIDGE. IT APPEARS YOU HAVE GRANTED DEVIN OIL SOME ADDITIONAL MARK-UP THAT I HAVE NOT BEEN AWARE OF. IF THIS IS THE CASE, THIS WOULD BE ILLEGAL OR AT LEAST UNETHICAL.

THE LAST TWO YEARS I HAVE ASKED FOR A REPLY WHY METRO HAS NOT GONE OUT FOR BIDS. THEN IN 1997 I RECIEVED AN EXPLANATION ON WHY METRO HAS NOT GONE OUT FOR BIDS. AS PER STAFF REPORT BY JIM WATKINS DATED APRIL 14, 1997 AND ADOPTIONS OF RESOLUTION NO. 97-2496 BY JON KVISTAD THERE IS SOME MISCONCEPTIONS ON MY PART OF YOUR POLICIES AND PROCEDURES.

1. RESOLUTION 97-2496 TO AUTHORIZE EXTENSION OF CONTRACTS. AS STATED EARLIER THERE WERE NO PROVISIONS IN ORIGINAL PROPOSAL TO EXTEND CONTRACTS. IF THERE WERE

THIS PROVISION ONE WOULD MOST LIKELY BID DIFFERENTLY. TO MAKE THIS A PROVISION AFTER BID PROCESS TO ME IS HIGHLY UNETHICAL.

2. MR. WATKINS STATEMENT "SINCE THE ORIGINAL PROCUREMENT NO NEW SUPPLIERS HAVE BECOME AVAILABLE OR HAVE MARKET CONDITIONS CHANGED TO THE EXTENT THAT A NEW PROCUREMENT WOULD RESULT IN ANY SIGNIFICANT ADDITIONAL SAVING AT THIS TIME" WAS AN UNFAIR ASSESSMENT AND ON WHAT BASIS WAS THIS STATEMENT MADE. HE DID NOT ASK ME OF MY POSITION OR OPINION OR HOW IT WOULD EFFECT OUR COMPANY. ANY SAVINGS SHOULD BE SIGNIFICANT TO METRO AND THE CITIZENS OF THIS DISTRICT.

3. THE STATEMENT "REQUESTED EXTENSIONS WOULD AUTHORIZE ADDITIONAL WORK FOR WHICH UNIT PRICES WERE SUBMITTED" WHICH APPEARS THAT YOU HAVE GRANTED DEVIN AN INCREASE IN MARGIN. IF THAT WAS CASE MOST LIKELY ARE BID AT THAT POINT WOULD OF BEEN LOWER. DID YOU GRANT DEVIN AN INCREASE IN EITHER FREIGHT OR MARGIN FROM HIS ORGINAL BID?

4. AS PER BUDGET IMPACT STATEMENT "METRO WOULD CONTINUE TO SAVE THE AVOIDED FEDERAL EXCISE TAX" IS ONLY TRUE IF YOU ARE DOING THIS LEGALLY. IF DOING LEGALLY, (IRS EXCISE TAX EXEMPTIONS) THEN ANY SUPPLIER SUCH AS OUR COMPANY WOULD BE ABLE TO PASS THIS ON TO YOU BY NOT CHARGING YOU THE EXCISE TAX PER GALLON PURCHASED.

5. IN CONSIDERTION OF RESOLUTION NO. 97-2496 "WHERE AS THE METRO COUNCIL AUTHORIZED THE EXECUTIVE OFFICER TO EXECUTE MULTIYEAR CONTRACT WITH DEVIN OIL CO. INC." IN MY OPINION IS UNETHICAL AND POSSIBLE ILLEGAL. THIS WAS NEVER STATED IN YOUR ORIGINAL BID OFFERING.

6. IN THE STATEMENT " WHEREAS, THESE CONTACTS PROVIDED FOR EXTENSION OF THE CONTRACTS TO PROVIDE ADDITIONAL WORK FOR WHICH UNIT PRICES WERE PROVIDED AT METRO'S DISCRETION" TO ME MEANS AS STATED EARLIER YOU HAVE GRANTED DEVIN A LARGER MARGIN OR INCREASE IN FREIGHT RATE FROM HIS ORIGINAL BID. YOU WOULD OF THOUGHT THAT METRO IF THIS WAS GRANTED TO CHECK WITH THE OTHER BIDDERS TO SEE IF THEY COULD OF SAVED METRO MONEY ON NOT RAISED MARK-UPS OR FREIGHT RATES. DID YOU GRANT DEVIN A CHANGE FROM ORIGINAL BID PROCESS?

7. IS IT REALLY IN METRO'S BEST INEREST TO EXTEND CONTRACTS? ARE THERE OUTSIDE FORCES FROM HAULER NOT TO CHANGE? IS SO, WHAT ARE THEY? HOW WOULD METRO BE SAVING $45,000.00 PER MONTH? ORIGINAL BIDS WERE ONLY OFF BY $9000.00 OVER A YEARS TIME AT BID OPENING AS STATED EARLIER. THIS WOULD OF BEEN MORE LKIE A SAVINGS TO METRO OF $750.00 PER MONTH IF DEVINS BID HAS NOT CHANGED FROM ORIGINAL BID DATE. IS THE STATEMENT OF SAVING $45,000.00 PER MONTH BASED ON AVOIDING THE FEDERAL EXCISE TAX? IF THIS IS THE CASE THIS STATEMENT IS VERY MISLEADING TO MEMBERS OF COUNCIL WHO BASED THERE DECISION TO SAVE MONEY. NO WAY OUR BID WAS THAT MUCH HIGHER THAN DEVINS. THIS SAVINGS WOULD BE BASED ON AN IRS RULING TO BE ABLE TO BUY TAX EXEMPT FOR EXCISE TAX FOR DIESEL OF $.244 PER GALLON. THIS HAS NOTHING TO DO WITH OUR COMPANY. IF YOU ARE AFRAID TO CHANGE SUPPLIERS AND LOSING THIS EXEMPTION IS FAULTY THINKING AT BEST. YOU HAVE MADE AN UNTRUE STATEMENT TO COUNCIL MEMBERS AT BEST.

YOUR AGENCY HAS ASSUMED OUR COMPANY WOULD NOT OF PROVIDED YOU WITH A BETTER BUYING PRICE, THAT MARKET CONDITIONS HAVE NOT CHANGED, AND OUR COMPANY HAS NOT CHANGED. WE WOULD OFFER YOUR AGENCY A BETTER PRICE, WHICH MEANS A SAVING TO METRO, MARKET CONDITIONS HAVE CHANGED AND OUR COMPANY HAS CHANGED. YOUR STAFF REPORTS AND RESOLUTIONS 97-2496 SEEM UNTRUE AND NEED TO BE DISCUSSED

FURTHER FOR EITHER I DO NOT HAVE ALL THE INFORMATION OR UNDERSTAND METRO'S POLICIES AND PROCEDURES FROM OTHER GOVERNMENT AGENCIES IN THE STATE OF OREGON.

PLEASE RESPOND IN WRITING TO WHY YOU ARE DISCRIMINATING AGAINST OUR COMPANY AND UNDER WHAT OREGON AUTHORITY OF LAWS YOU ARE DOING SO? WHY YOU ARE NOT GOING OUT FOR BIDS THIS YEAR?

THANK YOU FOR YOUR CONSIDERATION.

J. D. HATTENHAUER PRES.

HATTENHAUER DIST. CO.

METRO

April 7, 1998

Mr. J.D. Hattenhauer, President
Hattenhauer Distributing Co.
110 Union - P.O. Box 499
The Dalles, OR 97058

Dear Mr. Hattenhauer:

I received your letter dated March 2, 1998, via FAX, on April 3, 1998, and distributed a copy to the parties you requested. The points made in the letter are addressed below. It is our intention to exercise the final one year extensions contained in the current fuel supplier agreements, for many of the reasons that are contained in our response to you. In our request to the Metro Council to approve these extensions, we will include a copy of your letter, as well as this response. Council consideration of the matter will include a public hearing, at which we urge you to voice your concerns.

Provision for Extensions in the RFP

You state in your letter that: *"IN YOUR REQUEST FOR PROPOSALS THERE WAS NOTHING IN BID PROCESS THAT SAID BIDS COULD BE EXTENDED."* This is untrue. Section III (**PROPOSED SCOPE OF WORK/SCHEDULE**), A. General Requirements, Item #7 on page 4 states: "Term - The term of this agreement shall be for a period of April 1, 1995, to June 30, 1996, with the option to extend for up to an additional three years in one-year increments, at the discretion of Metro."

The Request for Proposals (RFP #94-35-SW) was approved for release by the Metro Council through Resolution No. 95-2073A, which in item #3 refers to "...its option to extend the agreement for up to an additional three years ...". As you can see, the option to extend was spelled out in the original procurement process. The legal authority for use of the process was cited in the authorizing resolution as Metro Code Section 2.04.041(c) and Oregon Revised Statutes 279.015(2).

Process Unfair

In the third paragraph of your letter you contend that the scoring of the experience criteria was unfair. You also state: *"...THERE WERE A LOT OF CHANGES ON DEVIN'S BID WHICH I HOPE WAS NOT DONE BY YOUR AGENCY."*

The evaluation process was conducted by a group of professionals in a conscientious manner. We did not alter any of the information submitted to us. The evaluation process for proposals is subject to appeal by parties submitting proposals, at the time of Council consideration of the contract. A review of the record does not indicate that you voiced the above concerns at the time when such appeals are appropriate.

Additional Markup

You state in the fourth paragraph of your letter that: *"IT APPEARS THAT YOU HAVE GRANTED DEVIN OIL SOME ADDITIONAL MARK-UP THAT I HAVE NOT BEEN AWARE OF."* You further state that, based on Devin's original proposed mark-up and the Willbridge terminal price (one of the three terminals from which Devin purchases fuel for sale to Metro), that as of 3/2/98, the price to Metro should have been $0.5490 per gallon. You do not state what you think we were charged on this date, nor the basis for your contention that there have been additional markups.

There have been no additional mark-ups from Devin's original proposed price. In fact, Devin did not pass through a freight mark-up of the freightline used as a basis for their proposal. The price charged Metro on the 3/2/98 was **$0.537**, and this was with the addition of higher cost fuel for winter blending! It would appear we are receiving more than a fair price based on your calculations.

Staff Report / Resolution No. 97-2496

You state that you received a copy of this staff report and resolution for the most recent extension of the existing contracts and list seven points in response. I will address them in order.

1. No extension in original RFP.

   See above discussion "**Provision for Extensions in the RFP**".

2. You contend that the staff report's assessment of market conditions was "AN UNFAIR ASSESSMENT AND ON WHAT BASIS WAS THIS STATEMENT MADE."

   We believe our assessment that no new major suppliers had become available was, and still is, correct. Your firm proposed originally and we are unaware of any new suppliers near the Columbia Ridge Landfill. Please inform us if you know of any.

   Our basis for an assessment of market conditions was a review of State of Oregon and Tri-Met contracts, as well as contacts with the suppliers to a number of terminals. This was conducted as part of an analysis to install tanks and purchase fuel directly.

3. You quote a portion of the staff report referring to unit prices and ask: *"DID YOU GRANT DEVIN AN INCREASE IN EITHER FREIGHT OR MARGIN FROM HIS ORIGINAL BID?"*

   No. The reference "authorizing additional work for which unit prices were submitted" is from the Metro Code section dealing with contract extensions. If unit prices were originally submitted in the proposal, and have not changed (as is the case with the Devin margins), then contract extensions are permitted by Metro's Executive Officer.

4. You state that the excise tax savings are only available if we are obtaining them legally, and that any supplier could pass on such savings.

   Agreed. The legality of the current arrangement has been explored extensively with the IRS.

5. You state that the multi-year nature of the original bid offering was never stated.

   You are mistaken. See above discussion **"Provision for Extensions in the RFP".**

6. You state that you believe the phrase "additional work for which unit prices were provided" means granting a larger margin or increase in freight rates to Devin.

   Your interpretation is incorrect. It means that no increase in unit prices (in this case margins and freight rates) has been granted. See response to #3.

7. You question the basis for calculating savings of $45,000 per month.

   As stated in the staff report, the basis for the calculation of savings is "the avoided federal excise tax." The issue regarding the savings was whether to have our contractor purchase the fuel as they originally did, or have Metro purchase the fuel.

Conclusion

It appears you have misunderstood several key points on which the contract extensions were based. I hope my explanations have helped clarify both: 1) our intent from the start of the process to provide for contract extensions; and 2) the concept of "additional work for which unit prices were submitted".

It appears from your calculations, that we are receiving a very competitive price from our current supplier. Given the cost of conducting another RFP process, it seems prudent to extend the Devin contract for the remaining additional year.

Please provide us with any additional information regarding this project. I will inform you of the Metro Council meeting at which the extension will be discussed.

Sincerely,

Chuck Geyer
Senior Planner
(503)797-1691

CG:gbc
cc: Mike Burton, Executive Officer
John Kvistad, Metro Council Presiding Officer
Bruce Warner, Director, Regional Environmental Management
Jim Watkins, Engineering & Analysis Division Manager, REM
John Houser, Senior Council Analyst
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Attachment 3

****** FAX TRANSMITTAL ******

HATTENHAUER DISTRIBUTING CO.
110 UNION - P.O. BOX 499
THE DALLES, OR. 97058

FAX NO. (541) 296-1426
PHONE NO. (541) 296-3515

FROM: Doug

DATE: 4/10/98

TO: Chuck Geyer

COMPANY: Metro

FAX NO.: 503-797-1797

SUBJECT:

MESSAGE:

Enclosed response to your Letter - Correction of date on my original Letter and fax Sorry for the confusion - Resent with corrected dates.

Will send in mail also.

This fax contains this cover and 2 page(s). If you do not receive all pages or have any problems with receiveing, call Doug at HATTENHAUER DISTRIBUTING CO. (541) 296-3515.

APRIL 10. 1998

MR. CHUCK GEYER
SENIOR PLANNER
METRO
600 N. E. GRAND AVE.
PORTLAND. OREGON 97232

DEAR MR. GEYER:

THANK YOU FOR YOUR QUICK RESPONSE TO MY CONCERNS WITH YOUR LETTER DATED APRIL 7, 1998. FIRST OF ALL MY FAX AND MY LETTER WERE BASED ON APRIL AND NOT MARCH. THE LETTER WAS WRITTEN TO YOU ON APRIL 2ND AND FAXED ON APRIL 3RD BUT FOR SOME REASON I PUT MARCH ON LETTER AND ALSO ON FAX. THIS I AM SURE HAS LED TO SOME CONFUSION. PLEASE ACCEPT MY APOLOGY FOR THIS MISTAKE.

AS STATED IN MY LETTER THAT WAS DATED MARCH 2, 1998 BUT SHOULD OF BEEN APRIL 2, 1998, I MAY OF BEEN MISINFORMED ON SOME OF MY STATEMENTS MADE, BUT YOU NEED TO CONSIDER THE FOLLOWING:

1. SIGNED ORIGINAL CONTRACT WITH DEVIN OIL, THE LANGUAGE WAS OR WAS NOT STATED AS YOU REFER TO (PROPOSED SCOPE OF WORK/SCHEDULE) A. GENERAL REQUIREMENTS, ITEM #7 ON PAGE 4 STATES: " TERM - THE TERM OF THIS AGREEMENT SHALL BE FOR A PERIOD OF APRIL 1, 1995 TO JUNE 30, 1996 WITH THE OPTION TO EXTEND FOR UP TO AN ADDITIONAL THREE YEARS IN ONE YEAR INCREMENTS, AT THE DISCRETION OF METRO", MAY BE ILLEGAL IF NOT STATED ON SIGNED ORIGINAL DOCUMENT OF CONTRACT. WITH THE LANGUAGE OF DISCRETION OF METRO MAY IN FACT BE A TERM FOR DISCRIMINATION. WITH THE SCALE OF DOLLARS INVOLVED, THE BID PROCESS SHOULD NEVER BE DISCRETIONARY. WE WILL SEEK THE LEGAL AUTHORITY ON THIS ISSUE. THE STATE OF OREGON BID PROCESS HAS NEVER BEEN DISCRETIONARY THAT I AM AWARE OF.

2. MY STATEMENT STILL STANDS CONCERNING DEVIN'S BID. THERE WERE A LOT OF CHANGES AND NOTES ON BID, BUT NO INITIALS BY DEVIN WERE MADE. OUR COMPANY DID NOT VOICE A PROTEST IN 1995 PROCESS BUT ONLY BECAME AWARE OF THE POSSIBILITY OF INAPPROPRIATE CHANGES MADE TO ORIGINAL BID.

3. PLEASE FORGIVE ME ON DATE OF MY FAX AND LETTER, BOTH SHOULD OF BEEN DATED FOR THE MONTH OF APRIL. HOWEVER USING YOUR PRICES FOR DEVIN OF $.537 ON 3/2/98 AND PRICE I GAVE YOU WAS TO BE FOR APRIL 2, 1998 AND NOT MARCH 2, 1998, THIS NEEDS TO BE LOOKED AT IN TO RELATION OF BID OF 1995 AND CURRENT PRICES. ON 3/2/98 WILBRIDGE PRICE (CHEVRON) WAS FROM MY RECORDS $.4420 PER GALLON FOR DIESEL. YOU STATED YOU PAID $.5370 THAT IS A DIFFERENCE OF $.095/GALLON. DEVIN'S BID PROCESS ON ORIGINAL BID WOULD OF BEEN BASE PRICE OF .4420, PLUS HIS FREIGHT OF .05, PLUS SUPERFUND OF .0023, PLUS 0.015

MARGIN WOULD BE COST OF $.5093 PER GALLON. YOU HAVE A DIFFERENCE OF .0277 WHICH I HAVE TO ASSUME IS FOR WINTER BLENDING. WINTER BLENDING IN MARCH SHOULD NOT OF BEEN OVER .01 PER GALLON IF IT WAS EVEN NECESSARY. HOW DO YOU MONITOR THIS CHARGE? I CAN ONLY ASSUME IT IS DISCRETIONARY.

CHEVRON'S POSTED PRICE ON 4/6/98 AT WILBRIDGE IN PORTLAND WAS $.487. BY USING THE SAME FORMULA THE PRICE BEING CHARGED TO YOU FOR THIS WEEK SHOULD OF BEEN $.5543. IS THAT THE PRICE THEY ARE CHARGING? IF IT IS NOT THEN THE FORMULA HAS CHANGED THAN WHAT WAS ORIGINALLY PRESENTED. HOPEFULLY THIS IS NOT DISCRETIONARY. IF DEVIN HAS NOT BEEN GRANTED ADDITIONAL MARKUPS THEN I APPLAUD METRO. FREIGHTLINE THAT YOU MENTIONED SINCE ORIGINAL BID HAS BEEN DEREGULATED.

PLEASE UNDERSTAND YOUR STATEMENT "IT WOULD APPEAR WE ARE RECEIVING MORE THAN A FAIR PRICE BASED ON YOUR CALCULATIONS" WOULD NOT BE CORRECT BECAUSE PRICE I GAVE YOU WAS FOR APRIL 2, 1998 AND NOT MARCH 2, 1998. THAT WAS A MISTAKE ON MY PART. ON MARCH 2, 1998 OUR COMPANY WOULD OF CHARGED YOU USING TEXACO PRICE FROM PORTLAND AT $.4300, PLUS FREIGHT OF .048, PLUS SUPERFUND OF .0023, PLUS WASH. HAZ. TAX OF .004, PLUS OREGON LOAD FEE OF .0006 PLUS OUR MARK-UP OF .0145 WOULD BE A CHARGE TO METRO OF $.4994/GALLON FOR DIESEL. IF WINTERIZATION WAS ADDED OF .01/GAL. PRICE TO YOU WOULD OF BEEN $.5094. YOU STATED YOU PAID $.5370. THIS IS A SAVING OF .0276/GAL. FOR THIS PERIOD. OF COURSE METRO'S POSITION THAT MARKET CONDITIONS HAVE NOT CHANGED WOULD OR WOULD NOT APPLY HERE..

4. AS PER YOUR RESPONSE TO MY COMMENTS, I WILL RESPOND:

A. PLEASE REFER TO MY EARLIER COMMENTS.

B. AS STATED ABOVE CONDITIONS HAVE CHANGE AND MY PREVIOUS LETTER STATES THAT. THERE ARE ONLY TWO COMPANIES OFFERING CARD LOCK SERVICES NEAR COL. RIDGE LANDFILL. WE HOWEVER OFFER ADDITIONAL SITES ALONG THE ROUTE FROM PORTLAND TO ARLINGTON THAT MAY HAVE NOT BEEN CONSIDERED IN PAST (RUFUS AND THE DALLES SITE AT EXIT 82).

ORIGINALLY WHEN THE LANDFILL WAS SET UP IN ARLINGTON ALL PARTIES WERE TO HAVE AN EQUAL BASIS FOR SUPPLYING FUEL TO THE HAULER ON A FREQUENT BASIS. METRO'S BID PROCESS DENIES EQUAL ACCESS TO HAULERS ON A FREQUENT BASIS. YOU SHOULD KEEP IN MIND THAT ANY SAVING TO METRO IS A SAVING TO THE RATE PAYERS IN THE METRO DISTRICT WHICH IT APPEARS IS NOT WORTH THE EFFORT TO GO OUT FOR BIDS ON A FREQUENT BASIS.

C. AGAIN IF NO CHANGES IN MARK-UP OR FREIGHT HAS BEEN ALLOWED THEN I APOLOGIZE FOR ANY MISUNDERSTANDING ON MY PART. HOWEVER THE FORMULAS PROVIDED AND CURRENT COST NEED TO BE EXPLORED FURTHER.

D. METRO BEGAN PURCHASING FUEL TO SAVE EXCISE TAX.

THIS IS A SUBSTANTIAL SAVING TO METRO. METRO SHOULD ALSO GO OUT FOR BIDS TO INSURE THEY ARE GETTING THE BEST PRICE. THEY HAVE ONLY ASSUMED THEY ARE DOING SO.

E. BID AGREEMENTS MUST BE SIGNED BY BOTH PARTIES AND ALL TERMS AND CONDITIONS MUST BE SPELLED OUT IN INITIAL CONTRACT. EVEN THOUGH STATED IN RFP, MUST STILL BE PART OF SIGNED CONTRACT. AT BEST, METRO IS NOT BIDDING BASED ON A DISCRETIONARY BASIS WHICH SHOULD NOT BE THE PROCESS.

F. ACCEPTED AS STATED.

G. ITEM 7 IS QUESTIONABLE. IT WOULD NOT NECESSARILY BE INTERPRETED THAT WAY IN THE WAY IT WAS PRESENTED IN WRITING TO COUNCIL. IF YOUR STATEMENT IS CORRECT YOU WOULD OF HAD TO GO OUT FOR BIDS ANYWAY. METRO IS NOT BEING FAIR IN MY OPINION BY NOT GOING OUT FOR BIDS ON AN ANNUAL BASIS. THE SAVING OF $45,000.00 PER MONTH SHOULD NOT AFFECT METRO'S DECISION TO GO OUT FOR BIDS BECAUSE IF "THE AVOIDED FEDERAL EXCISE TAX IS NOT BEING CHARGED" THEN ALL VENDORS WOULD NOT HAVE TO CHARGE FET IF APPROVED BY IRS.

IN CONCLUSION I MADE A MISTAKE CONCERNING THE DATE ON MY LETTER AND FAX. THIS IS TOTALLY MY FAULT AND I AM EMBARRASSED BY NOT DOING CORRECTLY. AS STATED EVERYTHING IN MY ORIGINAL LETTER WAS BASED ON APRIL 2, 1998 AND FAX OF THE NEXT DAY. THE DATE ON LETTER WAS MARCH 2, 1998 WHICH SHOULD OF BEEN APRIL 2, 1998 AND HOPEFULLY THIS TIME IT IS VERY CLEAR AND NO CONFUSION EXISTS.

WE FEEL IT IS WRONG FOR METRO NOT TO GO OUT FOR BIDS. WE HAVE PROTESTED EACH YEAR. METRO'S PROCESS THAT IS DISCRETIONARY SHOULD NOT BE ACCEPTABLE FOR DETERMINING BID EXTENSIONS. METRO NEEDS A BETTER PROCESS. NO OTHER GOVERNMENT AGENCY THAT I AM AWARE OF HAS A DISCRETIONARY POLICY FOR THIS MAGNITUDE OF DOLLARS.

WE WOULD HOPE THAT METRO WOULD HAVE A BETTER UNDERSTANDING OF THE BID PROCESS THAT THEY HAVE ALLOWED IN PAST AND GO OUT FOR BIDS AS THE INTENT WAS WHEN THE LANDFILL CAME TO GILLIAM COUNTY. WE HOPE WE CAN WORK OUT A WORKABLE SOLUTION BUT NOT GOING OUT FOR BIDS AND EXTENDING DEVIN'S BID IS TOO DISCRETIONARY AND NOT THE BEST INTEREST FOR OUR COMPANY OR METRO I WOULD SUSPECT.

SINCERELY,

J. D. Hattenhauer

J. D. HATTENHAUER, PRES.
HATTENHAUER DIST. CO
P. O. BOX 499
THE DALLES, OREGON 97058

REGIONAL SERVICES

Attachment 4

600 NORTHEAST GRAND AVENUE | PORTLAND OREGON 97232 2736
TEL 503 797 1700 | FAX 503 797 1797

METRO

April 14, 1998

J.D. Hattenhauer, President
Hattenhauer Dist. Co.
P.O. Box 499
The Dalles, OR 97058

RE: Letter received: dated April 10, 1998

Dear Mr. Hattenhauer:

This letter is in response to your most recent letter. I will try to respond to the concerns you have raised. First, let me apologize regarding two misstatements made in my letter to you dated April 7, 1998.

In your original letter you asked the basis of the $45,000 per month in savings contained in the resolution authorizing the most recent extension. I replied that these savings were due to avoidance of the Federal Excise Tax: That was incorrect. The savings are a result of both the excise tax avoided, as well as the price of fuel being lower than the price used in reducing payments to the Waste Transport Services Contractor. When Metro negotiated a reduction in this contractor's unit price in exchange for us purchasing fuel, the reduction was made based on this contractor's assumed price of fuel when it submitted its original bid. If fuel prices to Metro (as adjusted by the excise tax) are below the price used in the reduction, this is counted as savings to Metro. This additional savings has averaged approximately $0.06 per gallon during the first eight months of this fiscal year.

My second misstatement concerns your contention that there were changes made to Devin's bid. I have reviewed the evaluation file for the project, and found marked-up versions of both your and Devin's price sheets (attached) to which I assume you referred in your original letter. If these are the sheets to which you referred, I apologize. Frankly I had forgotten about them.

The changes made to the Devin price sheet was a $0.002 reduction in the average price for the last six months of the year, due to a reduction in the Superfund tax of which we were aware, but that had not been incorporated into the price stated. We made the reduction to correct the calculation of total price. It reduced their total price by $1,372. or less than 1% of their original bid of $832,906.

Two adjustments were made to your bid. The first month's total cost was incorrect due to a multiplication error of your average price times the gallons to be used. The second correction was to your average price/gal. Our review of the OPIS backup data provided by you indicated an averaging error of $0.009/gal. These adjustments increased your bid $905.64, or less than 1%.

These changes did not effect the outcome of the cost criteria point allocation of 90 for Devin and 89 points for your firm.

You state in your letter of April 10th that the extension language contained in the RFP was not included in the executed contract with Devin. This is incorrect. Item #6 of the Scope of Work of Contract No. 904179 between Metro and Devin Oil states: *"Term - The term of this agreement shall be for a period of April 1, 1995, to June 30, 1996, with the option to extend for up to an additional three years in one-year increments, at the discretion of Metro"*. The agreement was signed by both parties.

Concerning the price we should have been charged on April 6, 1998, you state the price should have been $0.5543. The price Metro was charged was $0.552 ,or $0.0023 less! This is because not only has Devin not been granted an additional markup for freight (or overhead for that matter), but it has absorbed the Superfund charge of $0.0023.

Regarding the previous price I gave you for March 2, 1998, you have requested to know whether this included higher priced fuel for winter blending and how we monitor this. The price did contain winter blend fuel, and we monitor this by receiving detailed invoices regarding how much of each was used and at what price. The price you calculated included a Superfund charge which Devin has not passed through.

I hope the above adequately responds to your concerns. I understand your desire to compete for this business, and I assure you we will contact you in the future regarding this matter. However, based on the pricing information provided by you and others I have contacted, it appears Metro is receiving a very good price that would probably go up when we do competitively rebid this project in the future. Given that Metro has only the final year to force our supplier to continue at these prices, I believe we would be remiss in not extending this contract.

Sincerely:

Chuck Geyer
Senior Planner

CG:gbc
Enclosure
cc: Jim Watkins, Engineering & Analysis Manager
John Houser, Senior Council Analyst
S:\share\geye\misc\diesal\hat april 14

PRICE SHEET FOR EASTERN LOCATION TO BE FILLED IN BY PROPOSERS

a. Indicate index to be used for base cost. Portland OPIS Monday Average

b. Describe all cost components: i.e. base cost + freight cost + taxes (except excise) + markup + other (please specify)

OPIS Ave + freight (.048) + Taxes (.0069)
+ overhead / mark-up (.0145)

c. Eastern Fueling Location Price Sheet (Please attach backup)

MONTH 1994	FUEL USED**	AVERAGE PRICE/GAL.	TOTAL MONTHLY COST	
January	99,310	.5988	~~59,464.84~~	59,466.83
February	97,363	~~.6611~~ .6702	~~64,366.68~~	65,252.68
March	110,567	.6317	69,839.65	69,845.17
April	119,482	.6137	73,320.13	73,326.10
May	125,581	.6006	75,421.44	75,423.95
June	124,374	.5908	73,477.05	73,480.16
July	117,369	.5838	68,520.02	68,520.02
August	116,390	.6019	70,059.80	70,055.14
September	101,256	.6543	66,249.27	66,251.80
October	110,880	.6908	76,595.90	76,595.90
November	111,636	.6835	76,303.21	76,303.21
December	106,126	.6191	65,699.95	65,702.61
	1,340,334		839,317.93	TOTAL COST

840,223.57
revised

** Assume that for the Eastern location, that for the months of December through February, that 30% of each gallon will consist of #1 diesel to achieve "non-gel" operation

HATTENBAUER

Devin Oil/METRO Bid

Attachment A

PRICE SHEET FOR EASTERN LOCATION TO BE FILLED IN BY PROPOSERS

a. Indicate index to be used for base cost. Chevron USA Rack Price: Purchased at Willbridge/Umatilla/Pasco Terminals

b. Describe all cost components: i.e. base cost + freight cost + taxes (except excise) + markup + other (please specify)

Chevron Rack + Freight Willbridge .05 / Pasco .03 / Umatilla .02 + Superfund .004 (1994) + Margin .015

for 1995 .002

Superfund reduction will reduce total bid

c. Eastern Fueling Location Price Sheet (Please attach backup)

MONTH 1994	FUEL USED**	AVERAGE PRICE/GAL.	TOTAL MONTHLY COST	
January	99,310	.598	59,387.38	
February	97,363	.631	61,436.05	
March	110,567	.618	68,330.41	
April	119,482	.609	72,764.54	
May	125,581	.602	75,599.76	
June	124,374	.582	72,385.67	
July	117,369	~~.585~~ .583	68,660.87	68,426.13
August	116,390	~~.608~~ .606	70,765.12	70,532.34
September	101,256	~~.646~~ .644	65,411.38	65,208.86
October	110,880	~~.692~~ .690	76,728.96	76,507.20
November	111,636	~~.688~~ .686	76,805.57	76,582.30
December	106,126	~~.609~~ .607	64,630.73	64,418.48
	1,340,334		832,906.44	TOTAL COST 831,579.12 revised

** Assume that for the Eastern location, that for the months of December through February, that 30% of each gallon will consist of #1 diesel to achieve "non-gel" operation

Note: Winter blend January through February 16, 1994 was 50% due to colder than usual winter. if 30% cost will decrease

Winter blend December, 1994 - 30%