

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION)
FROM COMPETITIVE BIDDING REQUIREMENTS)
AND AUTHORIZING ISSUANCE OF RFP #01R-52-REM)
FOR THE OPERATION OF THE METRO SOUTH AND/OR)
THE METRO CENTRAL TRANSFER STATIONS)

RESOLUTION NO. 01-3126

Introduced by Mike Burton,
Executive Officer

WHEREAS, Metro is responsible for advancing the cost-effective recovery of materials from solid waste generated within the region and for ensuring the proper disposal of the remaining solid waste; and

WHEREAS, Metro owns the Metro Central and Metro South transfer stations in partial fulfillment of these responsibilities; and

WHEREAS, It is Metro's policy to operate the transfer stations through the use of private firms; and

WHEREAS, The current operations contract expires September 30, 2002, at which time a replacement contract(s) must be in place; and

WHEREAS, As described in the accompanying staff report and attached findings, the proposed request for proposals attached hereto as Exhibit "A" is appropriate for obtaining such a replacement contract(s); and

WHEREAS, Metro Code Section 2.04.054 provides that all Metro public contracts shall be based upon competitive bid with the exception that specific contracts may be exempted by resolution of the Metro Contract Review Board, subject to the requirements of ORS 279.015, including certain findings; and

WHEREAS, for the justifications set forth in the attached Exhibit "B", the Metro Contract Review Board finds that exempting the award of a contract, resulting from the request for proposals for the operation of the Metro South and/or Metro Central transfer stations, from the competitive bidding requirements of ORS 279.015 and Metro Code Section 2.04.052 is unlikely to encourage

favoritism in the award of such contract or substantially diminish competition for such contract, and result in substantial cost savings to Metro; now, therefore,

BE IT RESOLVED:

1. That the Metro Contract Review Board adopts as its findings the justifications, information and reasoning set forth in Exhibit "B" and incorporated by reference into this Resolution as if set forth in full; and
2. That based upon such findings, the Metro Contract Review Board exempts from competitive bidding requirements the contract to be solicited through the attached Request for Proposals; and
3. That the Metro Council authorizes issuance of RFP # ___ - REM, attached as Exhibit "A".

ADOPTED by the Metro Council this _____ day of _____, 2001.

WITHDRAWN

David Bragdon, Presiding Officer

APPROVED AS TO FORM:

Daniel B. Cooper, General Counsel

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EXHIBIT "A"

**Request for Proposals for the
Operation of the Metro South and/or
Metro Central Transfer Stations**

RFP #01R-52-REM

Draft September 2001

**Metro
Regional Environmental Management
600 NE Grand Avenue
Portland, OR 97232
503-797-1650**

EXHIBIT "B"

FINDINGS SUPPORTING AN EXEMPTION FROM THE COMPETITIVE BIDDING PROCESS FOR A REQUEST FOR PROPOSALS FOR THE OPERATION OF THE METRO SOUTH AND/OR METRO CENTRAL TRANSFER STATIONS

1. BACKGROUND

Metro owns the Metro South and Central Transfer Stations, which receive solid waste and certain source separated materials from the public and commercial haulers. The stations have traditionally been operated by private contractors that are responsible for receiving the materials, recovering recyclables, and loading the remaining materials into transfer trailers for disposal.

The current contract to operate Metro's transfer stations expires on September 30, 2002. Metro will award a replacement contract(s) through a request for proposals process. This process requires the adoption of the following findings by the Metro Contract Review Board.

2. FINDINGS

2.1. **Findings supporting exemption from competitive bid process regarding favoritism and competition**

The Metro Contract Review Board finds that exempting operation of Metro transfer stations from competitive bidding requirements is unlikely to encourage favoritism in the award of a contract or to substantially diminish competition for such a contract. This finding is supported by the following:

- 2.1.1. Solicitation Advertisement: Pursuant to ORS 279.025, the solicitation will be advertised as appropriate in regional publications. In addition, solicitation documents will be available both through Metro's website page that highlights contracting opportunities, as well as at regional plan and procurement centers. Additionally, regional and national firms providing such services will be contacted directly by staff. Accordingly, this solicitation process is designed to encourage competition and to discourage favoritism.
- 2.1.2. Full Disclosure: To avoid favoritism and ensure full disclosure of all project requirements, the RFP solicitation package will include:
 - A detailed description of the project
 - Performance specifications
 - Contractual terms and conditions
 - Selection process description
 - Evaluation criteria
 - Complaint process and remedies
- 2.1.3. Selection Process: To avoid favoritism the selection process will include the following elements-

- 2.1.3.1. A pre-proposal period to ask questions, request clarifications and suggest changes to the RFP or solicitation process generally.
- 2.1.3.2. The evaluation process will include the following steps:
 - Proposals will be evaluated for completeness and compliance with the requirements listed in the RFP
 - References regarding experience, qualifications and operating history will be investigated and evaluated
 - The information regarding other aspects of the proposal such as technical characteristics, product support and cost will be discussed and evaluated
 - Firms submitting proposals considered complete and responsive will be interviewed regarding their proposal
 - Proposals will then be scored by the voting members of the selection committee
- 2.1.3.3. Metro will then enter into negotiations with the highest ranked firm (or combination of firms) to attempt to negotiate a contract. If negotiations are unsuccessful, negotiations will be conducted with the next highest ranked firm.
- 2.1.3.4. Once a contract has been negotiated, competing firms will be notified and given an opportunity to appeal award in accordance with the provisions of the Metro Code.

2.1.4. Competition: Metro staff is familiar with the solid waste industry and private providers that might be interested in providing these services. The exemption from competitive bidding will not diminish competition because all private providers known to have expressed an interest in the project will be directly contacted by staff.

2.2. Findings supporting exemption from the competitive bid process regarding cost savings

The Metro Contract Review Board finds that awarding the contracts for the operation of Metro's transfer stations pursuant to an exemption from competitive bidding requirements will result in substantial cost savings to Metro. The finding is supported by the following:

2.2.1. Protection of Metro Assets: Exemption from the competitive bid requirements permits Metro to solicit proposals that maximize the protection of over \$20 million of Metro's assets through proper operation and maintenance of the transfer facilities and associated equipment. Proposed operation and maintenance procedures as well as the experience of proposers is best evaluated through the proposal process and will result in substantial savings in maintenance and repair costs both short and long term. In addition, proper operation of the facility will minimize the financial risks to Metro through expensive cleanups of hazardous materials and possible facility closures occurring as a result of poor operational practices.

2.2.2. Waste Reduction Savings: Exemption from the competitive bid requirements permits Metro to solicit both the cost and level of material recovery proposers are willing to commit to. This enables Metro to pick the most cost-effective combination of achieving its goal of increased recovery- both between proposers and other potential Metro waste reduction programs. This will result in substantial savings in expenditures for achieving Metro's waste reduction goals.

2.3. Additional information justifying exemption from competitive bidding requirements

2.3.1. It is a policy of Metro to direct the use of alternative contracting and purchasing practices that are consistent with the public policy of encouraging competition. Exemption from the competitive bid requirements permits Metro to encourage competition allowing smaller firms to compete based on alternative methods of operation advantageous to Metro rather than simply the economic strength of large national firms.

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**RESOLUTION 01-3126
EXHIBIT "B"**

**FINDINGS SUPPORTING AN EXEMPTION FROM THE
COMPETITIVE BIDDING PROCESS FOR A REQUEST FOR PROPOSALS
FOR THE OPERATION OF THE METRO SOUTH AND/OR METRO CENTRAL
TRANSFER STATIONS**

1. BACKGROUND

Metro owns the Metro South and Central Transfer Stations, which receive solid waste and certain source separated materials from the public and commercial haulers. The stations have traditionally been operated by private contractors that are responsible for receiving the materials, recovering recyclables, and loading the remaining materials into transfer trailers for disposal.

The current contract to operate Metro's transfer stations expires on September 30, 2002. Metro will award a replacement contract(s) through a request for proposals process. This process requires the adoption of the following findings by the Metro Contract Review Board.

2. FINDINGS

2.1. Findings supporting exemption from competitive bid process regarding discouraging favoritism

The Metro Contract Review Board finds that exempting the contract(s) for operation of Metro transfer stations from competitive bidding requirements is unlikely to encourage favoritism in the award of a contract(s). This finding is supported by the following:

- 2.1.1. Opportunity to Comment on Draft RFP Documents: Draft RFP documents were made available to potential proposers and other interested parties, and they were provided with an opportunity to comment on the draft RFP documents. Announcements regarding this opportunity to comment were made at public meetings of the Metro Solid Waste and Recycling Committee and the Metro Solid Waste Advisory Committee. Interested parties have also been provided with an opportunity to comment at public hearings of the Metro Solid Waste and Recycling Committee and the Metro Contract Review Board convened to authorize the release of this RFP.
- 2.1.2. Solicitation Advertisement: Pursuant to ORS 279.025, the solicitation will be advertised as appropriate in regional publications. In addition, solicitation documents will be available both through Metro's website page that highlights contracting opportunities, as well as at regional plan and procurement centers. The release will also be announced publicly at meetings of the Metro Solid Waste Advisory Committee, the Metro Solid Waste and Recycling

Committee, and the Metro Contract Review Board. Additionally, regional and national firms providing such services will be contacted directly by staff. Accordingly, this solicitation process is designed to discourage favoritism.

2.1.3. Full Disclosure: To avoid favoritism and ensure full disclosure of all project requirements, the RFP solicitation package will include:

- A detailed description of the project
- Performance specifications
- Contractual terms and conditions
- Selection process description
- Evaluation criteria
- Complaint process and remedies

2.1.4. Selection Process: To avoid favoritism the selection process will include the following elements:

2.1.4.1. A pre-proposal review period for potential proposers to ask questions, request clarifications and suggest changes to the RFP or solicitation process generally.

2.1.4.2. The evaluation process will include the following steps:

- Proposals will be evaluated for completeness and compliance with the requirements listed in the RFP;
- References regarding experience, qualifications and operating history will be investigated and evaluated;
- The information regarding other aspects of the proposal such as technical characteristics, product support and cost will be discussed and evaluated;
- Firms submitting proposals considered complete and responsive will be interviewed regarding their proposal; and
- Proposals will be scored by the voting members of the selection committee using predetermined criteria stated in the RFP.

2.1.4.3. Metro will then enter into negotiations with the highest ranked firm (or combination of firms) to attempt to negotiate a contract(s). If negotiations are unsuccessful, negotiations will be conducted with the next highest ranked firm.

2.1.4.4. Once a contract has been negotiated, competing firms will be notified and given an opportunity to appeal the award(s) in accordance with the provisions of the Metro Code.

2.2. Findings supporting exemption from competitive bid process regarding fostering competition

The Metro Contract Review Board finds that exempting the contract(s) for operation of Metro transfer stations from competitive bidding requirements is unlikely to substantially diminish competition for such a contract(s). To the contrary, this RFP is likely to encourage competition among sufficient number of suppliers that will offer a wide spectrum of products and services representing a broad marketplace. This finding is supported by the following:

- 2.2.1. Preparation of RFP Documents: The RFP has been written in a simple, easy to read format given the complexity of the task for which proposals are being requested. As described above in section 2.1.1 of these findings, potential proposers have been provided with multiple opportunities to review and provide comments on this RFP prior to its final release. In addition, proposers will have an opportunity to ask clarifying questions after this RFP is released. All of these steps, in combination, will make this process fair and unbiased to all potential proposers, such that parties are not likely to be discouraged from submitting proposals due to a misunderstanding of the RFP documents.
- 2.2.2. Solicitation Advertisement: As described in section 2.1.2 of these findings, the solicitation will be advertised in regional publications, via Metro's internet website, through direct contact with potential proposers, and with announcements at several public meetings. Thus, this RFP will be advertised widely to encourage the greatest number of competitive proposals.
- 2.2.3. RFP Design--Allowing Combinations of Proposals: This RFP permits proposals to operate one or both transfer stations. This will encourage competition because smaller companies that may not have the resources to operate both transfer stations, and that may have more innovative or specialized approaches, will be provided the opportunity to submit a proposal to operate a single transfer station. Thus, a firm may choose to propose only on the one station that best fits its strengths. During the last procurement a small local firm chose to propose on MSS only, and ended up in a combination with a large national firm as the second-highest ranked combination. It is unlikely this firm would have proposed if the RFP had required proposals to operate both stations.

2.3. Findings supporting exemption from the competitive bid process regarding cost savings

The Metro Contract Review Board finds that exempting the procurement of the contract(s) for the operation of Metro's transfer stations from competitive bidding requirements will result in substantial cost savings to Metro. This finding is based on consideration of the type of contract, its cost, the amount of the contract, the number of available proposers, and other appropriate factors as follows:

- 2.3.1. Protection of Metro Assets: Exemption from the competitive bid requirements permits Metro to solicit proposals that maximize the protection

of over \$20 million of Metro's assets through proper operation and maintenance of the transfer facilities and associated equipment. Proposed operation and maintenance procedures as well as the experience of proposers is best evaluated through the proposal process and will result in substantial savings in maintenance and repair costs both short and long term. In addition, proper operation of the facility will minimize the financial risks to Metro through expensive cleanups of hazardous materials and possible facility closures occurring as a result of poor operational practices.

2.3.2. Waste Reduction Savings: Exemption from the competitive bid requirements permits Metro to solicit both the cost and level of material recovery to which proposers are willing to commit. This enables Metro to pick the most cost-effective combination of achieving its goal of increased recovery—both between proposers and other potential Metro waste reduction programs. This will result in substantial savings in expenditures for achieving Metro's waste reduction goals.

2.3.3. Savings Due to Increased Competition: As described in section 2.2, above, this RFP process will encourage greater competition, which should result in substantial cost savings to Metro to operate the transfer stations while achieving its goals and purposes.

2.4. Additional factors regarding exemption from competitive bidding requirements

The operation of Metro's transfer stations represents a unique project in which special expertise is required to perform a technically complex operation. It is complex and is subject to multiple and conflicting needs of public and commercial customers who use the station as well as integration with the regional solid waste system. Metro must balance the cost of operating the transfer station with achievement of Metro's waste recycling and waste reduction goals. These conflicting needs are best balanced by examining both quantitative and qualitative responses to the RFP, and are not easily measured only in pricing mechanisms.

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**EXECUTIVE SUMMARY
RESOLUTION 01-3126**

**TO AUTHORIZE THE RELEASE OF A REQUEST FOR PROPOSALS FOR TRANSFER
STATION OPERATIONS SERVICES**

PROPOSED ACTION

- Adopt Resolution No. 01-3126 to exempt the procurement of transfer station operations services for Metro's two transfer stations from the competitive bid requirements of the Metro Code and state law, and to authorize the release of a request for proposals to obtain such services.

WHY NECESSARY

- The current contract to operate Metro's transfer stations expires September 30, 2002, and a replacement contract or contracts must be mobilized and in place by then. Approval of the resolution will initiate the procurement process to obtain such replacement contracts.
- Due to Metro's desire to maximize multiple goals and the complexity of the project, a request for proposal process is recommended. This requires an exemption from the competitive bid process.

ISSUES/CONCERNS

- Proposals will be accepted to operate one or both stations. Metro will evaluate resulting combinations. In the previous procurement, 16 combinations were ranked.
- Three evaluation criteria will be used to rank proposals- cost (50%), material recovery approach (25%), and operation and maintenance plan and procedures (25%). These criteria and allocation of points are recommended because they balance the multiple goals Metro wishes to emphasize, and because levels of performance for the latter two goals will now be guaranteed. The previous RFP for this project had cost (65%), MR (20), and O&M (15).
- The RFP includes "put or pay" levels for both waste received and the amount of material recovered. The level for waste has been lowered and the amount of material that must be recovered increased from the last procurement. This combination is needed to comply with the fixed payment requirements of the IRS for the bonds used to construct the facility.
- The resulting contract will be performance-based. Failure to achieve specific levels of performance, such as recovery guarantees, results in disincentives. Exceeding the levels will result in incentives.
- Metro has committed to partner with the City of Portland in the recovery of commercial organics through the use of Metro Central Station. The City has not completed its selection process so it is unclear exactly how the facility will be used. The requirements of the RFP may therefore have to be modified at a later date.

BUDGET/FINANCIAL IMPACTS

- There will be no impact on the current budget. The FY 2002-03 budget may be impacted depending on the cost associated with the replacement contract(s).

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 01-3126 FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION FROM COMPETITIVE BIDDING REQUIREMENTS AND AUTHORIZING ISSUANCE OF RFP #01R-52-REM FOR THE OPERATION OF THE METRO SOUTH AND/OR METRO CENTRAL TRANSFER STATIONS

Date: November 1, 2001

Presented by: Terry Petersen
Chuck Geyer

PROPOSED ACTION

Adopt Resolution No. 01-3126 to exempt the procurement of transfer station operations services for Metro's two transfer stations from the competitive bid requirements of the Metro Code and state law, and to authorize the release of a request for proposals to obtain such services.

EXISTING LAW

Metro Code Section 2.04.054(c) authorizes, where appropriate and subject to the requirements of ORS 279.015, the use of alternative contracting and purchasing practices that take account of market realities and modern innovative contracting and purchasing methods which are consistent with the public policy of encouraging competition.

BACKGROUND

Metro owns the Metro South and Central Transfer Stations. The Metro South Station (MSS) opened in 1983 and initially transferred waste to the St. Johns Landfill until its closure in 1991. The Metro Central Station (MCS) opened in 1991. The stations have traditionally been operated by private contractors that are responsible for receiving the materials, recovering recyclables, and loading the remaining materials into transfer trailers for disposal at the Columbia Ridge Landfill. In FY 2000-01 the stations received approximately 640,000 tons of solid waste and certain source separated materials from the public and commercial haulers.

The current contract to operate Metro's transfer stations began on October 1, 1997, and expires on September 30, 2002. Since the spring of this year, staff has been researching approaches to be incorporated into a replacement contract. The research has included focus groups with the various types of commercial haulers, surveys of the public customers of transfer stations, interviews with the current contractor and a review of past surveys of transfer station customers. An independent economist was hired to provide comparison data on other jurisdictions' transfer operations. Jurisdictions with similar types of operations were interviewed. An independent engineering firm familiar with the solid waste field was hired to review draft documents and provide advice.

The results of this research have been incorporated into the proposed RFP.

REASONS FOR USE OF A REQUEST FOR PROPOSALS PROCESS

The Regional Environmental Management Department (REM) is recommending use of a request for proposals process (specifically RFP#01R-52-REM attached to the resolution as Exhibit "A") as the most appropriate method to accomplish the multiple goals of the procurement for a replacement contractor. These goals include efficient and safe operations, a maintenance program that ensures continuous operations while protecting Metro's assets, and an innovative and effective material recovery program- all in a cost-effective manner.

Achieving these multiple goals requires that firms be given the flexibility to propose creative operational approaches, and for Metro to utilize multiple criteria to evaluate these approaches. A bid process does not allow for such flexibility.

The result of the procurement should be a performance-based contract in which enforceable goals are achieved through the use of incentives and disincentives.

Detailed findings to exempt the procurement from the competitive bid process are attached as Exhibit "B" to the resolution.

SUMMARY OF RFP #01R-52-REM

The major features of the RFP are:

- Proposals will be accepted to operate one of the stations or both;
- At least 50% of the payments will be guaranteed to the contractor;
- The resulting contract(s) will be for 5 years;
- Contractor must guarantee a monthly recovery rate;
- A bonus payment for recovery above the guarantee is available;
- Three evaluation criteria: Cost, Operations & Maintenance, and Material Recovery.

These features are discussed in more detail below.

Combinations of Proposals

Firms may propose to operate Metro South (MSS), Metro Central (MCS), or both transfer stations. Proposals for MSS only will be paired with proposals for MCS only and those combinations will be evaluated against proposals to operate both stations. These are referred to as options #1 (MSS), #2 (MCS) and #3 (both).

Proposals will be solicited in this fashion in order to maximize competition. Competition is encouraged because the two stations are quite different. Firms may choose to propose only on the one station that fits their strengths. During the last procurement a small local firm chose to propose on MSS only, and ended up in a combination with a large national firm as the second-highest ranked combination. It is unlikely this firm would have proposed if the RFP had required proposers to operate both stations.

The approach also promotes competition in that the regional and national firms submitting proposals have chosen in the past to propose on all three options. Their proposals for options #1 and #2 are then paired with others to create multiple combinations. During the last procurement, while only four firms submitted proposals, sixteen combinations were evaluated.

Fifty-Percent Fixed Payment Guarantee / Annual “Put-or Pay”

One of the financial restrictions of this procurement is that lump sum (or fixed) payments guaranteed the contractor must make up at least half the total annual payments under the resulting contract. This is because the transfer stations were financed using tax-exempt bonds. Such financing presumes public ownership and operation and therefore tax liability is avoided. IRS rules consequently impose restrictions on the private operation of publicly owned facilities financed by this method. The restrictions vary depending on the length of the contract. The longer the contract, the more restrictions that are imposed on the amount of revenue the private operator can obtain through variable payments. Failure to abide by these restrictions can result in serious financial consequences to Metro.

A five-year contract length is proposed in this procurement. This contract length is considered the minimum length necessary for the contractor to amortize the equipment it is specified to provide. IRS rules require that at least half of the total annual payments must be fixed for this length contract. As a result, lump sum and variable price distinctions are made in the price schedule, with the lump sum payments (also referred to as “put-or-pay” amounts) set at levels so that they will make up at least half the total payments.

Lump sum payments will be made for fixed annual amounts of solid waste established at each facility as well as fixed annual amounts of recovery from the mixed waste (see Attachment No. 1 for these categories). Metro will make these annual payments in equal monthly installments. This annual approach differs from the current operations contract that has monthly put-or-pay tonnage amounts. By using an annual amount, Metro avoids a situation where a minimum monthly tonnage amount may not be received at one of the facilities, but the minimum payment still must be made. This is because the proposed annual put-or-pay amounts are set such that they will always be received at the facilities during the course of the year and are not affected by monthly variations.

To ensure that payment is made only if minimum tonnage is received, variable waste payments will not be made until the fixed annual (base) tons to date have been received. An example of this contractual provision is contained in Attachment No. 2 which shows how payments are made for the transfer of waste at MSS. As can be seen in the example, variable payments are not made (the “Metro Pays” column) until any deficit in the cumulative number of base tons (the put-or-pay level) for the year has been erased. While it is still possible to pay for the fixed annual amount without receiving the base tonnage, it is extremely unlikely. This is because the put-or-pay tonnage amount (204,000 tons for MSS) is so low (108,000 tons less for MSS than was received in the most recent fiscal year) that it should be received in every contract year. This technique is used for both fixed payments for waste and material recovery at each facilities.

The annual fixed payment levels in this procurement are set at 204,000 tons per year at MSS and 216,000 per year at MCS for mixed waste, and 7,800 tons per year for MSS and 10,200 tons per year for MCS for recovery. The existing put-or-pay for waste is currently 21,000 tons per month (or 252,000 tons/year) at each station. The minimum recovery rates are currently 1% of incoming tonnage for MSS and 3% for MCS¹.

Lump sum payments are made for both the transfer of waste and the recovery of materials to balance the multiple goals of the procurement. One goal that must be achieved is compliance with the IRS rules. Another goal is to make fixed payments only for waste that is actually received at the facilities. A third goal is to require the recovery of materials at the facilities.

To ensure compliance with IRS rules, the amount of required recovery at each facility was raised from the levels required in the current contract and for which a fixed payment is made. This fixed payment is combined with that for waste so that total fixed payments will always be at least half of total payments to the contractor.

The required recovery levels were established by reviewing historical annual recovery levels. Both facilities have been able to achieve the minimums contained in the RFP. MCS exceeded the levels by more than 50% of the base so achieving the minimums under even the most dire tonnage projections should not be a problem. The MSS recovery levels were achieved before the new public unloading area was opened. The addition of this 26,000 square feet of space should ensure attaining the minimums as well.

The annual put-or-pay waste tonnage levels for each facility were based on tonnage projections reflecting current policies. The same forecast is the basis for REM's proposed FY2002-03 budget and is published in the Department's SWIS report. The put-or-pay levels for waste were then established by applying the same ratio as used in the previous procurement on an annual basis. The result is a put or pay level that has a high probability of being attained annually.

As noted above, the purpose of the put-or-pay levels for both waste transfer and material recovery is to achieve compliance with IRS rules. A contractual safeguard is contained in the RFP to ensure this compliance. Metro will review quarterly the split of fixed versus variable payments. If the review indicates a violation of IRS rules, Metro reserves the right to withhold payments to achieve annual compliance with the rules as required, and then to enter into good faith negotiations to restructure the contract.

Contract Length

The initial term of the contract is for a period of five years (October 1, 2002 to September 30, 2007). Five years is considered the minimum length of time for a private contractor to reasonably amortize the equipment that must be purchased. The contract can be terminated unconditionally at the end of the third year of the five-year term, as required by IRS rules.

¹ The proposed annual recovery amounts are approximately 3% for MSS and 4% for MCS.

Contractor's Recovery Guarantee

A new performance-based feature of this procurement as compared to the 1997 solicitation process is that a monthly recovery rate will be guaranteed. For each facility, proposers must guarantee a recovery rate to be obtained each month as a percentage of total incoming materials. Recovered materials that qualify for the percentage includes both materials recovered from mixed waste, as well as source separated materials brought to the facilities for which a separate price is charged.

If the contractor fails to meet its guaranteed rate for the month, it must pay Metro a Recovery Credit for each ton that should have been recovered. The credit is equal to Metro's avoided cost for transport and disposal and is equal to the incentive payment made to the contractor for material recovered from mixed waste.

Bonus Recovery Credit

Another new performance-based feature of this procurement is a bonus payment for recovery above the guaranteed level. Each month, the contractor would be entitled to an additional per ton payment for each ton recovered in excess of its guarantee. The amount will be established during the proposal process and subsequent negotiations. The total amount of such payments would be capped during each fiscal year by the budget process. Staff is proposing \$150,000 for FY 2002-03. In addition to funds budgeted for such payments, any recovery credit payments due Metro for failure to achieve the guaranteed recovery level would be added to the bonus fund to give the contractor additional incentive to earn its money back by increasing recovery in subsequent months.

Staff believes that through the combination of the recovery guarantee and bonus credit features of the RFP, recovery can approach a level equivalent to 25% of incoming dry waste.

Evaluation Criteria

The same three evaluation criteria will be used in this procurement as in the last, but with a different allocation of points. The three criteria are cost, material recovery, and operations and maintenance. They are discussed below.

Cost

Cost will be calculated using five prices submitted for handling waste and source separated materials at MSS and six prices at MCS (organics is the additional item), as well as proposing a CPI adjustment. In addition, a number of payment items will be fixed by Metro. These items are contained on the price schedule for Options #3 (both stations), which is included as Attachment No. 1 to this staff report.

The main difference from the last procurement is the number of tonnage levels for handling mixed waste and the number of source separated categories, for which prices were solicited. Two tonnage categories are contained in the RFP for each station, as opposed to five in the last procurement. The number has been reduced mainly because the higher number of tonnage categories did not achieve their purpose of determining points where economies of scale can be achieved. Proposals received in the previous procurement did not contain

marked differences in the cost of handling waste at different tonnage categories above the put-or-pay level. Given the decline in tonnage projected for this contract as compared to the previous contract period (approximately 20%), staff determined that two tonnage categories would be adequate.

Only one source separated category (yard debris/wood) was included in the last contract. As can be seen on Attachment No. 1, source separated prices are being solicited in the current RFP for source separated roofing, wallboard and organics (at MCS only) as well as a per ton price for bonus recovery.

Fifty points are allocated to this criterion. It was allocated sixty-five points in the last procurement. The change reflects an increased emphasis on material recovery and operations and maintenance, and the explicit commitment proposers will be required to make in each of those areas. For material recovery, the commitment of the guaranteed recovery rate will be contractually binding. Likewise, the levels of staffing and equipment proposed to operate and maintain the facility will also be binding on the successful proposer. This was not the case for the previous procurement.

Material Recovery

Twenty-five points are allocated to this criterion - an increase of five points from the previous procurement. The main difference in the criterion involves how the recovery guarantee will be applied. A formula, similar to that used in allocating cost criterion points, will be used to allocate twenty (ten for each facility) of the twenty-five available for each combination. The formula allocates points between proposers by comparing their proposed guarantees with the highest guarantee getting all 20 points and someone proposing half of highest getting 10. No guarantee was previously required.

The remaining five points will be awarded based on evaluation of the feasibility of the proposal to exceed its guarantee, its accommodation of reuse strategies, experience with the proposed recovery methods and the cost to achieve bonus levels of recovery.

The use of the recovery guarantee to allocate the majority of points for this criterion provides certainty in achieving the recovery goals of the procurement. This certainty, in combination with the cost criterion, establishes a cost-effectiveness measure for material recovery not seen in the previous procurement. This allows an increase in points for the criterion while balancing Metro's economic interests and recovery goals.

Operations and Maintenance

This criterion examines how well the operation and maintenance approaches proposed satisfy the RFP requirements and achieve Metro's goals. Goals for operation include a healthy and safe work environment for customers and employees, as well as efficient operation and customer satisfaction. Metro's goals for maintenance consist of ensuring continuous operation and the longevity of Metro-owned equipment and facilities.

Points will be allocated based on how well the proposed approaches will accomplish Metro's goals and satisfy the requirements of the RFP. Ten of the twenty-five points will be available for each facility, and five will be allocated based on the combination of options evaluated.

Specific aspects of each proposal that will be used to allocate points include:

- Type and proposed levels of personnel and equipment for station operations;
- How the operations plan maximizes operational efficiency and effectiveness;
- The quality of maintenance plans, schedules and tracking systems;
- Experience, number and type of proposed maintenance personnel;
- Safety and training programs and procedures, and experience of dedicated personnel;
- The implementation of sustainable practices in operation and maintenance practices.

The number of points allocated for this criterion has increased from 15 in the last procurement to 25. Two factors have influenced the increased allocation. First, the realization that the quality of operations, maintenance and safety practices translates into costs or savings for Metro and its customers. In addition, the procurement has been changed to bind the successful proposer to the detailed plans it submits in its proposal. This increased certainty justifies the increase in points for the criteria.

Other New Features

Several additional changes not mentioned above have been made to the requirements of the RFP as compared to the current contract.

- The performance-based system to maximize payloads for transport has been changed to increase the average payload used to trigger bonus payments and by the addition of a disincentive provision if minimum average payloads are not achieved.
- The safety and training requirements have been substantially revised. Contractor's responsibilities have been increased and clarified. Metro also has increased its responsibilities for monitoring the contractor and for providing training to the contractor's employees.
- The RFP anticipates that Metro Central will act as a reload point for source separated organics collected through a City of Portland commercial organics program. The MCS operator will be required to manage the loads after delivery and reload them into the organics processor's vehicles.
- Annual adjustments to contract prices are limited to 75% of the CPI.

Vendor Review

In September 2001, staff released to twelve prospective vendors a draft copy of the RFP for review and comment. Attachment No. 3 contains their comments and staff responses, including a description of how the RFP was modified as a result of those comments.

PROJECT SCHEDULE

Council Approval – November or December 2001

Release to Vendors – December 2001

Proposals Due - January 2002

Evaluation of Proposals – February 2002

Council Hearings on Award/Appeals - March 2002

Contractor Mobilizes - April through September 2002

New Contract Begins - October 1, 2002

The six-month mobilization period is needed to obtain new rolling stock for performance of the work. In particular, the track loader that will be used in the pit at MSS requires this lead-time and a new one is required for this contract. If award cannot be made by April 2002, staff may recommend extending the existing contract.

BUDGET IMPACTS

There will be no impact on the current budget. The FY 2002-03 budget may be impacted depending on the cost associated with the replacement contract(s).

OUTSTANDING QUESTIONS AND POLICY ISSUES

The City of Portland has not completed its selection process or negotiations for an organics processor. Until that process is complete, Metro will not know what specifically to include in the RFP.

Operation of the new public unloading building at MSS is still evolving. It is unknown what material recovery impact the addition will have or the best way to utilize the facility in conjunction with the main transfer building. This will complicate the evaluation of proposals and increase the risk to proposers regarding the recovery guarantee.

Long-term tonnage cap issues for private facilities are not anticipated to be resolved prior to release of the RFP. Changes in the caps would affect the tonnage projections for this procurement.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 01-3126.

RESOLUTION 01-3126
ATTACHMENT NO. 1

Price Schedule
for
Option #3 - Metro South and Metro Central Station Operation

METRO SOUTH ONLY ITEMS

- | | |
|--|------------------|
| 1. Fixed Annual Payment for Waste Transfer | \$ _____. |
| 2. Per Ton Price for each ton in excess of 17,000 tons per Month | \$ _____. |
| 3. Per Ton Price for each ton of source separated yard debris/wood | \$ _____. |
| 4. Per Ton Price for each ton of source separated clean drywall | \$ _____. |
| 5. Per Ton Price for each ton of source separated asphalt roofing Material | \$ _____. |
| 6. Contractor's Recovery Guarantee | _____ % |
| 7. Fixed Annual Payment for Waste Recovery | <u>\$261,300</u> |

METRO CENTRAL ONLY ITEMS

- | | |
|--|------------------|
| 1. Fixed Annual Payment for Waste Transfer | \$ _____. |
| 2. Per Ton Price for each ton in excess of 18,000 tons per Month | \$ _____. |
| 3. Per Ton Price for each ton of source separated yard debris/wood | \$ _____. |
| 4. Per Ton Price for each ton of source separated clean dry wall | \$ _____. |
| 5. Per Ton Price for each ton of source separated asphalt roofing Material | \$ _____. |
| 6. Per Ton Price for each ton of source separated organics | \$ _____. |
| 7. Contractor's Recovery Guarantee | _____ % |
| 8. Fixed Annual Payment for Waste Recovery | <u>\$341,700</u> |

Items for Both Stations

- | | |
|---|-----------|
| 1. Per Ton Bonus Recovery Credit | \$ _____. |
| 2. Percentage of CPI proposed (cannot exceed 75%) | _____ % |

Other Payments

- | | |
|--|---------|
| A. Per Ton Compaction Bonus | \$7.62 |
| B. Per Ton Compaction Deduction | \$15.24 |
| C. Per Load Overload Adjustment | \$18.62 |
| D. Per Ton Recovery Credit/(Disposal Cost Reimbursement) | \$33.50 |

Variable Tonnage Example for MSS

Monthly Base Tons 17,000	Monthly tons processed	Cummulative Base Cumulative Tons	Cummulative # of tons (base x months) above (base x months)	"Metro Pays" Variable Tons
	1 Oct	17,200	17,000	200
	2 Nov	17,100	34,000	300
	3 Dec	16,800	51,000	100
	4 Jan	16,700	68,000	-200
	5 Feb	15,800	83,600	-1,400
	6 Mar	16,700	100,300	-1,700
	7 Apr	17,100	117,400	-1,600
	8 May	17,300	134,700	-1,300
	9 Jun	18,100	152,800	-200
	10 Jul	19,900	172,700	2,700
	11 Aug	20,400	193,100	6,100
	12 Sep	19,300	212,400	8,400
		<u>212,400</u>		<u>8,400</u>

*17,000 tons is one-twelfth the annual put or pay tonnage amount for MSS of 204,000 tons and Contractor receives one-twelfth of its fixed annual payment (from Price Schedule) per month, regardless of the amount of tons delivered.

* In addition, Contractor receives a per ton payment (from Price Schedule) for the number of variable tons as calculated above.

ATTACHMENT NO. 3
RESOLUTION NO. 01-3126

NOTE: Below are questions or recommended modification from potential proposers as a result of vendor review of draft RFP#01R-52-REM. These were solicited as part of the RFP process and are followed by Metro's response. For purposes of this attachment, vendor questions or recommendations may have been paraphrased or condensed for purposes of clarity. Original copies of correspondence are available upon request. Complete copies have been provided to the Metro Council and the Executive Officer.

K. B. Recycling Inc.

1. How can Metro assure small, Oregon-based businesses (including minority owned businesses) that they would not lose points during the evaluation process to the large, national companies which currently operate stations similar to Metro's all over the United States. Or, In Metro's opinion is there no Oregon-based company that can successfully address the above request and/or operate the Metro transfer stations?

Response: As stated in the evaluation section of the RFP, Metro will evaluate proposals using the proposers' experience, both of the proposed personnel and the approaches that are to be used in the performance of the work. It is not required that a proposer has experience at specific Metro stations.

2. Transfer Station Equipment: "...It is the responsibility of the Contractor to supply additional equipment or make substitutions as appropriate, at no additional cost, to accomplish the work as described in the Contract in an efficient manner"
- Does Metro wish for the successful proposer to own a used, substitute track-loader available for use at either station?

Response: Not necessarily. This is a performance requirement not a specific equipment requirement.

- Does Metro intend to purchase any of the current contractors equipment; and, if so, will Metro have this equipment available for purchase by the successful respondent?

Response: No.

- Also, how can Metro assure small, Oregon-based businesses that the current contractor does not hold an advantage, over respondents, by owning all the equipment currently being used at Metro stations?

Response: Metro will evaluate all proposals equally in accordance with the criteria and procedures contained in the RFP.

3. **Evaluation Process:** "An evaluation team will conduct the evaluation process."

- How can Metro assure small, Oregon-based businesses that they will be evaluated on an equal basis with the current contractor?

Response: Metro will evaluate all proposals equally in accordance with the criteria and procedures contained in the RFP.

- Also, in Metro's opinion, does the current contractor hold an advantage over all others in the evaluation process because they currently operate the Metro transfer stations?

Response: No. Metro will evaluate all proposals equally in accordance with the criteria and procedures contained in the RFP.

4. **Evaluation Criteria:** Will Metro provide Oregon-based and minority-owned businesses with bonus evaluation points?

Response: No, Metro is prohibited by law from doing so.

Waste Management, Inc.

1. What changes to Metro's solid waste system do you expect to have an effect on Metro Central and/or Metro South Transfer Stations? Are there any policies currently being discussed that might have affect waste flows and volumes?

Response: The tonnage projections contained in the RFP were made based on current Metro policies.

2. Tonnage: It might be helpful to include tonnage levels and a description (and date) of Metro policy changes during the past contract term.

Response: Historical data is contained in the Appendix. Additional data and a legislative history are available upon request.

3. We did not notice a Bid Bond in the draft RFP. Will one be required in the final RFP?

Response: No.

4. What sort of working relationship do you anticipate between a food waste processor and Metro Central Station and the transfer station's operating contractor?

Response: A relationship similar to that of Metro's Waste Transport Services Contractor and the station operator.

- How will the handling process and pricing be managed? What role will Metro have in this relationship?

Response: The station operator will be responsible for handling the material in compliance with the specifications at the price stated in its proposal. Metro will have the role described in the contract, that is, ensuring compliance with the contract and resolving any disputes between the Contractor and the organics processor.

5. **Operations/Maintenance (page 5):** What is the legal load limit for trucks coming out of Metro Central and Metro South Station?

Response: Provided that the load is correctly distributed across its axles, a truck destined for the Disposal Site may weigh up to 32 tons.

6. **Cost (Page 5):** The RFP states that "the lump sum payments must make up at least half the total annual payments under the resulting contract." With a changing waste stream, how does Metro gauge this tonnage number each year?

Response: Metro has revised Article 12 of the General Conditions to provide a quarterly review of the status of the fixed versus variable payment split, and a process to ensure compliance with the IRS rules as well as an opportunity for good faith negotiations to revise contractual arrangements if necessary. Metro does not intend to change the Annual Base Transfer Level or the Annual Base Recovery Level unless absolutely necessary.

7. **Exceptions and Comments (page 7 and page 11):** Please explain the steps that would be taken in resolving exceptions to the RFP before a Proposal is rejected.

Response: Metro would consider the exception, develop its position, and relate it to the proposer.

8. **Options (page 8):** Please explain the matching process better. For example, what would happen if Proposer A submitted only Option #1 and all other Proposers submitted Option #3? What if Proposer A's Option #1 had the lowest price and most favorable rating?

Response: If no proposal for Option #2 was received, then a proposal for Option #1 would not be evaluated regardless of the price. It would not receive a rating.

9. **Sustainable Practices (page 10):** How will Metro evaluate a Proposer's commitment to Sustainable Practices? Specifically, what quantifiable characteristics will be used to evaluate for each of the bullets described in this section?

Response: Metro will evaluate this aspect of the proposals using factors like those contained in Item 5(B)(3)(f) of the RFP.

10. **Operation and Maintenance (page 10):** A sentence is included that states that "Metro will also utilize current and past operation and maintenance approaches used at its facilities in evaluating proposals." However, there are no parameters set around this statement. While it does seem appropriate to evaluate proposals on current operations and approaches, since companies and managers change, it does not seem appropriate to measure current qualifications on activities performed by staff five years ago. This statement should be modified to reflect a certain time period of measurement.

Response: Metro believes historical approaches to operating the facilities are relevant to its evaluation of proposals.

11. **Sustainable Practices (Page 11):** While we have heard about The Natural Step Program, we do not have any specifics regarding the nature of the program as it pertains to the operation of Metro's Transfer Stations. It would help to include more detailed information on The Natural Step Program in the RFP document.

Response: Details concerning the application of this concept are contained in the Specifications under section 9.4. Staff would be happy to provide additional background materials. Additional information is also available at the website: www.naturalstep.org.

12. **Price Schedule (Pages 3-5):** Will the numbers included on these pages be included in the final RFP (\$7.62, \$15.24, etc.)? What is their origination?

Response: Yes. The compaction bonus is an estimate of half of Metro's transport savings due to a one ton increase in payload, the compaction deduction is twice that amount, the overload adjustment is the amount contractually due the Waste Transport Services Contractor, and the recovery credit amount is Metro's estimate of the avoided cost to transport and dispose of a ton of waste.

13. **Material Recovery Questions:** The Draft RFP asks "How will the system respond to a changing waste stream?" Certainly, this is a difficult question to answer unless Metro provides more information on anticipated changes in the next 3-8 years. Do you anticipate providing additional information regarding Metro's plans for the next 3-8 years?

Response: Metro has deleted the provision that gave Metro the unilateral right to extend the contract an additional three years at the conclusion of the initial five year term. Metro plans to manage its transfer stations consistent with the Regional Solid Waste Management Plan, and will assess the need for modifications to the Metro Code or the Plan on an ongoing basis. The tonnage projections contained in the RFP reflect the anticipated waste tonnage based on the best information currently available, and the waste composition data contained in the RFP provides Metro's best information on the waste's makeup.

14. **Base Recovery Level (Page 3):** We are concerned about the Base Recovery Level being measured in tons rather than a percentage. On page 4 of the Project Summary, the Draft RFP states that it is "Metro's goal to recover material at a rate equivalent to at least 25% of incoming dry waste loads." Since all other forms of recovery measurement are evaluated on a percentage basis, it seems appropriate and consistent to measure the Base Recovery Level on a percentage basis, as well.

Response: The level is in tons because payment for that part of the work is fixed, so the corresponding number of recovered tons should also be fixed. Although it is Metro's goal to recover material at a rate equivalent to 25% of incoming dry loads, that is not a specific requirement of the RFP. Accordingly, in order to avoid confusion, reference to the 25% recovery rate has been deleted from the RFP (though still addressed in the accompanying staff report).

15. **"Load of Waste" (Page 5):** definition of the General Conditions. Add "to a Disposal Site" at the end of this sentence.

Response: Agreed.

METRO SOUTH STATION SPECIFICATIONS

16. **Commercial Materials Recovery (Page 8):** Please clarify the definition of Mixed Solid Waste versus Mixed Dry Waste and Putrescible Waste.

Response: They are not defined terms for purposes of this RFP. See definition of Acceptable Waste.

17. **Commercial Materials Recovery (Page 8):** Why are Oil and Anti-freeze included on the list of target materials when they are not acceptable Waste?

Response: Oil, anti-freeze and oil filters have been removed from the list.

BFI Waste Services of Portland

General Comments and Questions

1. The stated emphasis of the RFP is materials recovery, and the proposed terms go so far as to provide penalties for not reaching recovery goals. However, there is no provision in the RFP assuring the Contractor of the composition or amount of dry waste from which to recover material. Is Metro, in any way, going to provide such assurance?

Response: No. The most recent waste composition data will be available in the Appendix.

2. During the current contract period, Metro has substantially reduced the flow going to the Metro-owned transfer stations. Currently, Metro is going through another process that will lower tonnage going to its stations by another (approximately) 200,000 tons per year. Can Metro provide potential contractors with any assurance that transfer station volumes will not be further reduced during the term of the contract?

Response: No. See Item 3.0 of the Specifications.

3. What major changes does Metro anticipate (or is staff going to propose) for the Region's solid waste system during the term of this contract?

Response: Metro plans to manage its transfer stations consistent with the Regional Solid Waste Management Plan, and will assess the need for modifications to the Metro Code or the Plan on an ongoing basis. The tonnage projections contained in the RFP reflect the anticipated waste tonnage based on the best information currently available, and the waste composition data contained in the RFP provides Metro's best information on the waste's makeup.

4. Metro states that its goal is to recover 25% of incoming dry waste loads. Is that 25% system wide or 25% at the two Metro owned transfer stations? If the 25% goal applies to the two transfer stations, how will that be achieved if most loads rich in recoverable material are directed or diverted to a MRF or one of the local transfer stations?

Response: Although it is Metro's goal to recover material at a rate equivalent to 25% of incoming dry loads, that is not a specific requirement of the RFP. Accordingly, in order to avoid confusion, reference to the 25% recovery rate has been deleted from the RFP (though still addressed in the accompanying staff report).

5. Private MRF's may reject dry loads for being low or totally lacking in recovery value in order to meet their recovery requirements. Is the Contractor going to be compensated for handling these loads even though they contain no recyclable material? Will dry loads with no or very little recyclable material be included in the recovery calculations?

Response: Contractor will be compensated as specified in the contract documents (see Article 12 of the General Conditions). Recovery is calculated generally as a percentage of all incoming materials.

6. Source-separated material dropped off by the public often contaminated. Will Metro propose any compensation to the Contractor for handling this material?

Response: Contractor is compensated through the Recovery Credit payment for these materials.

7. Is it possible, under the terms of this proposal, for the successful bidder, if it controls several other disposal facilities, to manipulate the flow so that the Metro owned stations will be constantly operated at a level below the put or pay volumes?

Response: While hypothetically possible, it is not probable. The Annual Base Transfer Levels were set using a probabilistic model with extremely conservative weighted scenarios. The level is set 16% below the comparable level of the current contract.

8. If the contractor successfully develops a new market for materials recovery is Metro going to help the Contractor protect that market even though this may compete with other private sector processing facilities?

Response: No.

9. If Bay Two is taken over by an outside firm to do organics, what portion of Metro Central will be reserved for materials recovery?

Response: Metro will discuss this situation when it develops. The RFP currently contemplates a reload operation for organics.

10. There is no mention in the RFP about the amount of money Metro will budget for replacement and renewal of equipment. We recognize that budgeting is a Council function. However, should not the potential contractors have some indication of what the staff will recommend to the Council as the contract goes forward?

Response: Metro anticipates continued funding for its renewal and replacement account at approximately the same level as in the past. A copy of the proposed Capital Improvement Plan is contained in the Appendix to the final RFP and contains specific projects.

Draft Request for Proposals

11. Pages 4 and 5 provide that the Contractor must achieve both a monthly **Base Recovery Level** and the **Contractor's Recovery Guarantee**. Over what time period will these amounts be calculated? Will they be counted every month or averaged over six months or a year?

Response: Monthly, although Article 12 of the General Conditions does have a quarterly reconciliation process for the base recovery level.

12. Page 5 of the Draft RFP provides that while Metro will require payment from the Contractor for each ton not recovered but guaranteed in the Recovery Guarantee, Metro's payment to the Contractor for tons recovered and eligible for the Bonus Recovery Credit is not guaranteed but is "contingent on the availability of budgeted funds." This puts the Contractor at risk of investing resources into recovering tons above the guarantee (the most difficult and expensive tons to recover) with no assurance of payment.

Response: REM staff will recommend budgeting an equitable amount for payment as Bonus Recovery Credits each year. Recommended amounts will reflect staff's analysis of the cost-effectiveness of recovery at the stations versus other options. Moreover, any funds received by Metro when the contractor fails to meet its guarantee will be placed in the bonus fund and the contractor will have the opportunity to earn them back in later months of each fiscal year.

Agreement

13. Item # 5 provides that the term of the contract will be five years. However, Article 11F of the General Conditions provides that Metro may terminate the contract, at its sole discretion, after only three years and Article 31 of the General Conditions provides that Metro, again at its sole option, may extend the contract for three years beyond the original five years. Proposers are therefore being asked to make performance guarantees and price commitments without knowing whether the risks will be spread over 3 years or 8 years.

Response: The three year extension has been removed from the RFP.

Proposal/Contract Forms

14. Item 8 limits the proposer to proposing a CPI escalator of no more than 75%. This limit should be eliminated and proposers should be free to make their best offers based on an assessment of the risks and benefits of entering into the contract.

Response: Metro has considered this comment and has decided to retain its proposed language.

15. Under item 9, "Other Payments", the payment amounts should reference how they are calculated, for example, the Compaction Bonus should be "\$7.62 per ton" and the Overload Deduction should specify that it is "per load." Also, item A under #9 should state the Base Recovery Level - for South it is 750 tons per month and for Central it is 850 tons.

Response: Agreed.

General Conditions

16. Article 1, page 3: The definition of "Base Recovery Level" does not state whether that the 750/850 ton per month recovery figure is based on the "put or pay" quantities of 15,000/17,000 tons per month, although that appears to be the case if one divides the lump sum recovery payment for base recovery level by the \$33.50 per ton avoided cost figure. The definition of "Base Recovery Level" needs to be amended to account for the possibility that the "put or pay" tonnages of 15,000/17,000 per month declines. It is unfair to hold the Contractor to a 750 or 850 ton per month Base Recovery Level if the actual tonnage coming in the door is only 12,000 or 14,000 tons.

Response: Metro has made a number of changes to these items. The "put or pay" levels for recovery and waste transfer have been annualized so that monthly fluctuations cannot result in falling below put or pay thresholds as in the current contract. This annual base recovery level for MSS is 7,800 tons per year (equivalent to 650 tons/mo.), and the annual waste transfer level is 204,000 tons per year (equivalent to 17,000 tons/mo.). Staff believes the annual base recovery levels are attainable even under low probability tonnage scenarios. The annual base recovery level amount is computed at \$33.50 per ton.

17. Article 1, page 5: The definition of "Material Recovery Level" should be amended to clarify that it is computed by including in the total number of tons recovered not only the source separated material but also the base recovery tonnages.

Response: The current definition makes that clear.

18. Article 6, page 10: Independent Contractor, states that the Contractor will perform all work as an independent contractor and "have exclusive control of, and the exclusive right to control the details of

the services and work performed hereunder and all persons performing such work.” This Article appears to be in conflict with many provision of the RFP when Metro, for example, has the right to determine additional staffing levels, approve markets, approve of staffing plans, approve the supervisor of the material recovery operations, etc. Please provide a response to the apparent conflict.

Response: Metro has modified Article 6.

19. Article 10, pages 12 and 13: The Liquidated Damages section allows Metro "in Metro's sole opinion" to assess liquidated damages in the amount of \$6,000 per hour if the contractor "substantially impedes the normal operation of MSS or MCS."..."Substantially impedes ...shall mean the inability of the customers to unload waste within 1/2 hours of arriving at the facility or to load a trailer within 1/2 hours." Our experience has been that customers often wait longer than 30 minutes to unload when traffic volume is high. Will the Contractor be assessed Liquidated Damages in this case? Will Liquidated Damages be assessed when there is a 30-minute delay in loading a trailer due to major equipment failure? Or when the delay is caused by faulty Metro-owned equipment or a transport company's delay?

Response: Liquidated damages will only be assessed if there is a default by the Contractor.

20. Article 11, pages 13, 14 and 15: Item A4 will allow Metro to immediately terminate or suspend the contract without prior notice to the Contractor in the event of a default that continues beyond 72 hours. The current operating contract does not allow for immediate termination or suspension without notice unless a default extends beyond 10 days. Item C3 gives Metro the right to use all of Contractor's equipment that for a period of 120 days after Contractor ceases to provide services as a result of a default. This is an increase from the 90 days provided under the current operating contract. These changes from the current contract substantially favor Metro with no compensating provisions for the Contractor.

Response: Metro has considered this comment and has decided to retain its proposed language.

21. Under this RFP the Contractor will have no right to terminate the contract, even for circumstances beyond Contractor's control, and even if Metro is acting in violation of the Contractor's rights under the contract. The Article in the current contract that provided this remedy to the Contractor, Article 12, has been eliminated from the RFP. The provisions of Article 12 in the current contract should be added back in to the RFP General Conditions.

Response: Metro has considered this comment and has decided to retain its proposed language.

22. Article 12, page 16: The RFP limits payments to increasing at a rate no greater than 75% of inflation, starting in July 1, 2004, 21 months after the contract starts. This raises two points:

- a) There should be an adjustment after the first year of the contract and each year thereafter.
- b) The limitation of an increase to no more than 75% of the CPI, when combined with no adjustment for the first 21 months, will mean that at the end of the possible 8 year life of the contract, the payments to the Contractor will be nearly 14% less than if payments are tied to the real rate of inflation. Thus the proposer should have discretion as to what rate of inflation to include in a proposal.

The Percentage Price Adjustment should also include a separate provision to allow the Contractor to pass through utility rate increases above a certain percentage. As we know, the Public Utility Commission has already granted PGE (Enron) a rate increase in excess of 50% for commercial customers and very soon the City of Portland water and sewer rates are likely to increase drastically. Natural Gas rates are also increasing steeply.

Response: Metro has considered this comment and has decided to retain its proposed language.

23. Article 12, page 17: The Compaction Maximization Adjustment (a.k.a. "bonus" or "deduction") is calculated in the RFP on a base load of 29 tons. The current contract calls for a base load of 28 tons. This represents a significant reduction from the compensation provided under the current contract. Further, the 29 ton base load is an unrealistic, or impossible, goal to achieve if there is a malfunctioning densifier. A case in point is the old densifier at Central. Metro should change the figure back to 28 tons.

Response: Metro has considered this comment and has decided to retain its proposed language.

- Also, under the current contract, corrected overload are not calculated in the per load average. Will that continue under the new contract?

Response: Yes.

- Under the current contract there is no penalty for not reaching minimum weight levels. When combined with the higher base load, the impact of counting corrected loads will be significant for the Contractor.

How will Metro adjust the load averages when tonnage is diverted to the burner at Marion County since the trailers used to haul to that facility are limited to 24 tons? We suggest that Metro amend paragraph C. 1. "Base Tonnage" to read "(Number of loads of waste transported for disposal at the disposal site in the previous month)" since "disposal site" is defined as a landfill.

Response: Agreed.

24. Article 12, pages 17 and 18, Paragraph 2 under "Recovery and Bonus Recovery Credits" provides that Metro is only obligated to pay Bonus Recovery Credits until its budgeted funds run out. Toward the latter part of the Metro fiscal year the Contractor may be reluctant to spend the extra money and resources necessary to extract the last "hard" tons of recoverable materials without knowing that Metro will be able to pay the bonus. Paragraph 3, however, allows Metro to continue to deduct money from the Contractor if the Contractor fails to meet its recovery guarantee.

Response: Money deducted from contractor's payment for failure to reach its guarantee will be made available for the bonus.

25. Article 12, page 20: The internal references in Section J, paragraphs 2 and 3 to "Section H" should be changed to "Section J."

Response: Agreed.

- Paragraph 5 reduces the amount of capital improvement that Contractor will effect (with Metro's approval) from \$40,000 to only \$25,000. Why?

Response: So the improvements will not be subject to prevailing wage requirements of the Oregon Bureau of Labor and Industry.

26. Article 16, pages 25 and 26: The Indemnification clause in the RFP is the same as in the current contract. Under this clause BFI was obligated to pay \$1.7 million to settle one single claim at Metro South. It is not realistic for Metro to continue to expect experienced contractors to agree to accept total liability for any and all claims that arise against the operation when the claims may result from

the physical design or other circumstances of the station which are beyond the control of the Contractor.

Response: Metro has considered this comment and has decided to retain its proposed language.

27. Article 25, page 31: This Article calls for binding arbitration to settle differences. However, throughout the RFP Metro states that it has the sole authority or sole discretion to make decisions and resolve issues or disagreements. What is an example of an issue that the Contractor would be entitled to have resolved under arbitration?

Response: Failure of Metro to pay the Contractor.

28. Article 29, page 32, Paragraph D requires that employees who work on Saturday shall be paid time and a half. This should be changed to allow an employee who works on Saturday or Sunday as part of his or her regular work, and who is not working beyond 40 hours a week, to be paid straight time for Saturday and Sunday. The marketplace should determine whether someone is willing to work on Saturday and Sunday, with Monday and Tuesday off, for the same salary as someone who works Monday through Friday.

Response: The language to which the commenter objects is required by law, as referenced in the Article.

Specifications

29. Page 6, Materials Recovery:

- Section 9A reserves to Metro the approval of the Contractor's employee to supervise material recovery. If the Contractor has the responsibility to meet certain minimum recovery levels, the Contractor must have sole discretion on employee selection.
- Section 9B provides that Metro approve markets for tires and yard debris. If the Contractor is responsible to market the materials and will suffer a financial penalty if minimum recovery levels are not met, the Contractor should be solely responsible for market selection.
- Section 9B also states that Metro shall not be responsible for loss of recycling revenue caused by Metro's actions. If Metro has the ability to approve staff and markets, the Contractor will face the potential of a large financial risk with these provisions.

Response: Metro has considered this comment and has decided to retain its proposed language.

30. Page 12, Services Provided by Metro: What level of training is Metro requiring for employees designated as HazMat Technicians? When Metro calls for a trained HazMat person to be on duty during all hours of operation, does it mean HazMat duties are that person's primary job, or, for example, can he or she also act as a spotter with a 40 hour certificate?

Response: Contractor shall ensure that all HazMat Technicians receive 40 hours of appropriate training and medical surveillance as required by OSHA 1910.120 in order to use level B personal protective equipment. See the *Transfer Station Contractor's Procedure Manual*. A CD copy will be provided with the final RFP.

31. Page 21, Litter Control: Metro appears to have changed the area of Contractor's responsibility for litter control. Is this accurate? In any case, the description of the area to be patrolled at Metro South appears to be misstated. (Washington Street intersects with Highway 213 and not I-205).

Response: Yes, the area for which the Contractor will be responsible for litter control has changed. Metro has corrected the language to accurately describe that area.

32. Pages 21 and 22, On-site Personnel: This section raises several questions;

- a) What would be the function of the second loader/ equipment operator per operating area during peak hours?
- b) Subsection B seems to duplicate subsection E, and subsection C seems to duplicate I. Why?
- c) When the staff is required to be doubled in the operating area, is Metro calling for a specific number of spotters and operators? Can Metro be more specific about the allocation requirements?

Response: Metro has clarified the language.

- This section also seems to give Metro full control over staffing, even above the minimum staffing levels. Once the minimum levels are met, the force account provisions should be activated for any additional staffing.

Response: Metro has considered this comment and has decided to retain its proposed language.

- This section allows Metro to require additional staff if Metro so determines and requires that the Contractor must supply the additional staff within 2 hours. Will the Contractor be compensated for this additional staff? What are the criteria and/or standards by which Metro will make the determination that additional staff is needed?

Response: The criteria/standards are the smooth functioning of the station- getting customers in and out in a timely manner.

- If Metro permits or allows the material going to the transfer stations to be substantially reduced, will the Contractor be permitted to reduce staff levels accordingly?

Response: Metro will consider such a request at the time.

33. Litter Control and Landscape Maintenance (Pages 21 and 26): Several provisions of this RFP identify area where the contractor will be expected to contract with outside services. This list includes but is not limited to the twice daily litter patrols in and around the transfer stations and maintenance of the landscaping around the stations (approximately \$10,000 per month). In these cases, Metro has reserved the right to solely determine whether or not the level of these services is adequate. What is the reason for this shift in policy?

Response: Contractor is not required to contract for these services, it can provide them directly. The reason for this change is that Metro no longer wishes to directly contract for these services.

Waste Connections, Inc.

RFP Summary

1. Page 4: Metro will process hazardous waste found by the station operator at no cost to the station operator if the waste is classified as conditionally exempt or from a household. Will the station operator be responsible for the cost of processing if it does not fall in either of these two categories? If so, what authority will the operator have to recovery costs from the hauler or generator?

Response: See section 12.2 of the specifications.

2. Page 5: What is the anticipated availability of funds from the Metro budget for the Bonus Recovery Credit?

Response: Staff is recommending at this time \$150,000 in the first year.

3. Page 5: If a market ceases to exist for one of the four source separated materials, what remedy will Metro consider in setting rates at the gate and the rate paid to the operator?

Response: Metro anticipates discontinuing accepting the materials at the source separated price.

4. Page 6: Does Metro anticipate renegotiating the contractor's price at the end of three years? If so, what parameters would trigger a renegotiation of the contractor's price?

Response: Federal tax rules require Metro to include this provision for a management contract of this kind. Metro reserves its rights to decide whether to continue, renegotiate, or terminate the contract at that time.

5. Page 7: Since the contract begins October, 2002, would Metro consider a partial CPI increase effective July 1, 2003?

Response: No.

6. Page 9. If a company proposes a recovery percent and guarantee based on methods clearly not reasonable, they could theoretically receive 20 points and lose only 5 points under the feasibility evaluation. Would Metro consider reallocating more points to the feasibility evaluation?

Response: No. If Metro believes the approach is not reasonable it would reject the proposal as non-responsive. Metro has added such language to that section of the RFP. It should be noted that Metro has removed the adjustment process in allocating evaluation points for the recovery guarantee.

General Conditions

7. Page 7, Paragraph 1 [Article 2]: Would Metro consider adding language regarding the legal rights of individuals and their rights to privacy in order to protect the contractor if an employee or subcontractor's employee is interviewed by Metro?

Response: Metro does not understand these concerns and does not believe any change in the language is necessary.

8. Page 8, Paragraph L [Article 2]: Please define "Promptly".

Response: Metro has revised the item to clarify its intent.

9. Page 20, Paragraph J(1) [Article 12]: Will Metro supply recent cost estimates for the routine maintenance of Metro owned equipment and buildings referred to in section J-1?

Response: Yes. It will be supplied in the Appendix of the final RFP. Additional detail will be available upon request.

10. Page 20, Paragraph J(2) & (3) [Article 12]: Please define "Per Occurrence".

Response: Each individual repair.

11. Page 20, Paragraph J(5) [Article 12]: Does this mean Metro is responsible for Capital Improvements over \$25,000? Or does Metro pay for all Capital Improvements regardless of the cost?

Response: Metro pays for all capital improvements except those due to Contractor's fault.

12. Page 30, Article 23: At what point does the title to waste transfer from the contractor to either the transporter or landfill operator?

Response: Metro has clarified the language in Article 23 of the General Conditions.

13. Page 32, Article 28(C): Will a change in control automatically trigger a contract renegotiation prior to Metro's approval and novation?

Response: Metro will assess a request for approval or novation of a change in control at the time one arises and reserves its rights to approve or deny such a request, and to raise any issues it deems relevant to such a decision, until such time.

14. Page 34, Article 31: How much time prior to the start date of October 1, 2002 does Metro anticipate being available to the contractor for mobilization and procurement of equipment?

Response: Staff is recommending six months.

Specifications for Metro South (Most apply to Metro Central as well)

15. Page 4, 4.0: How often does Metro anticipate they will re-check and verify the tare weights of trucks utilizing the tag reader system?

Response: Quarterly.

16. Page 6, 9.0(B): Please define "source-separated recyclables" as it relates to the RFP.

Response: Metro has clarified the language in this section.

17. Page 6, 9.0(B): What is Metro's acceptance policy for tires?

Response: Metro will accept 15 tires per day, per customer.

18. How will the contractor be compensated for tires disposed of outside the posted maximum for quantity and size of tires?

Response: It will be negotiated on a case by case basis.

19. What is the current operator's market for tires?

Response: R.B. Rubber.

20. Page 9, 10.0: Are tare weights of transporters trailers and tractors available for response to this RFP?

Response: Tare weights are available for trailers and shuttle vehicles, they will be provided in the Appendix.

21. Will Metro require the transporter to keep its equipment within a certain tare weight throughout the term of the transfer station operator's agreement?

Response: Metro will make best faith efforts to ensure maximum payloads are possible.

22. Page 22, 26.0(J): Will Metro enforce this requirement if tonnage falls to low enough levels that there would be no justification for this requirement (i.e. personnel requirement)?

Response: Metro will consider such a request at that time.

23. Page 22, 27.0: Will backup equipment for frontline machinery be considered "major" and thus need to be new? An example would be a backup dozer, trackloader or loader.

Response: No. But, backup equipment and operations plans must provide for adequate coverage until frontline equipment is returned to operation.

24. Page 24, 28.3: Will the property, building and equipment in general be in good working condition at the time the new contractor begins operations for Metro?

Response: Yes.

Specifications for Metro Central

25. Page 25, 27.2: Will the third SSI compactor be available to the contractor for compaction of waste?

Response: Yes.

Background Information Appendix

26. Payment History: Are the recovery credits, compaction bonus, overload penalties and yard debris/wood waste payments of the current contractor at the same rate as proposed in the draft RFP?

Response: No. See information in the Appendix as compared to the RFP.

27. Utility Information: How has the new public drop-off area at Metro South (Bay 3) affected utility rates, traffic flow and staffing?

Response: The full impact is unknown at this time. The new public building has increased the facility's floor space by approximately one third, and staffing has also been increased by

approximately one third. The impact on utilities is still unclear, any additional information will be included in the Appendix of the final RFP. Traffic flow has been changed per the drawings in the RFP.

28. Current Staffing: Do the current staff levels include any temporary labor employees?

Response: Yes.

General Questions and Comments

29. Has Metro considered the option of allowing the contractor to operate the scalehouses at both stations?

Response: Metro intends to continue operating the scalehouses.

30. How will the City of Portland organics RFP affect operations at Metro Central, particularly the use of floor space, compactors, utilities and the staffing required to manage organic material? Please describe these effects if the facility is used as a reload only and if the facility is used to process organics into a marketable commodity.

Response: It is currently anticipated that reload operations will be conducted as in the recent organics pilot project. Material was staged in the area near compactor #2 and loaded using the compactor or a front end loader. The impact of onsite processing is unknown at this time. The RFP addresses a reload scenario only.

31. Will Metro South be utilized in this Program?

Response: Metro does not anticipate utilizing MSS at this time. It is possible in the future.

32. Will both sites be available for tours and/or inspections to potential responders prior to the response date?

Response: Facility visits can be arranged by contacting Penny Erickson at 503-797-1659.

33. Does Metro have any plans in the near future that will materially affect the operations or maintenance of either Metro Central or Metro South?

Response: See the list of proposed capital improvements contained in the Appendix.

EXHIBIT "A"

**Request for Proposals for the
Operation of the Metro South and/or
Metro Central Transfer Stations**

RFP #01R-52-REM

Draft November 2001

**Metro
Regional Environmental Management
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PROPOSAL/CONTRACT FORMS

APPENDIX