



**METRO**

**OFFICE OF THE AUDITOR**

**COPY**

January 8, 1996

Mike Burton, Executive Officer  
Councilor Jon Kvistad, Presiding Officer  
Councilor Patricia McCaig  
Councilor Ruth McFarland  
Councilor Susan McLain  
Councilor Rod Monroe  
Councilor Don Morissette  
Councilor Ed Washington

**Re: Review of Metro's Process for Evaluating Proposals for the Disposal and/or  
Transport of Waste from the Forest Grove Transfer Station**

Dear Mr. Burton and Councilors:

The accompanying report covers an independent review of request for proposals and the staff evaluation process in contracting for the disposal and/or transport of waste from the Forest Grove Transfer Station. The work on this project was performed under contract by KPMG Peat Marwick LLP, an independent certified public accounting firm. We undertook this study in response to a request by Executive Officer Burton.

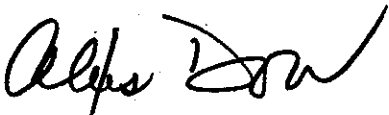
We reviewed a draft of the KPMG Peat Marwick LLP report with the Executive Officer, the General Counsel and the Chief Financial Officer. Generally, they are in agreement with the report's observations and conclusions.

We would appreciate receiving a written status report from the Executive Officer, or a designee, indicating what actions have been taken in response to this report's observations and conclusions.

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We appreciate the cooperation and assistance provided by the Executive Officer, Office of the General Counsel, the Chief Financial Officer, and Regional Environmental Management Department staff.

Very truly yours,

A handwritten signature in cursive script that reads "Alexis Dow". The signature is written in dark ink and is positioned above the typed name.

Alexis Dow, CPA  
Metro Auditor

cc: Jennifer Sims  
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Bern Shanks

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January 5, 1996

Ms. Alexis Dow, CPA, Metro Auditor  
Metro  
Office of the Auditor  
600 N.E. Grand Avenue  
Portland, Oregon 97232

Dear Ms. Dow:

This letter reports the findings of KPMG Peat Marwick LLP (KPMG), on our review of Metro's Request for Proposals for the Disposal and/or Transport of Waste from the Forest Grove Transfer Station (RFP #95R-21-REM), dated August 1995, the proposals received in response to that RFP, and the evaluation of these proposals by a Metro evaluation team. KPMG understands that this RFP was issued to obtain prices to compare options at the Forest Grove Transfer Station, including continuation of the current arrangement or implementing Amendment #4 to the Waste Disposal Services Contract, which would utilize the Columbia Ridge Landfill for disposal of waste from the Forest Grove facility.

KPMG was requested to independently determine if there were aspects of this procurement that could be perceived as creating a lack of impartiality or would otherwise reflect on the fairness of this procurement process. Our review was conducted within the context of the Oregon Revised Statutes' procurement policy of openness and impartiality to the maximum extent possible, and Metro contract procedures that provide that contracts shall be awarded to the most responsive proposer.

Our findings are based on a review of documents provided to KPMG pertaining to the procurement, including:

- (1) RFP #95R-21-REM;
- (2) Copies of proposals submitted by three firms - Oregon Waste Systems (OWS), Regional Disposal Company (RDC), and Sanifill [at times referred to as Riverbend Land Company (RLC)];
- (3) Correspondence between Metro and each proposer regarding points of clarification in the proposals submitted;
- (4) The Metro staff proposal evaluation report, dated October 1995;
- (5) Notification of proposed award to OWS; and protests of proposed award by legal counsel for RDC and by Sanifill.

Also, we interviewed and obtained additional documents from members of Metro staff, including Regional Environmental Management Department and Office of General Counsel staff.



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In summary, our review identified certain aspects of this procurement process that could have adversely impacted the equal treatment of each proposal submitted in response to the RFP. In performing our review, we did not assess the cumulative effect of each of these issues on the status of each proposal as being the most favorable proposal to Metro, nor were we able to definitively quantify how an issue would affect the ranking of a specific proposal. Our focus was on the impact each issue would have on the perception of fairness being accorded equally to each proposer. Some of the issues we have raised were also raised by the firms protesting the proposed award. Our review is not intended to be an assessment of the merits of these protests.

### Compaction Costs

The RFP provided for proposers to submit proposals under four alternatives: Alternate #1, was for transport and disposal on a price per ton, with no compaction; Alternate #2 was for transport and disposal on a price per load, with compaction; Alternate #3 was for a separate price for transport on a price per load, and for disposal on a price per ton, with compaction; and Alternate #4 was for transport only, at a price per compacted load.

Alternates #2, 3 and 4 included an add-on of \$2 per ton for the cost of compaction. The Forest Grove Transfer Station presently does not have a compactor, and the \$2 per ton was intended to reflect the cost of purchasing, installing, and operating a compactor specified by Metro. We were provided with data regarding the basis of the \$2 per ton cost factor. Data indicating a cost of \$1.81 per ton, was supplied by a vendor of the Metro specified compactor and informal data indicating a cost of \$2.45 per ton, was provided by the operator of the Forest Grove facility. We were informed that because of the range in cost estimates, a price of \$2 per ton was used. We noted that as part of the Sanifill protest, the compactor cost was claimed to be \$2.64 per ton.

In our review of these cost estimates, we noted significant issues that impact on their reliability.

1. The vendor estimate was based on amortizing the \$610,000 cost of the compactor over a 15 year period, with a residual value of 40 percent, resulting in a \$.69 cost per ton. The Forest Grove operator used a cost of \$632,000 and a five year amortization period, with a residual value of 60 percent, resulting in a cost of \$1.10 per ton. In our view, the use of the five year amortization period was appropriate, since the proposed contract was only for a five year period, with a non-binding option for extending the contract for an additional four years. In fact, the franchise operator had only four years remaining on its franchise agreement with Metro, with no provision for extension. Also, there is no provision in the franchise agreement for Metro, at the termination or expiration of the agreement to reimburse the operator for the unamortized cost of the compactor. In the absence of assurance that the operator would be able to recoup the cost of the compactor and site costs beyond a four or five year period, we believe that use of the shorter period is appropriate.
2. The compactor vendor estimate acknowledged that installation costs were not included and might be added. The Forest Grove operator provided undocumented site improvement costs of \$295,000, resulting in a cost of \$.94 per ton.

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3. The vendor estimated an operator cost of \$49,920, or \$.64 per ton; whereas the Forest Grove operator did not add a factor for operator cost.

**KPMG Comments**

In our view, the lack of a supportable estimate for the compactor could have significant impact on which is the lowest cost alternative and therefore should have been based on further review and documentation. For example, if the informal cost estimate of \$2.64 per ton was used, the lowest cost proposal would have increased from \$10,014,926 to \$10,272,782. This increase of \$257,856 would have resulted in the low cost proposal becoming the third lowest cost proposal. However, we question the second lowest cost proposal as being non-responsive in a following section of this report.

**Oregon Department of Environmental Quality (DEQ) Fees**

The RFP stated that the prices proposed should exclude DEQ fees and that a listing of these fees, totaling \$1.24, per ton, were contained in the Appendix to the RFP.

For reasons that are unclear, after the three proposals were received, Metro staff asked each proposer to state whether their proposal prices included fees. The response from OWS stated that no DEQ fees were included; whereas, the responses from RDC and Sanifill stated that all fees were included. Specifically, RDC stated "Regional Disposal Company's prices for Alternate #1 include all fees, taxes, expenses, and charges consistent with the terms of the RFP. There are no additional costs which are expected to be paid by or passed through to Metro." The Sanifill response stated "The price quoted in our proposal for the transport and disposal of waste under Alternate #1 does include all fees, including those paid to DEQ."

Based on these responses, Metro staff determined that no adjustment should be made to the initial prices quoted by Sanifill, since it was felt that to allow Sanifill to reduce their price would subvert the RFP process. Accordingly, the Metro evaluation report stated that "For purposes of this comparison, RLC's prices are deemed not to include DEQ fees." However, elsewhere in the evaluation report there is a statement that "The (evaluation) team rejected RLC's effort to include DEQ fees in its per ton prices as contrary to the RFP instruction." Despite this latter statement, there was no change in the initially quoted price of \$25.25 per ton under Alternate #1.

However, even though RDC also indicated that they also had included all fees in their price proposal, the Metro evaluation team made a deduction of \$.43 per ton, because the waste was being disposed of out-of-state.

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KPMG Comments

While we are unclear why Metro staff raised this issue with the proposers, we can understand why staff believed that to adjust the initially proposed prices could be viewed as a subversion of the RFP process. However, we believe that to then change one proposer's price and not the other appears to adversely impact the perception of fairness being accorded equally to each proposer.

**Unequal Treatment of Qualifiers in Submitted Proposals**

Our analysis of the three proposals submitted disclosed that some proposers attached conditions to their proposals which qualified or otherwise modified the terms of the RFP.

The OWS price proposal of \$25 per ton under Alternate #1 was based on a minimum of 28 tons per load of uncompacted waste (i.e., a minimum of \$700 per load). Under this proposal, if a load was less than 28 tons, OWS would still be paid the \$700 per load rate. We noted that under this alternate, OWS was proposing use of a 53 foot trailer. The current operator is using a 45 foot trailer, and according to the RFP, is achieving maximum loads of approximately 22 tons.

In the evaluation report, the evaluation team noted that, "Based on a review of current loading practices at the FGTS, achieving a minimum of 28 tons should not be a problem, therefore no adjustment was made in the scoring for this condition." There was no specified penalty for this minimum load requirement.

In the performance evaluation, one point was deducted from the OWS proposal for lack of direct experience in using a 53 foot trailer, and the condition that the per load payment was based on a minimum of 28 tons. The performance criteria evaluation deductions are discussed in more detail in the next section of this report.

The Regional Disposal Company (RDC) proposal under Alternate #2 included two prices. One price of \$775.04 per load, was based on a 28 ton per load of compacted waste, as specified in the RFP; the other price of \$834.83 per load was based on a 31 ton per load, using a more efficient compactor. The evaluation team questioned this higher 31 ton load and deducted 1.5 points in the performance criteria evaluation for this option.

KPMG Comments

One proposer was not specifically penalized for requiring a minimum load of 28 tons of uncompacted waste, which if not met, would result in a higher cost per ton. Another proposer was penalized 1.5 points for specifying an alternative price based on a 31 ton load of compacted waste. In our view, this situation can create the perception of unequal treatment of these proposal qualifications.

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We further believe that the conditional provision in the OWS proposal under Alternate #1 (in which price per ton was for a minimum load of 28 tons) was non-responsive to the terms of the RFP, which did not specify a minimum load for uncompacted waste. In fact, the RFP stated that the maximum load being achieved by the current operator was approximately 22 tons. In light of the minimum load condition, we question if the OWS proposal for this Alternate should be considered non-responsive to the terms and conditions of the RFP. We recommend this matter be reviewed by the Metro's General Counsel to determine the responsiveness of the OWS proposal.

#### **Apparent Lack of Consistency in Applying Performance Criteria**

In addition to cost factors (which were weighed at 75 points) used in evaluating a proposal, the RFP states that points would be assigned to performance criteria (15 points) and the environmental quality of the disposal site (10 points).

We recognize that Metro Code contract procedures state that disagreement with the judgment exercised in scoring by evaluators is not a basis for appeal. However, we believe that the scoring of proposal elements should be objective and consistent, in order not to be perceived as arbitrary and biased.

In the proposal evaluation of performance criteria, the following points were deducted from each proposal relating to the trailers proposed for use:

- (1) Riverbend Landfill Company (RLC) proposed 48 foot trailers. The evaluation team stated that these trailers had not been previously used in Oregon for this purpose, but that they appeared to be permissible.

Deduction - 1 point

- (2) Oregon Waste Systems (OWS), under Alternate #1, proposed 53 foot trailers. The evaluation team stated that these trailers had not been previously used in Oregon for this purpose, but that they appeared to be permissible. Also, the evaluation team noted that under this alternate, OWS was proposing a minimum load of 28 tons.

Deduction - 1 point

Under Alternate #2, OWS stated they would use the trailers currently used to transport compacted waste from Metro Central and Metro South. These are 45 foot trailers on a 48 foot chassis.

Deduction - 0 points

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- (3) Regional Disposal Company (RDC) proposed 53 foot trailers. The evaluation team stated that these trailers had not been previously used in Oregon for this purpose, but that they appeared to be permissible. In addition, as discussed in the previous section of this report, RDC was penalized 1.5 points for specifying an average load of 31 tons under an option under Alternate #2.

Deduction - 1.5 points

KPMG Comments

In our view, it appears that the evaluation of the performance criteria applied to the trailers specified by each proposer was not consistently applied to each proposal. As shown above, RLC was penalized 1 point for proposing use of a 48 foot trailer, whereas OWS' proposed use of a 48 foot trailer chassis was not penalized. Also, under another alternative, OWS was penalized 1 point for proposing use of a 53 foot trailer, plus specifying use of a minimum load of 28 tons, whereas RDC was penalized 1.5 points for also proposing use of a 53 foot trailer as an option under Alternate #2. RDC was also penalized an additional 1.5 points for specifying an average load of 31 tons.

Therefore, there is an appearance that equal weight was not given to the criteria used to deduct points in evaluating the trailer performance criteria.

Composition of the Metro Evaluation Team

Prior to the issuance of RFP #95R-21-REM, a draft was sent to potential vendors to solicit vendors' concerns and comments regarding the approach proposed by staff and to modify the draft as appropriate.

A review of the comments received to the draft RFP indicated that two vendors suggested that the proposal evaluation team include members from Metro units, in addition to staff from the Solid Waste Department (which has since been renamed the Regional Environmental Management Department), or from Washington County, where the Forest Grove Transfer Station is located. One vendor cited the publicity and controversy that has occurred with respect to this waste stream as the reason for this request. The response to these comments was that the Solid Waste Director would consider this advice when selecting the evaluation team.

When RFP #95R-21-REM was issued, it stated that an evaluation team would conduct the evaluation process; however the composition of the team was not described. The team consisted entirely of members of the Regional Environmental Management Department. Subsequently, Sanifill, one of the firms that appealed the proposed award, included as part of its appeal, comments that it had previously raised a question on the need to include non-Regional Environmental Management Department staff on the evaluation team.



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KPMG Comments

While our review identified certain aspects of the procurement process that could have adversely impacted the equal treatment of each proposal submitted in response to the RFP, we did not conclude that the members of the evaluation team displayed a bias toward or against any of the proposers. However, in our view, Metro could have taken steps to use staff on the evaluation team from other Metro units or from other organizations. Doing so might have helped avoid the concerns raised by some of the vendors and would have added additional expertise to the evaluation process. For example, proposed transport and disposal prices were the dominant factors in this proposal. We believe that using an administrative services analyst from the Metro Financial Planning Division to participate in the analysis of the proposed prices would be a logical member of the evaluation team. We also believe that adding a representative from the Oregon Department of Environmental Quality to the evaluation team would have enhanced the evaluation of the environmental quality of the proposers' disposal sites.

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We would be pleased to discuss our analysis and conclusions with you and other Metro staff. We thank the Metro staff for their assistance in providing information and clarification on the process used on this RFP.

*KPMG Peat Marwick LLP*