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Metro Hazardous Waste Disposal Contract

Strengthen Contract Management

May 2008

A Report by the Office of the Auditor

Suzanne Flynn
Metro Auditor



SUZANNE FLYNN

Metro Auditor

600 NE Grand Avenue
Portland, OR 97232-2736
(503)797-1892 fax: (503)797-1831

May 8, 2008

To: David Bragdon, Council President
Rod Park, Councilor, District 1
Carlotta Collette, Councilor, District 2
Carl Hosticka, Councilor, District 3
Kathryn Harrington, Councilor, District 4
Rex Burkholder, Councilor, District 5
Robert Liberty, Councilor, District 6

From: Suzanne Flynn, Metro Auditor

Re: Audit of Hazardous Waste Disposal Contract

The following report covers our audit of the Hazardous Waste Disposal Contract administered by the Department of Solid Waste and Recycling. This audit was not included in our FY07-08 Audit Schedule and was initiated because of a special request from the Office of the Metro Attorney. The purpose of the audit was to determine the quality of the contractor's performance and if the Department had adequate procedures in place to administer the contract and monitor performance.

Metro's Hazardous Waste Program contracts for the transportation and disposal of waste it collects at its two facilities and from periodic collection events. In September 2005, a two-year contract was awarded to Phillips Services Corporation (PSC) in the amount of \$766,070 and extended an additional year, increasing the contract amount by \$491,103. My office contracted with environmental specialists to perform a review of PSC facilities and the disposal process. We also conducted a review of the Program's contracting procedures and found the procurement process to be fairly strong. However, we found that the Program had inadequately planned for administering the contract once it was awarded and did not have procedures in place to monitor or correct performance. While our contractors found no evidence that PSC was disposing of Metro's waste improperly, they did note weaknesses at one of the facilities and in the system to monitor compliance.

We have discussed our findings and recommendations with the Department Director and management for the Hazardous Waste Program. I would like to acknowledge and thank the management and staff who assisted us in completing this audit. A formal follow-up to this audit will be scheduled within one to two years.

A handwritten signature in cursive script, appearing to read 'Suzanne Flynn'.

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Background

Metro's Hazardous Waste Program (Program) is responsible for household hazardous waste management in the region and has established two facilities for hazardous waste collection at its solid waste transfer stations. It also operates periodic collection events in various locations to give households additional opportunities for disposal and operates another facility to collect and recycle latex paint. In addition, the Program is allowed to receive hazardous waste from small businesses and facilities, generated at one of Metro's facilities, or abandoned waste from its solid waste transfer stations or dumped illegally.

As part of the management system, the Program contracts for the transportation and disposal of the waste it collects. In May 2005, the program issued a request for proposals (RFP) for this service. A Program team evaluated five proposals and unanimously ranked Phillips Services Corporation (PSC) the highest. A contract was awarded to PSC for a maximum price not to exceed \$766,070 to begin September 2005 and end August 31, 2007. The contract was amended to extend the end date to 2008, increase the contract amount by \$491,103 and make changes in the disposal methods. The contract also was amended to allow Metro to charge a penalty if waste was not disposed of as required by contract specifications.

Scope and Methodology

The purpose of this audit was to review the contract with PSC to determine the quality of the contractor's performance and whether the Program had adequate procedures in place to administer the contract and monitor performance.

In order to determine the quality of the contractor's performance, the Auditor's Office contracted with an independent environmental consulting and engineering firm to review hazardous waste management and disposal. A separate report was received from the consultants and shared with the Program. To determine whether the Program had adequate procedures in place to administer the contract, we interviewed the assistant director, program manager, supervisors at the collection facilities, safety analyst, financial manager and staff, and the procurement manager. The RFP, procurement process documents, billing process, and reports that the Program receives from the contractor were also reviewed. We toured the Program's two collection facilities and reviewed reports generated by the collection facilities and how Metro facilities tracked shipping and disposal.

This audit was requested by the Office of Metro Attorney and was not on the regular audit schedule. It was conducted according to generally accepted government auditing standards. In order to rely on the work of the consultants, we determined that they were qualified and able to perform the work impartially.

Results

In 2000, this Office completed an audit of contracting practices and made recommendations to improve the management of contracts. That audit recommended an organizational structure that had clearly defined roles and responsibilities, a performance reporting system designed to determine the status of each contract and matters needing attention, a way to identify and mitigate high-risk situations, and procedures for employees who are responsible for managing contracts. While at the time auditors found the method for selecting contractors was generally sound, procedures were not in place to ensure adequate contractor oversight. For the most part, findings in the current audit are very similar.

Procurement documents strong

According to Metro-recommended procedures, the procurement process should begin with the development of a Request for Proposals (RFP) and scope of work. Both of these documents set the stage for selecting a service provider and the requirements that the contractor must meet.

In the most recent procurement for disposal services, the Program developed a comprehensive RFP that outlined in detail the types and volume of wastes received. The RFP included a scope of work that defined the process the contractor was required to follow to pick up and dispose of waste, track disposal and report back to the Program. The scope also included a requirement for insurance and bond coverage and that the contractor follow all applicable federal, state and local laws and regulations. These two documents together gave more than adequate notice to proposers of the work to be done and the standards that the contractor would be required to meet.

Evaluation criteria heavily weighted to cost

The RFP outlined the criteria that were to be used in selecting a contractor. In order to be considered, the following items were to be included in the proposal:

- Transmittal letter
- Names and resumes of key staff
- Description of firm's experience
- List of present or former customers
- List of regulatory permits held
- Proposal price forms for each category of waste
- Description of other fees or costs
- Proposal security
- Surety form for Performance/Labor and Materials Bond

All responsive proposals were then scored by an evaluation team for experience and qualifications (30 points), total costs (50 points), and environmental soundness (20 points). Environmental soundness was based on a "Waste Reduction Hierarchy" developed by the Program that ranked the proposed disposal method of each waste stream from most desirable (reuse) to least desirable (landfill). Cost scores were determined by the full 50 points awarded to the lowest bid and points then allocated to the remaining proposals based on the proportion to the lowest bid.

Mathematically, it is possible for a proposer to overcome the cost weighting. However, when we analyzed the evaluators' scoring spreadsheets to determine how easily a proposer in this competition who had proposed higher costs could overcome the 50 point weighting for cost, we found it might be difficult. Averaging the scores given by the evaluators, we determined that even if a proposal with the next lowest cost received the highest average scores in the two other categories and the proposal with the lowest cost received the lowest average scores, the weighting for cost could not be overcome. It should also be noted that this scenario was not the case because the lowest bid proposal did not receive the lowest scores in the other two categories.

Exhibit 1 RFP Scoring	Lowest cost/lowest scores in other categories	Next lowest cost/highest scores in other categories
Experience/Qualifications	14.7	24.7
Cost	50	35
Environmental Soundness	8	10
Total	72.7	69.7

SOURCE: Metro Auditor's Office analysis of RFP scoring

Determining what is the best "deal" for Metro should be more than simply obtaining the lowest cost. In this case, the Program did recognize that cost should not be the only factor in choosing a firm and used a RFP process rather than simply asking for bids.

There are always trade-offs in determining how to choose a contractor, among them efficiency, economy, quality and risk. This is a high risk contract. The Program set high standards for the disposal of waste and there is considerable liability and responsibility to see that it is disposed of without causing harm. Best practices suggest that the weighting for cost should have been lower. Metro RFP procedures state that evaluators should look for the highest quality of work for the lowest cost and that the quality of work may be more important than cost.

Contract administration needs to be improved

Once the contract is awarded, contract administration is the activity that determines how well the work was performed. Contract administration starts with a clear statement of performance expectations in the scope of work and a contract administration plan that can measure the contractor's performance cost-effectively and provides documentation to pay accordingly.

The Transportation and Disposal of Hazardous Waste contract (Contract) has several performance expectations included in the Scope of Work. They are:

- Provide a hazardous waste manifest for signature for each waste shipment.
- Once received at a treatment storage or disposal facility, signed manifest copies are sent to Metro.
- Provide a report to Metro within 270 days of shipment if the waste is shipped to its final destination.
- Provide a report to Metro within 270 days if the waste was transported to an intermediate facility for treatment or storage and later shipped to a final disposition under a new manifest.
- Waste transported to a secondary facility under a new manifest must be uniquely identified.
- Provide a certificate of final waste management to Metro no more than 360 days from shipment.
- Dispose of each waste category in the method prescribed by Metro.
- Dispose of each waste category at a Metro approved facility.

To ensure performance, the contractor is required to allow Metro representatives to visit any facility it owns or operates - up to two visits per year per facility. The contractor must allow access to areas where Metro wastes are stored or processed, and all paperwork files relating to Metro waste.

The method and timing of payment is not specified in the contract. According to the Program, when the signed manifests are returned indicating the receipt of the waste at a facility, the quantity and type of waste is reconciled to Program records, and payment is made. This usually occurs 30 days after the waste is shipped. This results in the contractor being paid well before actual performance of the work (disposal) is completed.

Although performance expectations have been identified and the means to measure performance exists, the Program does not have a clear plan of how performance will be monitored. If the Program only relies on the reporting requirements, staff would not be aware of any performance problem until 270 days after the first shipment occurred. Further, the contractor would have already been paid for a possible nine months of work.

Monitoring quality needs to be strengthened

Not unlike many government agencies, the Program gave much attention to the contract award process; however, what to do after the contract was awarded received less. Monitoring for quality is essential, however, to ensure that benefit is received for public dollars. It is even more important when the service is high risk, such as the disposal of hazardous waste. A good quality assurance plan requires that responsibility and authority be clearly assigned, procedures be clear, documentation occurs, and action is taken. We found weaknesses in each of these areas.

Currently, no standardized procedures exist that guide roles and responsibilities in monitoring performance. The Program manager is responsible for contract monitoring but relies on facility staff to identify problems. These staff have no guidelines as to how problems should be identified, when they should be reported to the manager, how they should be documented, who takes action, and what action should be taken.

Program facility staff receive the signed manifests once waste has been received at a intermediate or final disposition facility. While this could be one logical point to check quality - that disposition required by the Contract actually occurred - staff are unclear as to how to monitor this and whether it is their role. The safety officer performed on-site inspections but procedures were not in place to guide how an investigation should be documented, reported, or acted upon. Position descriptions for these staff positions do not state that contract monitoring is a responsibility.

Program facility staff track in a database when the required reports are received for each type of waste that was shipped. Staff indicate they will usually notify the Program's manager or safety officer after one year when reports have not been received. In March 2007, the Program took action with PSC regarding the tracking requirements and withheld payment until reporting requirements were made current. In some cases, this was nine months after reports would have been due. The contract was extended; however, the amendment added a new

penalty for not disposing for waste as required by the contract. While the Program did act, in this case of inadequate performance, the response was not timely because of monitoring design deficiencies.

Progress on 2000 audit recommendations

An audit was completed by this office in 2000 titled, "Contracting: A Framework for Enhancing Contract Management." Many recommendations were implemented after the audit, but in the intervening years, procedures have changed. However, the weaknesses that they addressed can be found in this current contract.

**Exhibit 2
2000 audit recommendation status**

Recommendation	Status
Define and document the authority, roles and responsibilities of the various organizational units and positions involved in contracting activities, including the Contract Office, departments, and project manager.	Not clearly defined or documented.
Enhance the role of the Contract Office by providing it with the resources, authority and responsibility for oversight, quality control and support activities.	Procurement Services does not currently have authority or responsibility for quality control.
Improve contract oversight by conducting formal risk assessments to identify contracts requiring close monitoring and audits.	Metro currently conducts only informal risk assessments. In the case of this particular contract, the checkbox on the face of the contract used to identify high risk contracts was marked "N/A."
Establish a management reporting system geared toward providing oversight information to top management and departmental directors.	A monthly contract report distributed to management does not give adequate information for oversight.
Designate a formal contract coordinator in each department responsible for assuring that contracts are properly planned and monitored separate from the project manager and with the authority to counsel and direct project managers in developing contracts and evaluating contractor performance.	Was implemented, but has since changed.
Provide better support to project managers and other contracting personnel by developing procedures, guidelines and training in ...monitoring and evaluating contractor performance....and conducting risk assessments.	Procedures and guidance exist for procurement process but not for monitoring performance or conducting risk assessments.

Additional monitoring tools available

We contracted with Bergeson-Boese & Associates, Inc. (BBA) to perform a focused review of waste management disposal to determine the quality of the services PSC was providing. BBA reviewed the documentation by the Program and PSC to record the disposition of waste from receipt at the Program to final disposition at a facility. BBA also visited the two PSC facilities in Kent, WA and Tacoma, WA where waste from the Program is received, treated, or shipped to final disposition. While they found no evidence that PSC was disposing of Metro's waste improperly, they did note weaknesses in one of the facilities and in the system to monitor compliance. The methods they used to arrive at these conclusions could assist the Program in designing a monitoring plan that includes earlier warning of poor performance than the 360 day tracking deadline.

Visual observations about the quality of the facility. BBA performed unannounced visits at the Kent and Tacoma facilities. At the Kent facility, they noted that the onsite laboratory appeared to be infrequently cleaned, poorly maintained, and somewhat disorganized. Among the instruments used in the laboratory, two appeared to be "quite old" and in "questionable condition." The chemist also appeared to be somewhat unprofessional. The consultants, although not specifically knowledgeable about the handling of PCB's, expressed a concern about this particular waste and suggested additional scrutiny because it is a high risk waste. In contrast, the Tacoma facility was noted to be "clean, orderly, and well maintained." These types of observations could be integrated into a facility inspection checklist and used on a regular basis. When observations are negative and raise red flags, additional monitoring could then be scheduled.

The strength of other agency controls on operations. PSC facilities operate under federal, state, and local regulations. It is in the facilities' best interest to follow strict guidelines for hazardous waste disposal. As part of their review, BBA used the EPA's Enforcement and Compliance History (ECHO) website to determine PSC's compliance history. Both facilities were noted to have numerous compliance inspections in the last five years. BBA followed up on documented violations that were found with PSC facility representatives and was able to learn the nature of the violations.

BBA also noted a difference in the type of oversight provided by the cities of Kent and Tacoma. There is less oversight provided by the City of Kent. At Kent, the PSC facility tests the content of waste water and is allowed to make a decision as to whether the water can be disposed of into the City's system. At Tacoma, the PSC facility must send a sample to the City of Tacoma, who approves of any disposal of waste water.

These types of reviews can be accomplished at an employee's desk and do not necessarily require an onsite visit. They could be standardized and performed regularly. If conditions raise a concern, then a site visit could be conducted.

Review of tracking records to determine actual disposal.

According to the Program, 100 to 160 drums of hazardous waste are generated every one to two weeks. This means that, at the least 2,600 drums of waste are shipped annually. Each drum is labeled by the Program prior to shipment. However, once the waste is transferred to PSC, the ability to control tracking is lost. It is possible that waste is co-mingled with waste from other places and shipped to another location for disposal. BBA estimated at the conclusion of their review that it would take 200 to 300 man-hours to verify one full year of tracking from shipment by the Program to final disposal. Even then, according to BBA, there is no way to confirm with 100% confidence that Metro waste was disposed of as required in the contract.

There are methods which the Program could use to perform this type of review and control costs. Also, because of the potential cost, the Program could reserve this review only for when it is indicated because of information learned from the above two procedures. If indicated, the Program could sample certain waste streams, complete a random sample of all waste streams, or choose to review waste disposal at only one of the facilities. In preparation for such a review and to make it more economical, the Program could require in the next RFP process that the contractor diagram the waste streams through treatment to disposal.

Recommendations

Recommendations

1. **In order to balance the need for high quality with lower cost, the Program should change the RFP scoring system in the next procurement process.**
2. **In order to strengthen contract administration once a contract is awarded, the Program should:**
 - a. Develop a plan that will measure performance and include that plan in the RFP.
 - b. Clearly assign responsibility to staff who will be tasked with conducting monitoring activities.
 - c. Develop procedures for monitoring performance and reporting.
 - d. Develop procedures that outline what actions will be taken in response to poor performance and by whom.
 - d. Develop additional ways of measuring performance that can identify signs of prior poor performance.
 - f. Require firms that respond to an RFP to outline clearly how they will meet reporting requirements and the flow of hazardous waste materials from receipt at a Metro facility to disposal.
3. **In order to strengthen contract administration once a contract is awarded, Metro should:**
 - a. Strengthen the oversight role of the Procurement Manager.
 - b. Assign oversight responsibilities to Procurement Services for quality control.
 - c. Develop formal risk assessment procedures to determine which contracts should be monitored more closely.

Management Response



METRO

April 28, 2008

Ms. Suzanne Flynn
Metro Auditor

Re: Hazardous Waste Disposal Contract

We appreciate the observations you have made about the current Hazardous Waste disposal contract and find them particularly timely as we approach the awarding of a new contract. You have also made some suggestions about monitoring the performance of higher risk contracts generally, which we also find beneficial.

The report contains three specific recommendations to which we respond below.

1. In order to balance the need for high quality with lower cost, the Program should change the RFP scoring system in the next procurement process.

Response: In order to better balance quality and cost, we have designed a revised scoring system for the upcoming RFP. The scoring system that was used in the past included 50 points (out of a possible 100) for cost, with the remaining 50 points allocated to two non-cost factors: experience and qualifications of the respondent and environmental soundness of the disposal methods proposed.

The proposed new scoring system is:

Cost	45
Experience and qualifications	20
Disposal plan	20
Tracking plan	15

The disposal plan and tracking plan are new items. While we have asked for disposal method and disposal facility for each category of waste in the past, we will now be asking for a disposal plan for each category which will include significantly more information on how the waste will be handled from the time it leaves our facility through final disposal. We will also be requiring proposers to submit a plan for tracking the wastes that we ship and providing us paperwork assuring that wastes are handled according to the disposal plan submitted. The quality of the disposal plan and tracking plan will be important elements of the overall score that a proposer receives.

Note that in addition to the experience and qualifications portion of the scoring, two other aspects of the RFP process help ensure that only well-qualified firms are considered: a large performance bond and high

insurance coverage requirements. The required \$5 million Environmental Impairment Liability coverage and \$1 million performance bond set a high threshold that is very difficult for unqualified firms to meet.

2. In order to strengthen contract administration once a contract is awarded, the Program should:

a. Develop a plan that will measure performance and include that plan in the RFP.

Response: Taking advantage of the flexibility afforded by the proposal process, and recognizing that different firms have different paperwork procedures and capabilities, we believe the most effective approach will be to require respondents to propose disposal and tracking plans, then negotiate the details of the plans with the successful bidder prior to finalizing the contract. This will result in a contractually binding performance measurement plan.

b. Clearly assign responsibility to staff who will be tasked with conducting monitoring activities.

c. Develop procedures for monitoring performance and reporting.

Response: After contract language is finalized, as described in the response to 2a above, we will develop written performance monitoring procedures. They will include procedures for reviewing waste tracking documents submitted by the contractor by specifically designated staff. In addition, for on-site reviews of the contractor's facilities, staff will develop in advance a detailed audit plan, including the purpose of the audit, the scope and activities that the audit team will complete and the requirements of the written report. If deficiencies are noted, the report will specify the corrective action plan and completion deadline.

d. Develop procedures that outline what actions will be taken in response to poor performance and by whom.

Response: As in the current disposal contract (as amended), the scope of work for the upcoming disposal contract will include two specific actions that may be taken in response to deficiencies in waste tracking:

- When drums are disposed using a method or facility that is not authorized in the contract, Metro will decrease by 50% the payment for those drums.
- When waste tracking documents are not received according to the timelines specified, Metro will withhold payment until document submission is brought up to date.

When deficiencies are noted, either as part of our routine review of tracking documents submitted or during contractor site audits, the Hazardous Waste Program Manager, in consultation with department management, will take action in response to poor performance, including invoking of these contract terms.

e. Develop additional ways of measuring performance that can identify signs of poor performance earlier.

Response: We have developed two strategies to strengthen our current practices:

- We have recently implemented an improvement to the database used for waste tracking by the Metro Central facility staff, now allowing us to track every line item in each manifest instead of just the manifest as a whole. We will be implementing this at the Metro South facility by the end of May 2008.
- We will conduct an audit of contractor's waste tracking processes for specific targeted drums of waste within the first six months of the new contract, expected to begin in September 2008.

f. Require firms that respond to a RFP to outline clearly how they will meet reporting requirements and the flow of hazardous waste materials from receipt at a Metro facility to disposal.

Response: As described in the response to Recommendation 1, proposers must provide a disposal plan and tracking plan in the upcoming RFP. We have located an example of another leading hazardous waste program that requires a disposal plan, and will be adapting their approach for our RFP.

- 3. In order to strengthen contract administration once a contract is awarded, Metro should:**
- a. Strengthen the oversight role of the Procurement Manager**
 - b. Assign oversight responsibilities to Procurement Services for quality control**
 - c. Develop formal risk assessment procedures to determine which contracts should be monitored more closely**

Response: We understand this to be a recommendation of about higher risk contracts generally, in addition to the Hazardous Waste disposal contract reviewed in this audit.

Although Metro has chosen a highly decentralized contracting process, Finance and Administrative Services is moving systematically to strengthen the contracting tools available to all programs at Metro. Finance and Administrative Services agrees that the Procurement Officer should be involved in the agency's high-dollar, high-profile contracts, including the procurement process, contractor selection, contract negotiation and contract administration. The Procurement Officer has organized a cross-departmental Procurement Advisory Team (PAT) that works together to improve all contract processes.

As a result of this audit's recommendation, the Procurement Officer will work with the PAT to implement two new contract requirements by September 2008:

- Designation of higher risk contracts

We anticipate that all contracts over \$100,000 (Metro's formal bid threshold) will be included. However, some contracts less than \$100,000 may represent higher risk or higher profile because of the nature of the service to be performed. The Procurement Officer will work with the PAT to define the types of contracts to be designated "higher risk" automatically. The Office of the CFO

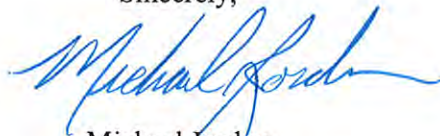
may also designate any contract “higher risk” at the sole recommendation of the Procurement Officer.

- Required Contract Administration Plans for all “higher risk” contracts

A contract administration plan will be required for all “higher risk” contracts prior to execution. The written plan will highlight the key terms of the agreement, identify any milestone or performance measures and will set forth the quality assurance method to be used. The assigned project manager will use this as a tool during contract management. No contract will be executed until a contract administration plan is submitted and approved.

Again, we appreciate your work on this report. We look forward to implementing these improvements.

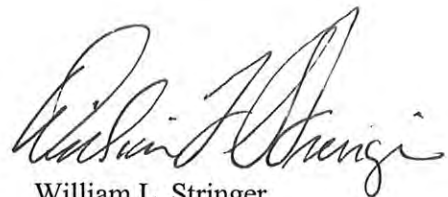
Sincerely,



Michael Jordan
Chief Operating Officer



Mike Heglund
Solid Waste and Recycling Director



William L. Stringer
Chief Financial Officer



METRO

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Office of the Auditor
600 NE Grand Avenue
Portland, OR 97232
(503) 797-1892