

BEFORE THE CONTRACT REVIEW BOARD OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AUTHORIZING AN)	RESOLUTION NO. 91 - 1396
EXEMPTION TO THE REQUIREMENT OF)	
COMPETITIVE BIDDING PURSUANT TO)	Introduced by Rena Cusma,
METRO CODE 2.04.041, AND)	Executive Officer
AUTHORIZING A CHANGE ORDER TO THE)	
METRO SOUTH STATION MODIFICATIONS)	
CONTRACT TO CONSTRUCT A HOUSEHOLD)	
HAZARDOUS WASTE COLLECTION FACILITY)	

WHEREAS, The Metropolitan Service District (Metro) is required to establish permanent depots to receive household hazardous waste; and

WHEREAS, Metro has determined that a household hazardous waste collection facility should be constructed at the Metro South Station; and

WHEREAS, As described in the accompanying staff report (EXHIBIT "A"), it is in the public interest to construct the facility as soon as possible; and

WHEREAS, Construction of the facility can be expedited through the use of the existing on site contractor through negotiation of a change order to the Metro South Station Modifications Contract; and

WHEREAS, Under Metro Code 2.04.045 (a) (2) such an amendment cannot be approved, because the cost of the change order exceeds 10% of the original contract price, unless an exemption from public bidding procedures is granted by the Metro Contract Review Board; and

WHEREAS, Metro Code 2.04.041 (c) and ORS 279.015 (2) authorizes the Metro Contract Review Board to exempt public contracts from competitive bidding if it finds that the exemption will not

encourage favoritism or substantially diminish competition for public contracts and that such exemption will result in substantial cost savings; now, therefore,

BE IT RESOLVED,

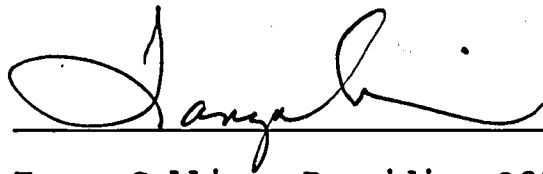
1. That based on the information presented in EXHIBIT "A", the Metropolitan Service District Contract Review Board finds that:
 - a) It is unlikely that exempting a change order for the construction of a household hazardous waste facility at the Metro South Station will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; and
 - b) The change order will result in substantial cost savings to the Metropolitan Service District; and
2. That based on these findings, the Metropolitan Service District Contract Review Board authorizes the Solid Waste Department to enter into negotiations with Emerick Construction Company for a change order to the Metro South Station Modifications Contract for

construction of a household hazardous waste collection facility; and

3. That the Executive Officer of the Metropolitan Service District is authorized to execute the negotiated change order if the change order price is less than or equal to the Engineer's Estimate for the project, as prepared by Sweet-Edwards/Emcon, Inc.

ADOPTED by the Metropolitan Service District Contract Review

Board this 28th day of February, 1991.

A handwritten signature in cursive script, appearing to read "Tanya Collier", is written above a horizontal line.

Tanya Collier, Presiding Officer

EXHIBIT "A"

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 91-1396 FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION TO THE REQUIREMENT OF COMPETITIVE BIDDING PURSUANT TO METRO CODE 2.04.041, AND AUTHORIZING A CHANGE ORDER TO THE METRO SOUTH STATION MODIFICATIONS CONTRACT TO CONSTRUCT A HOUSEHOLD HAZARDOUS WASTE COLLECTION FACILITY

Date: February 5, 1991

Presented by: Chuck Geyer

Proposed Action

Adopt Resolution No. 91-1396 to permit negotiation and award of a change order to construct a household hazardous waste collection facility (HHWCF) at Metro South Station in a timely manner.

Factual Background and Analysis

In 1989, the 65th Oregon Legislative Assembly passed House Bill 3515 which requires that "On or before January 1, 1991, the metropolitan service district shall establish permanent depots to receive household hazardous waste." The Metro Planning & Development Department subsequently developed a short term strategy to comply with the state mandate, which concluded that "Metro will concentrate on developing (household hazardous waste) depots at Metro regional transfer facilities."

In September of 1990, Metro entered into a Design Services Agreement to design the HHWCF at the Metro South Station. Design is expected to be completed by March, 1991. Metro has also initiated regulatory reviews by the City of Oregon City, DEQ and OSHA. These processes are expected to be completed by March, 1991.

The Metro South Station is currently undergoing modifications to relocate the compaction of waste from the current loading tunnel to the opposite end of the facility. These modifications must be substantially completed in order to begin the HHWCF construction since the compactor in the loading tunnel must first be moved. It is expected that the modifications will be substantially completed in February, 1991, and the compactor moved in early March.

Given the legislative mandate and the fact that Metro will not undertake household hazardous waste collection events in 1991, it is in the public interest to construct the HHWCF at Metro South Station

as soon as possible. Given the above concurrent processes, construction could begin in March, 1991. This is only possible if a change order to the modifications contract is used to construct the HHWCF (see Attachment No. 1). If such a process is used, the HHWCF could open as early as June, 1991.

If a bid process is used to construct the facility, opening would probably be delayed until November, 1991. The later opening would be due to the need to develop more detailed specifications, obtain Council approval of bid documents, conduct the bid process, obtain Council award of the contract, and the additional time required by a new contractor to mobilize for the project.

In order to use a change order process, the Contract Review Board must exempt the change order from the competitive bid process. The exemption is required since the cost of the work would exceed 10% of modifications contract.

Under Metro Code Section 2.04.041(c) and ORS 279.015(2), the board may, by resolution, exempt certain contracts from competitive bid requirements, if it finds as follows:

(a) It is unlikely that such exemption will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; and

(b) The awarding of public contracts pursuant to the exemption will result in substantial cost savings to the public contracting agency. In making such finding, the director or board may consider the type, cost, amount of the contract, number of persons available to bid and such other factors as may be deemed appropriate.

In addition, ORS 279.015(5) states that the board shall:

(a) Where appropriate, direct the use of alternate contracting and purchasing practices that take account of market realities and modern or innovative contracting and purchasing methods, which are also consistent with public policy of encouraging competition.

(b) Require and approve or disapprove written findings by the public contracting agency that support the awarding of a particular public contract or a class of public contracts, without competitive bidding. The findings must show that the exemption of a contract or class of contracts complies with the requirements of paragraphs (a) and (b) of subsection (2) of this section.

The following findings are recommended in support of an exemption from public bidding requirements for construction of a Household Hazardous Waste Collection Facility at Metro South Station:

1. It is not likely that the exemption will encourage favoritism or substantially diminish competition for public contracts.

"Favoritism" implies that there is a bias on the part of the contracting agency to award a contract to a particular contractor for reasons other than the furtherance of sound public policy and the intent of the public contracting system. Such favoritism is not encouraged through the awarding of this particular contract to Emerick, because the driving force behind the award is not bias, but instead, demonstrated public policy concerns outlined below. The contractor has not requested that it be awarded the contract, but would be directed to submit a proposal to do the work as a change order to its existing contract with Metro.

Awarding the contract to Emerick would allow Metro to bring its Household Hazardous Waste Collection Facility on line expeditiously. It brings the agency into compliance with the state mandate for development of such a facility in a more timely manner and shows good faith on the part of the agency.

In addition, there are overriding environmental concerns in further delaying construction of the facility. The success of the now discontinued "collection events" has demonstrated a high level of public willingness to segregate hazardous waste from the waste stream. Segregated collection prevents household hazardous wastes from being disposed of in ways likely to result in environmental degradation or increased risks to human health. It is important that the educational and habit-building gains made through past "collection events" not be lost due to inconsistent collection efforts by Metro. The possibility of a collection "gap" and attendant consequences serves as a justification for awarding the contract to the contractor who can most quickly complete the project.

Staff believe the above policy concerns override any perceived "bias" that may result from awarding the contract to Emerick simply because they happen to be on-site and in a position to perform more expeditiously.

In a like manner, competition will not be substantially diminished if the work is awarded to Emerick under the existing public contract. A public contract has already been awarded to Emerick Construction, Inc. for modifications to the Metro South facility. The contract to Emerick was awarded through a competitive bid process in which Emerick was determined to be the lowest responsible bidder. Emerick is currently on site and fully mobilized. Emerick is the only contractor in a position to perform within the time frames necessary to meet the public policy objectives outlined in this report.

The engineering firm of Sweet-Edwards/Emcon has been hired by the agency to provide specifications and cost estimates for the project. If Emerick's proposal is not reasonable in light of the engineer's estimate, it will be rejected as non-competitive, and the project will

be submitted to the competitive bid process. In this manner, Metro will balance the intent of the public contracting law (encouraging competition) with the important public policy objectives sought to be met through construction of the facility without further delay.

2. Awarding of the contract will result in substantial cost savings for the agency.

Costs that will be avoided fall into two categories. In the first category are avoided construction, engineering and administrative costs. Since the proposed contractor is already fully mobilized on the site, all costs associated with mobilization will be avoided. It is anticipated that these costs would account for approximately 10% of the total costs of a project. There are also avoided engineering costs, because specifications prepared for an on site contractor require less detail than those prepared for a contractor newly introduced to the site. Avoided engineering costs are estimated by staff at approximately \$8,000. Avoided administrative costs include the costs of the bid process and the legal expenses of establishing a new contractual relationship.

In the second category are avoided environmental costs. Further delay will result in the continued improper disposal of household hazardous wastes and a loss of momentum in public education efforts. While less easy to define, these environmental costs are expected to be substantial. No "collection events" are planned or budgeted for 1991 to collect household hazardous wastes while permanent facilities are being constructed.

The costs associated with a delay are substantial, and together with a mandate to construct a HHWCF in a timely manner, justify an exemption from public bidding to allow Emerick Construction, Inc. to complete the work as an amendment to the existing contract between Emerick and Metro.

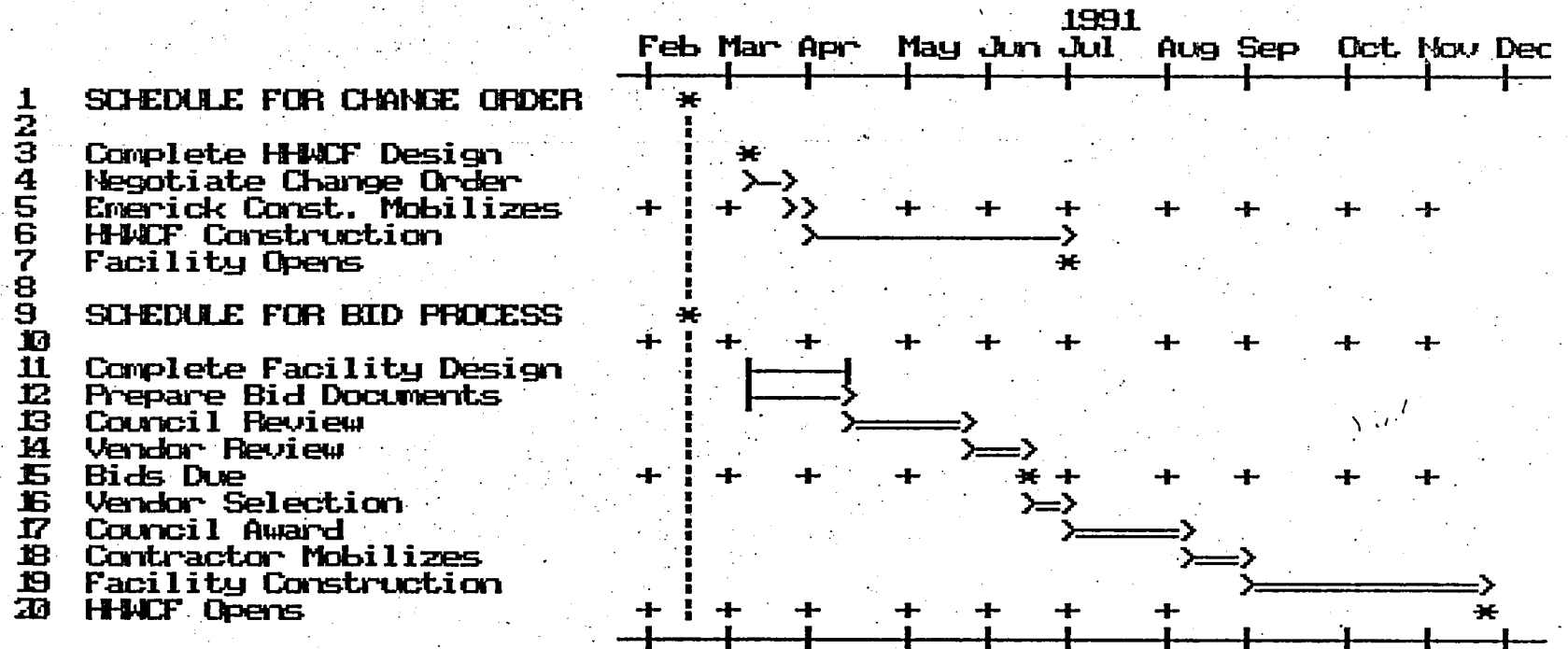
Budget Impacts

The current fiscal year budget for this project is \$300,000. Additional funds, estimated to be \$100,000, will be transferred from contingency as needed.

Executive Officer's Recommendation

The Executive Officer recommends adoption of Resolution No. 91-1396.

Attachment No. 1



SOLID WASTE COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 91-1396, FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION TO THE REQUIREMENT OF COMPETITIVE BIDDING PURSUANT TO METRO CODE 2.04.041, AND AUTHORIZING A CHANGE ORDER TO THE METRO SOUTH STATION MODIFICATIONS CONTRACT TO CONSTRUCT A HOUSEHOLD HAZARDOUS WASTE COLLECTION FACILITY

Date: February 21, 1991

Presented by: Councilor DeJardin

Committee Recommendation: At the February 19, 1991 meeting, the Committee voted 3-2 to recommend Council adoption of Resolution No. 91-1396. Voting in favor were Councilors DeJardin, McFarland, and McLain. Voting against were Councilors Gardner and Wyers.

Committee Issues/Discussion: Chuck Geyer, Solid Waste Planner, explained that staff is presenting two options for construction of a household hazardous waste facility at Metro South Station. The first alternative is to award a contract after competitive bidding; the other approach is to negotiate a change order with the current on-site contractor. Staff recommends the change order approach, since contracting with the current contractor will avoid additional engineering, construction, administrative, and environmental costs. Additionally, staff believes this approach will permit the facility to open five months sooner than if the contract is competitively bid.

Mr. Geyer said that the legislature in 1989 mandated establishment of permanent household hazardous waste depots by January 1, 1991. The Planning and Development Department studied the options available, and recommended that household hazardous waste collection facilities should be developed at regional transfer stations. After the Solid Waste Policy Advisory Committee approved this approach in spring, 1990, the project was assigned to the Engineering and Analysis Division for implementation.

Mr. Geyer said the first step was to determine FY 90-91 budget requirements, with detailed research taking place after adoption of the FY 90-91 budget. Staff then met with local officials and regulatory officials. He explained that a design engineer was retained in September, 1990. He said the project has become more complex than anticipated, primarily because of local regulatory concerns, and also because this is the first such facility to conform with the 1988 Uniform Fire Code Amendments. A conditional use permit was obtained from Oregon City in January, 1991.

Councilor Wyers asked why the modifications at Metro South and construction of the household hazardous waste facility were not combined into one project at the outset. Mr. Geyer said that the renovations were planned long before the 1989 legislative requirement, and specifications already were prepared. Jim Watkins, Engineering and Analysis Manager, noted that renovations

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to Metro South must be completed before construction of the household hazardous waste facility can begin.

Councilor Wyers asked the anticipated construction cost. Mr. Watkins estimated \$600,000 (4000 square feet at \$150 per square foot). He said total design and construction costs are estimated at \$700,000. The FY 90-91 budget allocates \$300,000 for design and construction; an additional \$400,000 will be funded from contingency if necessary.

Councilor Gardner asked for an explanation of why 15 months elapsed between the legislative mandate and the award of the design agreement. Bob Martin, Solid Waste Director, said that the delay occurred because the legislature acted after the FY 89-90 budget was adopted, so project funds could not be budgeted until the FY 90-91 budget. He said that DEQ has indicated that Metro has substantially complied with the requirement to establish a household hazardous waste facility by January 1, 1991, because Metro has dedicated space for a facility at the transfer station, and has completed permitting requirements. He also said that DEQ and Metro staff believe a facility should go into operation as soon as possible, since no household hazardous waste cleanup events are scheduled.

Mr. Geyer said that the facility can be constructed sooner with the change order, because staff will be able to prepare minimum rather than full, new specifications. A competitive bid process would require time for Committee and Council review. Also, a new vendor would need time to mobilize.

Councilor Wyers asked why the current contractor might be willing to agree to less than the engineering estimate, and how much would be saved. Mr. Geyer said it depends on staff's negotiation strategy, and that precise cost savings are difficult to predict.

In response to a question from Councilor Wyers, Mr. Watkins estimated that the cost of two additional household hazardous waste cleanup days would total \$600,000.

Councilor Gardner asked about the number of change orders with the current contractor, and the dollar value. Mr. Watkins said there have been approximately \$100,000 in change orders on the initial contract of \$2.8 million, and there will be more. The project is budgeted at \$3 million, so no budget adjustments have been requested to date.

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Councilor McFarland said she feels uncomfortable bypassing the safeguards in the competitive process, and anticipates frequent reports from staff regarding the project. She also said she is uncomfortable with staff delay in bringing matters forward for approval.

Councilor Wyers agreed. She said she had hoped household hazardous waste cleanup days would be planned during this time. She is concerned that if the change order is not accepted, there will be no alternatives for disposal of this waste. She said she appreciated staff outlining both the advantages and disadvantages of the change order approach.

Mr. Martin said staff was not asking the Committee to do away with normal checks and balances, and that either approach to construction is acceptable, but that staff recommends approval of a change order approach. He said if the current contractor does not offer a reasonable price (i.e. less than or equal to the engineer's estimate), a bid process will be pursued.

Councilor Gardner said he strongly favors the competitive bid process for construction projects, and does not think that the reasons presented in favor of the change order approach outweigh the rationale for competitive bidding. He said he believes there is a perception of bias because the contractor is already on site.