

BEFORE THE CONTRACT REVIEW BOARD
OF THE METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AUTHORIZING AN)	RESOLUTION NO. 91-1512
EXEMPTION TO THE REQUIREMENT OF)	
COMPETITIVE BIDDING FOR ISSUANCE)	Introduced by Rena Cusma,
OF A REQUEST FOR FRANCHISE)	Executive Officer
APPLICATIONS FOR THE PROVISION OF)	
TRANSFER AND MATERIAL RECOVERY)	
FACILITIES AND SERVICES FOR)	
WESTERN WASHINGTON COUNTY)	

WHEREAS, in June 1990 the Council of the Metropolitan Service District ("Council") adopted Resolution No. 91-1437B establishing policy for development of the "Metro West Transfer and Material Recovery System" as a chapter of the Regional Solid Waste Management Plan; and

WHEREAS, Ordinance No. 91-416, supported by the "Policy and Technical Analysis for the Washington County System Plan," (April 1991) amends the Regional Solid Waste Management Plan to include the chapter referenced above, and provides a firm policy basis for this Resolution; and

WHEREAS, Ordinance No. 91-416 states that "The primary method of facility procurement for transfer facilities in the west watershed will be through the issuance of a request for long-term franchises"; and

WHEREAS, because a public franchise may be viewed as a public contract subject to the provisions of ORS Chapter 279, an exemption from competitive bid requirements is being sought for issuance of a Request for Franchise Applications (RFF) for procurement of transfer and material recovery services in western Washington County; and

WHEREAS, 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.

WHEREAS, ORS 279.015(5) states that in granting an exemption, 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 the 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; now, therefore,

BE IT RESOLVED,

1. That the Board makes the following findings in support of an exemption from public bidding requirements for issuance of a franchise for transfer and material recovery facilities and services for western Washington County:
 - (a) It is not likely that the exemption will encourage favoritism or substantially diminish competition for public contracts. Metro's decision to issue this RFF for solid waste transfer and material recovery services in western Washington County is the result of extensive study and discussion. The policy behind this RFF was established as the local government solution to development of solid waste facilities in Washington County, and has been subjected to considerable public scrutiny and debate. The driving force behind the RFF is not favoritism, but important public policy concerns. Further, the process of requesting franchise applications is itself competitive, allowing all parties potentially capable of providing Metro with a specified level of service the opportunity to submit proposals. The proposed RFF establishes a competitive framework for submittal of applications, and objective criteria for judging those proposals.
 - (b) Awarding of a franchise in accordance with the RFF will result in substantial cost savings for the

agency. First, the services needed cannot readily be obtained through a request for bids. Because the envisioned franchise is for a major component of Metro's solid waste system, it is important that Metro retain control over the design and proposed operation of the selected facility. The franchise relationship is more appropriately established in a process of negotiation, following a request for applications. Second, cost will be an important consideration in award of the franchise. The procurement criteria for this project include a requirement that the cost must be no greater than the cost of a publicly financed facility, using the assumptions and methodology in the technical analysis.

2. That based on these findings, the Board hereby exempts from competitive bidding the major system component franchise to be requested in an RFF entitled "Request for Franchise Applications for the Provision of Transfer and Material Recovery Facilities and Services for Western Washington County."

ADOPTED by the Metropolitan Service District Contract Review Board this 10th day of October, 1991.



Tanya Collier, Presiding Officer

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NOS. 91-1512 AND 91-1513 FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION TO THE REQUIREMENT OF COMPETITIVE BIDDING AND AUTHORIZING ISSUANCE OF A REQUEST FOR FRANCHISE APPLICATIONS FOR THE PROVISION OF TRANSFER AND MATERIAL RECOVERY FACILITIES AND SERVICES FOR WESTERN WASHINGTON COUNTY

Date: September 20, 1991

Presented by: Jim Watkins
Chuck Geyer

PROPOSED ACTION

Approve Resolution Nos. 91-1512 and 91-1513 for the Purpose of Authorizing an Exemption to the Requirement of Competitive Bidding and Authorizing Issuance of a Request for Franchise Applications for the Provision of Transfer and Material Recovery Facilities and Services for Western Washington County.

FACTUAL BACKGROUND AND ANALYSIS

The attached Request for Franchise Applications (RFF) is being issued in conformance with Resolution No. 91-1437B which established policy for development of the Washington County solid waste system chapter to the regional solid waste management plan and Ordinance No. 91-416 which amends the Regional Solid Waste Management Plan to incorporate the Metro West Transfer and Material Recovery System Chapter.

The Plan Chapter for the Metro West Transfer and Material Recovery System recommends that long-term franchises be issued for transfer and material recovery facilities established in Washington County. This is consistent with the application process and award of a Major Disposal System Component franchise under Section 5.01.085 of the Metro Code. Section 5.01.085(d) of the Code requires that the Council establish application procedures, the review process for applications and the criteria to be utilized in determining which, if any, applications should be approved prior to authorizing a franchise agreement.

The RFF meets the requirements of Metro Code Section 5.01.085 with respect to submitting applications for major disposal system components franchises.

The purpose of the RFF is to acquire a long-term, privately owned transfer and material recovery facility for western Washington County. Washington County has been divided into two service areas serving western and eastern Washington County which are referred to as Service Areas #1 and #2, respectively (Please see map included in RFF).

BASIC FACILITY REQUIREMENTS

The services requested must be performed in a facility that meets basic requirements. These requirements, which are discussed in more detail in the RFF, are that the facility:

1. Process all waste received each day.
2. Limit public self-haul waste disposal to weekends.
3. Provide for public drop-off of source-separated recyclables prior to weighing.
4. Provide post collection material recovery of waste received utilizing proven technology and methods.
5. Remove unacceptable waste.

FINANCING

Metro has identified as an option for financing the acquisition, construction and installation of the facility and equipment, issuance of tax exempt limited obligation revenue bonds. Metro would issue the bonds and enter into a loan agreement with the franchisee. The franchisee would secure repayment of the loan through a mortgage and any credit enhancement needed to maintain Metro's current bond rating. Metro would in turn make a guaranteed monthly payment to the franchisee equal to the principal and interest due on the bond, provided the facility is operating. Alternative financial approaches will also be considered.

FRANCHISE EVALUATION CRITERIA

Each application will be evaluated by a selection committee based upon the information submitted regarding the following evaluation criteria:

1. The experience/qualifications of the applicant and project team.
2. Technical strength of both the proposed design and operations plan.
3. Cost - Applicants will be ranked according to acceptability of their financial structure and the resulting rate from capital and operating costs. The rate will be compared to the rate resulting from a publicly owned facility utilizing the methodology contained in the technical analysis.
4. Applicants will only be evaluated if appropriate land use approvals are submitted.

5. Compliance with Franchise Code.

FUTURE FINANCING

It is expected that over the life of the Franchise Agreement changes will occur in material recovery technology. The RFF provides a vehicle for future financing of required capital investments and permits delay of compactor procurement if deemed appropriate.

TIMELINE

Metro is scheduled to issue the RFF in October 1991, receive applications in mid-December and award a franchise in early 1992. Construction should be complete by the end of 1993. Metro will begin the procurement for eastern Washington County in early 1992 using a similar request for franchise process.

JUSTIFICATION FOR USING RFF PROCESS

Metro Code Section 2.04.041(c) allows the Contract Review Board to exempt specific contracts from the competitive bidding selection process by resolution subject to the requirements of ORS 279.015 (2) and (5). The Board, where appropriate, can direct the use of alternate 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. Resolution Nos. 91-1512, before the Contract Review Board, would exempt this selection process from the competitive bidding process. Under Resolution No. 91-1513, the Metro Council would authorize staff to issue a Request for Franchise Applications.

BUDGET IMPACTS

There are no immediate impacts on the FY 1991-92 Budget as any costs for financial consultants and bond counsel will be reimbursed from bond proceeds if Metro issues the bonds.

Long term impacts will not be known until the negotiations are complete and a rate established based on both capital and operating expenses. The Washington County Technical Analysis estimated the capital and operating costs for a transfer and material recovery facility located in the western service area. The medium range capital cost estimate (including site acquisition costs) is approximately \$10.3 million. Operating costs, representative of costs expected in the year 2003 when the facility is running at full capacity, is estimated to be \$1.7 million per year.

These costs were used to develop a rate for evaluating rate differences between a publicly owned and privately operated facility, and a privately owned and privately operated facility.

The table summarizes the projected impact on the regional tip fee of the private ownership option (the preferred local government option) and the public ownership option for FY 1993-94, the projected first full year of operation.

FY 1993-94 Metro System Rate

	REGIONAL USER FEE	METRO SYSTEM USER FEE	REGIONAL TRANSFER CHARGE	DISPOSAL FEE	TOTAL RATE
Public Ownership	\$13.11	\$9.76	\$12.16	\$36.40	\$71.44
Private Ownership	\$13.11	\$9.87	\$12.67	\$36.40	\$72.06

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends Contract Review Board approval of Resolution Nos. 91-1512 and 91-1513