

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING AN) RESOLUTION NO. 04-3426
EXEMPTION FROM COMPETITIVE BIDDING)
REQUIREMENTS AND AUTHORIZING ISSUANCE OF) Introduced by Council President David
RFP #04-1091-SWR FOR THE OPERATION OF THE) Bragdon
METRO SOUTH AND/OR THE METRO CENTRAL)
TRANSFER STATIONS)

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 region's 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, 2004, at which time a replacement contract or contracts must be in place; and,

WHEREAS, 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; and,

WHEREAS, the Metro Contract Review Board finds, as set forth on the attached Exhibit B, that exempting the transfer station operator contract(s) from competitive bidding requirements pursuant to the RFP attached hereto as Exhibit A is unlikely to encourage favoritism in the award of the contract(s) or to substantially diminish competition for the contract(s), and that the award of the contract(s) pursuant to an exemption from competitive bidding will result in substantial cost savings to Metro; and,

WHEREAS, the Metro Contract Review Board finds, for the reasons stated in the staff report for Resolution No. 04-3412, "For the purpose of authorizing an exemption from competitive bidding requirements and authorizing issuance of RFP #04-1091-SWR for the operation of the Metro South and/or Metro Central Transfer Station," and the findings attached hereto as Exhibit B, that the proposed RFP attached hereto as Exhibit A is appropriate for obtaining such replacement contract(s); and,

WHEREAS, as directed by Resolution No. 04-3412A, the Metro Chief Operating Officer entered into negotiations with BFI Waste Systems of North America, Inc., for an extension of the current agreement; and

WHEREAS, as directed the Metro Chief Operating Officer has reported to the Metro Council that an extension acceptable to Metro could not be agreed upon; and,

WHEREAS, these extension negotiations have delayed the project to obtain a replacement contract(s), a short-term extension to the existing operations contract is required as contained in Change Order No. 5 attached hereto as Exhibit C; now therefore,

BE IT RESOLVED that the Metro Contract Review Board:

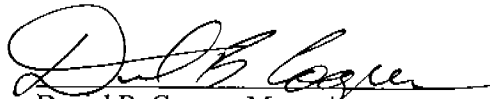
1. Adopts as its findings the justifications, information and reasoning set forth in Exhibit B, which is incorporated by reference into this Resolution as if set forth in full;
2. Exempts from competitive bidding requirements the contract to be solicited through RFP #04-1091-SWR, attached as Exhibit A;
3. Authorizes issuance of RFP #04-1091-SWR, attached as Exhibit A; and,
4. Authorizes the Chief Operating Officer to execute Change Order No. 5 to Contract No. 905690 attached as Exhibit C.

ADOPTED by the Metro Contract Review Board this 26th day of February, 2004.




David Bragdon, Council President

Approved as to Form:


Daniel B. Cooper, Metro Attorney

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for copy. (503) 797-1649



Exhibit A

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

RFB #04-1091 SWR

February 2004

Prepared by:
METRO

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Resolution No. 04-3426
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 recyclable 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, 2004. Metro intends to award a replacement contract(s) through a request for proposals process. Pursuant to Metro Code Section 2.04.054 and ORS 279.015(2) and (6), the Metro Contract Review Board makes the following findings to exempt this contract procurement from a request for bids process, and in support of the use of a request for proposals process.

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 RFP Documents: Interested parties will have been provided copies of the RFP documents and will have an opportunity to comment on those documents at a public hearing of 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 and national 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 Council, 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; and
- A 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
- The selection committee will score complete proposals using predetermined criteria stated in the RFP.

2.1.4.3. Metro will 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 and Oregon law.

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 numerous 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 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 and national 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 to operate Metro South Transfer Station only, and ended up as part of the second-highest ranked combination (combined with a large national firm's proposal to operate the other transfer station). It is unlikely this small 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 to achieve increased recovery—both between proposers and as compared with 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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CHANGE ORDER NO. 5

This Contract Change Order No. 5, effective _____, 2004, hereby amends Metro Contract No. 905690 between Metro and BFI Waste Systems of North America, Inc. (formerly Browning-Ferris Industries of Oregon, Inc.) "Contractor", dated July 18, 1997, including prior change orders, which contract and change orders are collectively referred to herein as the "Contract".

Purpose

The purpose of this change order is to extend the term of the Contract.

Provisions of Contract Change Order

1. The provisions of Paragraph No. 5 of the Contract Document entitled "Agreement" are amended to delete the date "September 30, 2004" and to replace such date with "November 30, 2004." In addition, the provisions of Article 31 of the General Conditions of the Contract are amended to delete the date "September 30, 2004" and to replace such date with "November 30, 2004."
2. Except as amended and modified herein, all other terms of the Contract and any previous Contract Change Orders shall remain in full force and effect. Any material conflict between the provision of the original Contract, including the provisions of other previous Contract Change Orders, and this Contract Change Order No. 5 shall be resolved by reference to and reliance upon this Contract Change Order No. 5.

BFI Waste Systems of North America, Inc.

METRO

Signature

Signature

Print Name and Title

Print Name and Title

Date

Date

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 04-3426 FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION FROM COMPETITIVE BIDDING REQUIREMENTS AND AUTHORIZING ISSUANCE OF RFP #04-1091-SWR FOR THE OPERATION OF THE METRO SOUTH AND/OR METRO CENTRAL TRANSFER STATIONS

Date: February 17, 2004

Drafted by: Chuck Geyer

BACKGROUND

In January 2004, Resolution No. 04-3412, "For the purpose of authorizing an exemption from competitive bidding requirements and authorizing issuance of RFP #04-1091-SWR for the operation of the Metro South and/or Metro Central Transfer Station," was filed with the Metro Council to authorize release of RFP #04-1091-SWR for the Operation of the Metro South and/or Metro Central Transfer Stations. Consideration of the resolution was postponed until February 5th in order to obtain comments from interested parties regarding the request for proposals.

At the February 5th Council meeting, the Metro Council adopted Resolution No. 04-3412A, directing the Metro Chief Operating Officer to negotiate an extension of the existing operations contract and to report on the result of such negotiations no later than February 26, 2004. Concerns were raised at the meeting as to the impacts on the RFP schedule should negotiations be unsuccessful. A representative of the current operator (BFI) stated that BFI would agree to a short-term extension at existing prices if long-term (three year) extension negotiations were unsuccessful.

The Chief Operating Officer has been unable to negotiate the terms of a long-term extension that are in the best interests of Metro and is therefore recommending that the Metro Council authorize release of RFP #04-1091-SWR. Due to the delay caused by unsuccessful negotiations, the Chief Operating Officer also recommends a two month extension to the existing operations contract in order to allow adequate time to conduct the RFP process and allow the successful proposer time to mobilize.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition.

2. Legal Antecedents

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.

Metro Code Section 2.04.058(b) requires Council approval of amendments to contracts designated as having a significant impact on Metro. Contract No. 905690 was designated as having such a significant impact.

3. Anticipated Effects

Adoption of Resolution No. 04-3426 will 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 authorize the release of a request for proposals to obtain such services. Adoption of the resolution will also authorize the Chief Operating Officer to execute Change Order No. 5 to Contract No. 905690.

4. Budget Impacts

There will be no impact on the current budget. The FY 2004-05 budget may be impacted depending on the cost associated with the replacement contract(s) and the establishment of a bonus fund.

RECOMMENDED ACTION

The Council President recommends approval of Resolution No. 04-3426.

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