

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING THE) RESOLUTION NO. 04-3502
CHIEF OPERATING OFFICER TO EXECUTE)
CHANGE ORDER NO. 6 TO THE CONTRACT)
FOR OPERATION OF THE METRO SOUTH) Introduced by Chief Operating Officer
AND METRO CENTRAL TRANSFER) Michael J. Jordan, with the concurrence of
STATIONS) Council President David Bragdon”

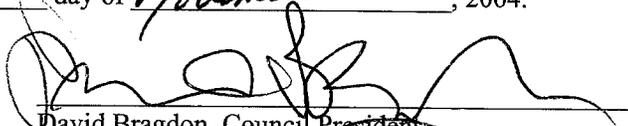
WHEREAS, Metro intends to enter into a new contract for the operation of Metro’s transfer station; and,

WHEREAS, In order to provide the new Contractor with sufficient time for mobilization, and in particular for the acquisition of new rolling stock, an extension of the existing contract is required; and,

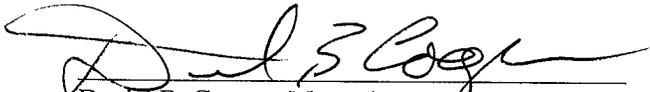
WHEREAS, As described in the accompanying staff report, Metro and BFI Waste Systems of North America, Inc., wish to amend the current Contract for the Operation of the Metro South and Metro Central Transfer Stations, Metro Contract No. 905690 (the “Contract”), to provide for the reloading of source-separated organic waste received at Metro Central Station, to implement recent changes in law regarding employees’ overtime pay, and to provide for the maintenance of existing equipment during the extension; now therefore,

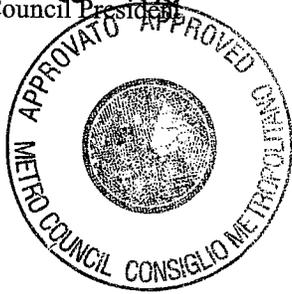
BE IT RESOLVED that the Metro Council, sitting as the Metro Contract Review Board, authorizes the Chief Operating Officer to execute Change Order No. 6 to Contract No. 905690, in a form substantially similar to that set forth as the attached Exhibit “A”.

ADOPTED by the Metro Council this 4th day of November, 2004.


David Bragdon, Council President

Approved as to Form:


Daniel B. Cooper, Metro Attorney



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EXHIBIT A TO RESOLUTION NO. 04-3502

METRO CONTRACT NO. 905690

CHANGE ORDER NO. 6

This Contract Change Order No. 6, effective upon full execution, 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, change the provision related to payment of overtime wages to reflect a change in law, require the provision of organic waste recovery services and reimburse contractor for equipment maintenance and overhaul during the transition to a replacement contract.

Provisions of Contract Change Order

In exchange for the promises and other valuable consideration described in the Contract and in this Change Order, the parties agree as follows:

1. The provisions of Paragraph No. 5 of the Contract Documents entitled "Agreement" are amended to delete the date "November 30, 2004" and to replace such date with "March 31, 2005." In addition the provisions of Article 31 of the General Conditions of the Contract are amended to delete the date "November 30, 2004" and to replace such date with "March 31, 2005."
2. Public Contract provisions related to the payment of wages and notification of employees and resulting savings due to changes in Oregon law are amended and cost savings applied in the following manner:
 - A. The provisions of Article 29(D) are replaced by the following:

"Pursuant to ORS 279.316(4) and ORS 279.334(8), Contractor must give written notice to employees who perform work under this Contract of the number of hours per day and per week that employees may be required to work, as specified in this Section D of this Article. Such notice must be provided either at the time of hire, before commencement of work, or by posting a notice in a location frequented by employees. Except as permitted by federal law or other state statutes or regulations:

 1. No person shall be employed under this Contract for more than ten (10) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, emergency or where the public policy absolutely requires it, and in such cases the employee shall be paid at least time and a half pay for all time worked in excess of ten (10) hours a day or in excess of forty (40) hours in any one week, whichever is greater; and

2. All persons shall be paid at least time and a half pay for all work performed under this Contract on the legal holidays specified in a collective bargaining agreement, if applicable, or on the following annual legal holidays: New Year's Day on January 1, Memorial Day on the last Monday in May, Independence Day on July 4, Labor Day on the first Monday in September, Thanksgiving Day on the fourth Thursday in November, and Christmas Day on December 25. For purposes of this provision, each time a holiday falls on a Sunday, the succeeding Monday shall be recognized as a legal holiday, and each time a holiday falls on a Saturday, the preceding Friday shall be recognized as a legal holiday.”
 - B. Metro is entitled to any reduced costs to the Contractor per Article 13(D) of the Contract due to the revised wage provisions described in item 2A, above. In lieu of passing such reduced costs to Metro, Contractor shall expend an amount equal to or greater than such reduced costs to perform additional activities to increase materials recovery at the Transfer Stations subject to the approval of Metro.
3. Organic Waste Recovery. Contractor shall provide the following additional services and shall be compensated for such services by Metro as follows:
 - A. Contractor shall reload source-separated organics brought to MCS into organics drop boxes provided by Metro's organics processor. Contractor shall handle the material from unloading through reloading in a manner to prevent contamination. Contractor shall manage the material in a manner that includes the following:
 - Receiving source-separated organic material at a location mutually agreed to by the parties. Metro shall be responsible for appropriately preparing the location. Metro shall be responsible for any deterioration to the location due to the nature of the material, if the Contractor manages the material in compliance with Item #3 of this change order.
 - Remove any incidental contaminants from source-separated organic loads. “Incidental contaminants” as used herein are any contaminants larger than the size of a five-gallon container.
 - Inspection of the loads to determine that the material is Acceptable Waste and qualifies as a load of source-separated organics (i.e. contains no more than four incidental contaminants per ton or 25 per load, or total contaminants of 5% by volume). Contractor, Metro and Metro's Organics Processing Contractor shall mutually develop practical rules for making such determinations.
 - If material is not Acceptable Waste it shall be managed in conformance with Item 10.0 of the Specifications for Metro Central Station. If material is Acceptable Waste but does not qualify as source-separated organics, it shall be managed in conformance with Item 4.0 of the Specifications for Metro Central Station; and Metro and the hauler shall be notified so that appropriate

fees may be charged. The notification to Metro shall include hauler name, Metro truck number, time of receipt, and date.

- Manage the material in a manner to minimize odor.
- Daily reloading of organic material into drop boxes provided by Metro's organics processor, including the staging of boxes to and from any storage area for pick up by a transporter.

B. Metro shall pay Contractor \$8.50 per ton as a unit price for each ton of source-separated organics reloaded as provided in this section. All such payments shall be considered additional Variable Payments for the purposes of interpreting Change Order No. 3 of this Contract.

4. Metro shall reimburse Contractor for equipment maintenance costs as follows:

A. Metro shall reimburse Contractor for up to \$100,000 of the third party costs incurred to overhaul the 973 track loader, used as primary equipment in the pit at Metro South Station during the period of the extension described in this change order. Contractor shall be responsible for any additional costs required to render this equipment serviceable for these uses.

B. Metro shall reimburse Contractor for the failure of the transmission or engine of either of the 950 wheeled front-end loaders used as primary equipment at Metro Central Station during the period of this extension subject to the following limitations:

- The failure must be catastrophic in nature (i.e. replacement is required);
- Metro will reimburse contractor for only half of the costs incurred by Contractor for the replacement of each engine or transmission; and,
- Metro's total expenditures under this clause shall be limited to no more than \$45,000.

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. 04-3502, FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO EXECUTE CHANGE ORDER NO. 6 TO THE CONTRACT FOR OPERATION OF THE METRO SOUTH AND METRO CENTRAL TRANSFER STATIONS

Date: September 29, 2004

Prepared by: Chuck Geyer

BACKGROUND

In March 2004, Metro released a request for proposals to operate Metro's transfer stations. At the end of April, four proposals were received and evaluated per the process contained in the request for proposals. The evaluation of proposals was completed in June 2004 and Metro began negotiations with the highest-ranked firm (Oregon Resource Recovery, LLC).

Due to a variety of factors, Metro was unsuccessful in negotiating a contract with the highest-ranked firm and terminated negotiations in August. Per the process contained in the request for proposals, Metro initiated negotiations with the next highest-ranked firm (Browning-Ferris Industries, Inc.). Metro has successfully negotiated a contract with this firm that will be considered under a process separate from this resolution.

The request for proposals process used to secure a replacement contract for operation of the transfer stations anticipated a mobilization period of five to six months for the next contractor. This time is needed to obtain the major rolling stock vehicles required to operate the stations such as a bulldozer at Metro South and large wheeled front-end loaders for Metro Central.

Due primarily to the complexity of the proposal and financial structure of the initial highest-ranked proposer, both the evaluation and negotiation phase of the project exceeded the projected timeline. Therefore an extension of the existing operations contract is needed.

The extension will allow the next contract to begin with the new equipment required in the request for proposals. This allows Metro to enjoy the benefit of this equipment (primarily improved operations) for the full life of the contract.

In addition to extending the contract, the change order also addresses a change in law related to the payment of overtime, the addition of organics reload services and reimbursement for limited equipment maintenance expenses. The change in law provision reflects current state law that no longer requires the payment of overtime for weekend work in public contracts (but still requires overtime pay for time worked over 10 hours in any one day or over 40 hours in a week). This change will provide savings to the contractor that are due Metro per existing contractual requirements. The change order applies these savings to increased material recovery efforts during the extension period.

Metro anticipates initiating its program to receive source-separated organics from commercial generators in conjunction with the City of Portland in January 2005. The change order requires the contractor to provide these services during the extension and sets the per ton rate at which it will be reimbursed (it is the same rate for this work that has been negotiated for the next contract). Staff concludes that this work,

which entails the receipt and transfer of a new category of source-separated solid waste, is directly related to the scope of work that was described in the competitive process utilized to award the current contract to contractor.

In order to extend the life of the existing major pieces of equipment through the extension period, Metro will participate in some maintenance expenditures. The change order requires Metro to reimburse the contractor for the overhaul of the dozer used in the pit at Metro South Station. The dozer must be overhauled to remain a reliable front line piece of equipment during the extension, since it is now over seven years old. Metro also commits to half the expense of replacing any transmission or engine of the two front-end loaders at Metro Central Station should they fail during the extension. All these pieces of equipment will be used as backups during the next contract.

ANALYSIS/INFORMATION

1. Known Opposition

None.

2. Legal Antecedents

Metro Code section 2.04.058(b) requires approval of this change order by the Metro Council. If contract amendments require additional work, such as the new source-separated organics transfer work contained in this change order, Metro Code section 2.04.058(c) requires such additional work to be directly related to the scope of work that was described in the competitive process utilized to award the contract.

3. Anticipated Effects

The existing contract for the operation of the Metro transfer stations will be extended for four months and the contract will be amended to address the payment of overtime, the provision of organics reloading and the maintenance of certain pieces of equipment.

4. Budget Impacts

Metro will reimburse the contractor an additional \$100,000 for rebuilding its dozer, and is obligated to reimburse contractor up to \$45,000 (in total) for catastrophic failures of the front-end loaders at Metro Central. Metro will pay approximately \$176,000 less under the contract extension than it would under the replacement contract for the same time period.

The increased costs for the current fiscal year due to this change order and to the higher costs associated with a new operations contract beginning in April 2004, may require budget adjustments in FY 2004-05.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Resolution No. 04-3502.