BEFORE THE CONTRACT REVIEW BOARD
OF METRO

FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION TO THE REQUIREMENT OF A COMPETITIVE PROCESS FOR THE SALE OF EQUIPMENT AT METRO CENTRAL STATION AND AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE CHANGE ORDER NO. 15 TO THE CURRENT OPERATIONS CONTRACT FOR METRO CENTRAL STATION)	RESOLUTION NO. 94-2019 Introduced by Rena Cusma, Executive Officer

WHEREAS, Metro can realize substantial savings for the operation of Metro Central Station by executing Change Order No. 15 (Attachment No. 1 to EXHIBIT "A") to Metro Contract No. 901584 as described in EXHIBIT "A"; and

WHEREAS, Change Order No. 15 would transfer ownership of certain equipment to the current operator of Metro Central Station; and

WHEREAS, Under Metro Code Section 2.04.070, such a sale of equipment (see EXHIBIT "A") must follow the procedures for purchase of goods and services; and

WHEREAS, Under Metro Code Section 2.04.060(a), such a sale requires an exemption from public bidding requirements by the Metro Contract Review Board; and

WHEREAS, Metro Code Section 2.04.041(c) and ORS 279.015(2) authorize the Metro Contract Review Board to exempt a public contract from competitive bidding if it finds that the exemption will not encourage favoritism or substantially diminish competition for public contracts and that such an exemption will result in substantial cost savings; and

WHEREAS, EXHIBIT "A" to this resolution presents findings which satisfy the requirements of such an exemption; now, therefore,

WHEREAS, This resolution was submitted to the Executive Officer for consideration and was forwarded to the Council for approval; now therefore,

BE IT RESOLVED,

1. That based on the information presented in EXHIBIT "A", the Metro Contract Review Board finds that:

   a) It is unlikely that exempting the sale of equipment to the current Metro Central Contractor will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; and

   b) The sale will result in substantial cost savings to Metro; and

2. That based on these finding, the Metro Contract Review Board exempts Change Order No. 15 to the Metro Central Operation Contract from the requirements for a competitive sale process and authorizes the Executive Officer to execute the change order.

ADOPTED by the Metro Contract Review Board this 22 day of September, 1994.

Judy Wyers

Judy Wyers, Presiding Officer

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EXHIBIT "A"

The following findings are recommended in support of an exemption from public bidding requirements for the sale of equipment listed in Change Order No. 15 to the operations contract for Metro Central 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 sale of rolling stock to Trans Industries (TI), because the driving forces behind the sale are not bias, but instead, demonstrated savings to Metro and operational efficiency. An appraisal has verified that the sale price of the equipment to TI is within the range of expected market prices. In addition to reducing transfer station costs, the sale is being undertaken to provide the operator with an incentive to maintain the rolling stock during the remainder of the contract which they would not have if Metro retained ownership, thereby reducing the likelihood of downtime and improving operations. This has been our experience at Metro South where the operator provides all rolling stock. Since the equipment would have little value at the end of the contract, the next operator would be required to provide new equipment and the existing rolling stock would have to be sold off at substantially less than Metro will receive through a sale at this time.

Competition will not be substantially diminished if the sale is made to TI. The sale of the equipment competitively would probably not be made until the end of the current contract. As mentioned above, it is expected that the value of the equipment would be close to the salvage value by that time, with little depreciation available to potential buyers. This is due to the fact that the rolling stock is being used in one of the harshest applications possible- i.e. moving solid waste. The equipment has also been specially modified (such as solid tires for the loader) which limits its use for other applications. For the above reasons, few buyers would be interested in bidding for the equipment. Instead of auctioning of the equipment, Metro would most likely turn over ownership of the equipment to the next operator as was done at Metro South as part of the award of that contract.

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

The $280,000 sale price is substantially more than the estimated salvage value Metro would probably realize if the equipment were sold at the end of the contract in 1996. The equipment could not be sold at this time because it is needed to complete the current operations contract. If Metro sells the equipment to TI, Metro will also avoid all maintenance costs associated with it. Metro's potential exposure for maintenance costs for the mobile equipment is over $150,000. Metro also avoids the administrative costs associated with auctioning off the equipment if this were done.

ATTACHMENT NO. 1

CHANGE ORDER NO. 15
METRO CONTRACT NO. 901584

MODIFICATION TO THE CONTRACT BETWEEN
METRO AND TRANS INDUSTRIES, ENTITLED
"1989 METRO CENTRAL TRANSFER STATION OPERATIONS AGREEMENT"

A. Purpose and Term of Change Order

The purpose of this Change Order is to modify the terms under which Trans Industries will operate the Metro Central Station effective October 1, 1994, and continuing until the conclusion of the Contract.

B. Terms of Change Order

DELETE the existing language and REPLACE with the following:

"(a) the sum of $283,120 (adjusted in the same manner as set forth in Section 8.3 and which includes the Materials Recovery Incentive for the first 800 tons of Recovered Materials) for each month effective October, 1994, provided that for any month during which 20,000 Tons or more of Acceptable Waste are delivered to the Facility, the Unit Price (Exhibit 8.1) shall apply to all tons delivered;

2. **REPLACE** EXHIBIT 8.1 with the following:

Unit Prices for Monthly Tonnages in Excess of Flat Fee

For months when Acceptable Waste tonnage exceeds 20,000, Contractor will be reimbursed based on the following unit prices:

	Tons/Month	Price Per Ton
	20,000	$12.700
	22,500	$11.356
	25,000	$10.280
	27,500	$9.400
	30,000	$8.667
	35,000	$8.000
over	40,000	$7.520

For months with tonnages between each tonnage category above a straight line sliding scale will be developed. Reimbursement for actual tonnage within the categories will be based on the incremental unit cost from the sliding scale. For example, if Acceptable

Waste tons received in a month were 27,936, then the unit price per ton would be $9.272; therefore the service fee for that month would be:

27,936 x $9.272 = $259,022.59

All months with tonnage greater than 40,000 will be reimbursed at $7.520 for all tons. For example, if Acceptable Waste Tons received in a month were 41,013, then the service fee for that month would be 41,013 x $7.520 = $308,417.76.

Unit Prices are adjusted annually in accordance with Section 8.3.

3. Change Order No. 13

   DELETE item number 5 of Section B

4. Change Order No. 1

   DELETE item B.2.(a)

5. Change Order No. 3

   DELETE items number 2 and 3

6. Section 7.4.1

   ADD to the end of the section:

All structural girders and ventilation systems shall have dust removed from their surfaces on a schedule agreed to by Metro, and all their painted metal surfaces that are chipped or corroded shall be repainted annually.

7. Section 7.4.3

   ADD to the end of the section:

Except that the Contractor shall pay for the periodic lab testing required by the City of Portland in accordance with the schedule and terms contained in the operating permit issued by the City, at no additional cost to Metro.

8. Section 7.3.2.1

   DELETE the existing language and REPLACE with the following:

The Contractor shall make all repairs of equipment and perform all maintenance, in addition to periodic maintenance set forth in section 7.3.1, reasonably required for the operation of the Facility in conformity with this Agreement and the Performance Standards, at no additional cost to Metro, except to the extent described below.

Contractor shall be reimbursed for one-half of its Direct Costs during the first 21 months of this change order and for seventy five percent of its Direct Costs during the last 3 months of this change order (excluding Contractor-provided labor expenses except those pre-approved by Metro) for the extraordinary costs for replacement or rebuilding of those items listed in Exhibit 7.2 to this Change Order to the extent of Cost Substantiation, provided that the Contractor has performed the periodic maintenance consistent with historical levels and the Operation and Maintenance Manual. If Metro determines that Contractor has not performed its maintenance responsibilities consistent with historical levels and the Operation and Maintenance Manual, Contractor shall be responsible for all costs described in this section.

Contractor shall be entitled to full reimbursement for Direct Costs described in this section which result from Metro Fault or Change in Law. If Direct Costs for any repair described in this section are required in order to avoid injury to persons or property or a material stoppage in the loading of transport vehicles, the Contractor shall effect the same and promptly notify Metro. In all other cases Metro shall be notified of and approve such actions in a procedure substantially equivalent to that for a Change Order.

9. INSERT the following Section 8.4.4:

Over the remaining life of the Contract, Contractor shall purchase from Metro the equipment listed in EXHIBIT 8.2 to this Change Order for the purchase price of $280,000 and be responsible for all repair and replacement costs associated with the equipment. Contractor shall remit the purchase price by deducting from its monthly operations billing the amount equal to the Acceptable Waste tons received at the Facility, times $.39, until the full purchase price of $280,000 has been remitted to Metro. In the event that the Contract is terminated prior to Contractor remitting the entire purchase price, the remaining amount due Metro shall be deducted from the final payment due the Contractor. In the event that the final payment is insufficient to reimburse Metro for the remaining balance due Metro for the equipment purchase, Contractor shall remit the remaining balance within 30 days of the termination of the Contract. The $.39 per ton payment to Metro shall not be subject to annual adjustment in accordance with Section 8.3.

10. DELETE Section 13.5 and REPLACE with the following:

Metro shall have the option, exercisable in its sole discretion, to terminate this Agreement without cause within ninety (90) days after October 1, 1994. Contractor shall continue its obligation under this Agreement for a period of ninety (90) days after receiving written notice from Metro of Metro's intent to terminate the Agreement under this section, at the end of which time the Agreement shall terminate and the Contractor shall demobilize from the facility. Upon such termination, Metro shall pay the Contractor the amount provided for in Section 13.4.

11. Section 1, Definitions, "Unit Prices":

DELETE "over 35,000" and SUBSTITUTE "equal to or exceeding 20,000".

12. INSERT the following Section 8.1.4:

Total compensation to Contractor under this Agreement, including all payments made by Metro to Contractor and all other revenue derived by Contractor from operation of the Facility, minus credits provided by Contractor under section 6.12.3 and adjusted as specified in Section 8.3, (herein "total compensation") shall not exceed $6,794,880 in a Contract Year. If Metro determines that total compensation to Contractor in a Contract Year is likely to exceed $6,794,880, and not more than $3,600,000 of that amount is attributable to Metro payment of Unit Prices and/or the fixed amount specified in Section 8.1.1(a), Metro may declare a Contractor Event of Default, and will be entitled to the remedies specified in Section 13.3.1, provided that Metro shall have given Contractor 30 days prior written notice, with reasonable detail of the basis for the default, and Contractor shall have failed to remedy or commence to remedy the default within the 30 day period. The amounts specified herein shall be prorated if this Agreement is terminated prior to the end of a Contract Year.

13. INSERT the following Section 13.4 (c):

A Force Majeure causes Metro to deliver quantities of waste to the facility such that Metro payment of Unit Prices and/or the fixed amount specified in Section 8.1.1 exceeds $3,600,000 and the total compensation specified in Section 8.1.4 exceeds $6,794,880.

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EXHIBIT 7.2

Metro Central Transfer Station
Extraordinary Equipment Repairs and Replacements List

Equipment/Component	**Estimated Cost To Rebuild**	**Estimated Cost To Replace**
<u>Densifiers</u>		
Amfab		
Packing Cylinder	10,000	80,000
Electric Motor 150 hp	1,600	5,000 two units
Hydraulic Pump	1,000	5,000
HydraulicValve Body	2,500	20,000
Replace floor	n/a	45,000
Resurface concrete	20,000	50,000
SSI Unit #1		
Packing Cylinder	6,000	70,000
Ejection Cylinder	7,000	60,000 two units
Electric Motors, 150 hp	1,600	5,000 two units
Hydraulic Pump	900	3,500
Hydraulic Valve Body	2,500	15,000
Replace floor	n/a	45,000
Resurface concrete	20,000	50,000
SSI Unit #2		
Packing Cylinder	6,000	70,000
Ejection Cylinder	7,000	60,000 two units
Electric Motors 150 hp	1,600	5,000 two units
Hydraulic Pump	900	3,500
Hydraulic Valve Body	2,500	15,000
Replace floor	n/a	45,000
Densifier Total	91,100	652,000
<u>Support Equipment</u>		
Air Compressor	n/a	40,000
Back up Generator	60,000	85,000
Diesel Tank Failure	n/a	75,000
Baler		
Packing Cylinder	1,500	12,000
Ejection Cylinder	1,000	8,000
Electric Motors	700	2,000
Hydraulic Pump	1,200	6,000
Hydraulic Valve Body	2,100	15,000
Support Total	66,500	243,000

EXHIBIT 8.2

Rolling Stock to be Purchased by Trans Industries from Metro

Quanity	Description
1	Caterpillar V200B Forklift
3	Komatsu WA320 Loaders
1	Komatsu WA380 Loader
1	Condor Boomlift
1	John Deere Sweeper
1	Hyster Forklift

M E M O R A N D U M

ATTACHMENT NO. 2

METRO

DATE: June 14, 1994

TO: Metro Council Solid Waste Committee

FROM: Bob Martin, Solid Waste Director

RE: Discussion of Options for Operations Contracts for Metro Transfer Stations

By late 1994, both operations contracts at Metro transfer stations will be able to be rebid. Discussed below are factors to be considered in deciding when to bid out the contracts. These factors include the current structure and performance of the two contracts, the role of the stations in the solid waste system, how current prices compare with other jurisdictions, and bidding strategies and possible outcomes. After consideration of these factors it is my recommendation that the current contracts be rebid together by October 1996. This means extending the Metro South agreement as provided by the contract, and simply continuing the Metro Central contract to maturity. This report provides the background and basis for this recommendation.

BACKGROUND

The current five year operations contract for Metro South Station (MSS) expires December 31, 1994. Per Article 32 of the General Conditions of the contract, Metro may, at its sole discretion, extend the term of the contract for up to an additional 2.5 years. Multiple extensions can be used to extend the term by that amount, except that each extension must be at least 6 months and 90 days notice must be given in advance of the termination date (of the original contract, this would be October 1st, or any subsequent extension). Preliminary discussions with the current contractor indicate a willingness to extend the term, although their agreement to an extension is not required. All terms and conditions of the existing contract apply during the extension, except for "fixed cost" payments which would be discontinued during an extension. The current contractor, Waste Management of Oregon (WMO), did not bid any "fixed costs".

Operations at MSS are fairly straightforward due to the pit design and lack of materials recovery activities. Haulers tip the waste into the pit and a tracked loader pushes the waste into compactors which extrude the waste into transport semi-trailers. Materials recovery activities are limited to mostly source separated materials and white goods which account for about a 1% recovery rate. Although there have been disputes over contract interpretation, these have not resulted in major cost impacts. The main operational problem at the facility has been the repeated failure of the SSI compactor. This has resulted in substantial downtime for the unit. The current operator has cooperated in the situation, and offered to share in a solution to the problem if the contract is extended since a solution would result in lower maintenance costs and downtime. In general, the current contractor's performance has been very satisfactory.

The current five year operations contract for Metro Central Station (MCS) expires October 1, 1996. Per section 13.5 of the agreement, Metro has the option of terminating the agreement after the 3rd year, at its discretion, upon 90 days notice (July 2nd notice to terminate October 1, 1994). The 3 year termination option is a requirement of the type of bonds used to finance the facility, and would be a requirement of any future operations contract as well.

If Metro exercises the termination option, Metro is responsible to pay the contractor's costs of "termination and demobilization." These costs are not defined in the agreement, staff estimates such costs to be in the range of $25,000 to $50,000. If Metro chooses not to terminate, all terms and conditions of the agreement still apply, except for those change orders which expire on the third anniversary. Actual operations at MCS are much more complex than at MSS and are still being modified. The difference in operations is largely due to the flat floor design and materials recovery activities.

The materials recovery activities are still evolving at the facility. The facility was designed to recover mainly wood and paper from the incoming wastestream. Wood is recovered mainly from commercial waste after being tipped onto the floor. It is then taken to the wood line for processing into hog fuel. The wood recovery line has functioned pretty much as planned, and is recovering 75% of the total 7% recovery rate. However, due both to the success of source separation programs (which appear to have removed larger quantities of materials from the wastestream than expected) and the inability of the mechanical lines to upgrade paper to marketable quality, paper recovery has been well below target levels. In an effort to utilize the paper feedstock from the mechanical lines, the contractor has recently installed a pellitizer to make fuel from recovered contaminated paper. The pellitizer is currently undergoing shakedown and contracts with users are being negotiated. In the event that Metro terminates the current contract in October 1994, and Metro is unable to evaluate this equipment sufficiently, it is most likely Metro would have the contractor remove the equipment upon demobilization. Since the fuel is to be made from the contaminated paper recovered by the lines installed initially, it is unclear what would be the materials recovery focus in a future contract. The contractor is also currently negotiating with the American Plastics Council for the installation of a materials recovery system for plastics. The system would primarily be funded by the American Plastics Council.

As originally negotiated, the MCS contract required Metro to reimburse the contractor for one half of the maintenance costs of the facility, other than periodic maintenance. Due to the unacceptability of part of the materials recovery system, the contractor, in a change order which expires in October 1994, agreed to pay all maintenance costs for the first three years of the contract. The value of this change to Metro is estimated at $237,000 annually. It should be noted that, unlike MSS, Metro owns most of the rolling stock at MCS. It is clear that a better arrangement would be for the operator to own this equipment since they have an incentive to maintain the equipment and can take advantage of depreciation. A five year depreciation period is appropriate for most rolling stock. Staff believes the $600,000 worth of rolling stock originally purchased by BFI as a part of the facility purchase price and thus owned by Metro will reasonably last an additional two years. It would be difficult to factor the cost of new equipment into the price per ton if the contract were rebid in October 1994.

As mentioned above, the current operations contract for MCS is five years in length, with the option to terminate after three years. Given the still evolving nature of the materials recovery activities, it would be difficult to specify the activities required in the next contract at this time. The option to terminate is a requirement of the financial arrangement used to construct the facility. The intent of this requirement is to protect Metro should the contractor's performance prove unsatisfactory or too costly. As discussed below, it is probably advantageous for Metro in the long run to honor the full length of the contract to attract lower bids as well as to consolidate operational parameters.

In general, it is staff's opinion that the current contractor (BFI) has performed well. BFI continues to invest substantial time and money in the materials recovery systems and operations. This includes an investment in over $300,000 of equipment not specified in the contract, as well as innovative attempts to increase materials recover such as the pellitizer. In terms of cost, the current cost of operations is perceived as high since the put-or-pay tonnage level has not been reached. A more detailed analysis of relative transfer station costs and expected bid prices is contained below.

THE ROLE OF METRO TRANSFER STATIONS

The solid waste department is currently developing a facilities plan update for the region. The purpose of the plan is to determine the type and number of solid waste facilities which will be needed in the region and the role different parties will play in developing these facilities. It is unclear what role Metro's transfer stations will have in the plan, the volumes they will be expected to process and what activities they will be expected to perform as a part of the solid waste system. The Metro Council adopted Resolution No. 94-1941 (calling for a facilities plan update) in part, because of its concern over the role of transfer stations as part of the system of solid waste facilities needed in the future. Until the facilities plan has been developed and adopted, it would be difficult and perhaps premature (but not impossible) to specify in bid documents what will be needed at MSS and MCS, and their future roles in system.

Likewise, the Department is concurrently developing its five year waste reduction plan. The plan will address the policies, programs and roles the region will need to achieve waste reduction goals. The role and need for transfer stations will be defined to some extent by the plan, both in terms of the stations' roles in increasing materials recovery and also as places where demonstration programs can be conducted to examine the feasibility of different approaches. Particularly with organics, the long term role of Metro transfer stations will be defined by demonstration programs which will be undertaken in the next fiscal year.

Metro is also currently conducting a waste characterization study to determine the composition and origin of waste arriving at solid waste facilities. The study will be a driving force in the development of both of the above plans. The information gathered will provide a picture of the success of waste reduction programs and what materials remain for recovery at transfer stations. The study will also examine the impact of a large "dump and sort" operation which will come on-line during the Spring. Its impact will be critical in determining the mix of recovery activities at

Metro transfer stations, particularly at MCS, and may result in discontinuing certain activities and emphasizing others. Given the still evolving nature of recovery activities at MCS, it would be desirable to have the information being developed from the characterization study, and the program and policy direction which will come from the plans currently being developed, before we rebid current operations contracts at Metro transfer stations.

PRICE COMPARISON AND REBIDDING

The MSS has a current average price of $4.30 per ton. It escalates annually at 80% of the CPI. The BFI contract price is set by the put-or-pay amount, which results in an average per ton price of $9.82.

In examining what is a reasonable price for transfer at these two very different facilities, information from other jurisdictions was sought. Comparable transfer station operation and maintenance information was found for Seattle's publicly-owned and operated transfer station, and for the publicly owned and privately operated station in Hennepin, Co., Minnesota. Other jurisdictions contacted were unable to separate transfer station costs from transport or disposal.

The Seattle station is a pit design with compaction for long haul similar to MSS. The per ton rate is approximately $8.39 for transfer. The Hennepin, Co. station is a pit design where waste is top loaded into trailers, its rate is approximately $6.27. Neither of these jurisdictions perform significant materials recovery at transfer stations.

Staff also analyzed the previous contract for the operation of Metro South and inflated the prices per the contract. The analysis indicates that current prices for Metro South are approximately 12% lower than the previous contract would have been if it were continued.

In addition, we compared prices from the proposed Wilsonville station (which would have had some materials recovery) and the recently negotiated Forest Grove franchise. The Wilsonville station, operating at full capacity, would yield a per ton rate of $10.51 (excluding capital costs). The Forest Grove station operating at full capacity is $11.96 without capital costs.

Averaging these five rates yields a per ton rate of $8.40 per ton. Metro South at $4.30 per ton is the lowest rate found in our analysis. Metro Central at its current $9.82 is at the upper range of our analysis. Averaged, our current transfer rate is about $6.96. This average does not include Metro's share of maintenance costs at Metro Central, which would increase the average by about $.30 per ton.

Given the unused capacity at MCS under the current put-or-pay arrangement, preliminary discussions were conducted with the operator regarding prices for the period beyond the initial three years. These discussions indicate that savings of approximately two dollars per ton are available over what would be contractually required in 1995, with BFI responsible for all maintenance costs. Averaged with MSS, our transfer rate would fall to approximately $6.42 per ton after October 1994. If we were to continue the MCS contract past October 1994, under the current contractual conditions, our combined transfer rate would rise to approximately $7.50 per ton due to the effects of the put-or-pay arrangement and the expiration of the maintenance change order discussed above.

In order to examine the effect rebidding the contracts would have on prices, staff speculated on the outcomes of three possible scenarios. First, each contract could be rebid separately, assuming Metro exercises its option to terminate MCS in October 1994, and does not extend MSS past December 1994. Secondly, the current MCS contract would be terminated to coincide with the expiration of MSS, and the two could be bid as a package, with new contracts effective January 1995. The third option would be to extend the MSS contract until October 1996, renegotiate prices at MCS as discussed above for the remainder of contract (while retaining the option to terminate), and then bid the two as a package effective November 1996.

Both the second and third options assume a reduction in prices of 7% due to bidding the two stations as a package. The reduction is possible due to having a single contractor operating both stations who would be able to share resources between the stations. For example, less administrative and maintenance personnel would be needed since they could be utilized by both facilities. Per unit costs for outside services and supplies (such as fuel) may be reduced due to increased volume. Cost savings should be available generally due to economies of scale.

Option #1 - Rebid both contracts separately at earliest opportunity.

The MCS contract could be terminated in October 1994. The current price is in the upper range of transfer costs, attributable mainly to the put-or-pay aspects of the contract, the complexity of operations and maintenance requirements of the materials recovery systems, and the cost of purchasing all new rolling stock during the term of the contract. It is expected that prices could be reduced through rebidding. The above analysis indicates that a rate of $8 to $9.50 per ton would be an expected rate.

MSS's current contract can be terminated in December 1994. Staff found no evidence that rebidding the contract would lower the rate. Since the station is less complex than operations at MCS and has fewer operating hours, a rebid would probably result in a slightly higher rate, in the range of $4.25 to $5.50 per ton.

The average rate would be $6.13 to $7.50 per ton. Bidding separately forgoes any potential savings available by combined operations.

Option #2 - Rebid both contracts as a package at earliest opportunity.

Both stations could be bid as a package effective January 1995. It is expected that doing so could reduce total prices by approximately 5% to 10% below separate procurements due to economies of scale (7% is used here). Such economies would include reduced overhead, shared maintenance, equipment and labor resources, and flexibility. A transfer station rate for Metro could be in the $5.70 to $6.98 per ton range.

Option #3 - Renegotiate MCS prices, extend MSS until October 1996, then rebid both.

Staff believes that a combined transfer rate of approximately $6.42 per ton is achievable. This option has the additional advantage of solidifying operational requirements of the materials recovery activities at MCS, which should result in a lower price when rebid as a package in 1996, since uncertainty will be reduced for bidders. It is also contemplated that it would be in Metro's best interest to sell the rolling stock to BFI during the remaining two years of the contract, since BFI can take advantage of depreciation, while Metro cannot. This would reduce the combined rate to approximately $6.27 per ton.

The effects of pursuing each of the three options is depicted in the chart below.

		Option #1 Range *		Option #2 Range *		Option #3 Range	
Year	Tonnage	$6.13	$7.50	$5.70	$6.98	$6.27	$6.42
1995	753,155	$4,616,840	$5,648,663	$4,292,984	$5,257,022	$4,698,163	$4,818,652
1996	779,294	$4,944,270	$6,049,270	$4,597,445	$5,629,854	$4,855,275	$4,980,046
1997	799,787	$5,251,889	$6,425,639	$4,883,485	$5,980,128	$4,808,550	$4,932,120
1998	815,527	$5,542,681	$6,781,420	$5,153,879	$6,311,242	$5,074,795	$5,205,207
1999	832,334	$5,854,900	$7,163,418	$5,444,198	$6,666,754	$5,360,659	$5,498,417
Total Expenditures under each option		$26,210,580	$32,068,409	$24,371,991	$29,844,999	$24,797,442	$25,434,44
Ave. Expenditures			$29,139,494		$27,108,495		$25,115,942
		Per ton	$7.32		$6.81		$6.31
Difference from lowest average			$4,023,552		$1,992,553		
Difference from highest of each Optio			$6,633,966		$4,410,557		
Difference from lowest of each Optio		$1,838,589				$425,451	

* Options 1 & 2 assume an annual escalation of 3.5%, beginning in 1996.

** For option #3, the first two years use existing contract assumptions, with renegotiated prices for MCS.
The third year assumes 1996 prices can be reduced by 3.5% due to bidding as a package (7% savings reduced 3.5% due to inflation) and improved specifications.
The fourth and fifth years assume a 3.5% escalation.

The chart shows that Option #3 has the lowest average price and that over the next five years it could save approximately $2 million over Option #2. If Option #2 were pursued and bids came in at the upper range, Metro would spend approximately $4 and half million more than the highest price in Option #3, or ten times more than the potential savings if the low range of Option #2 is compared to the low range of Option #3.

If options 1 or 2 are pursued, staff is unsure of how to deal with the issue of Metro's rolling stock. The equipment has probably no more than 3 years of useful life with significant maintenance costs. If Metro retained ownership under a five year contract, Metro would probably be responsible for replacement during the contract term, while entering into disputes with the contractor over how much maintenance is required. If, under options 1 or 2, Metro requires the contractor to take ownership of the current rolling stock and provide replacements which they own, it is unclear what the effect on prices would be since the contractor would be unable to fully depreciate the equipment (the normal cycle is 5 years), but yet would enjoy the salvage value of the current equipment after 2 or 3 years.

The prices estimated in options 1 and 2 reflect that potential bidders assume that the contracts awarded would be five years in length, as the prices from which they are derived are/were at least that length. Staff is unsure if prices would be higher if the MCS contract is viewed as a three year contract. One effect to bidders, as mentioned above, is less time to depreciate equipment that can be a sizable investment. This may not concern larger firms which can move equipment from one project to another, however smaller firms may not be willing to absorb such risk. In addition, firms may be unlikely to pass on all of the savings from combined bids for both stations for the full five years. By exercising the option to terminate the MCS contract after three years, prices received in subsequent bids maybe higher than expected.

RECOMMENDATION

It is recommended that Metro negotiate a reduction in price with BFI, acceptable to staff, and continue their operation of the station past October of 1994 while retaining the option to terminate as currently contained in the contract, as well as extend the WMO contract until October 1996. This action will permit Metro to develop its facilities needs for the future, reduce the overall transfer costs, and allow further refinement of the operations at MCS, while positioning to bid the stations as a package.

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NOTE: This table is an update of the table presented in the memo from Bob Martin, Solid Waste Director of June 14, 1994 regarding "Discussion of Options for Operations Contracts for Metro Transfer Stations". The updated information under Option #3 reflects updated assumptions and minor corrections in the previous analysis. As a result of the update, $7.54 should be substituted for $7.50 on page 4 of the memo.

Year	Tonnage	Option #1 Range *		Option #2 Range *		Option #3 Range **	
		$6.13	$7.50	$5.70	$6.98	$6.37	$6.56
1995	753,155	$4,616,840	$5,648,663	$4,292,984	$5,257,022	$4,775,936	$4,917,049
1996	779,294	$4,944,270	$6,049,270	$4,597,445	$5,629,854	$5,051,726	$5,197,853
1997	799,787	$5,251,889	$6,425,639	$4,883,485	$5,980,128	$5,003,111	$5,147,831
1998	815,527	$5,542,681	$6,781,420	$5,153,879	$6,311,242	$5,280,128	$5,432,862
1999	832,334	$5,854,900	$7,163,418	$5,444,198	$6,666,754	$5,577,558	$5,738,895
Total Expenditures under each option		$26,210,580	$32,068,409	$24,371,991	$29,844,999	$25,688,459	$26,434,491
Average Expenditures* **			$29,139,494		$27,108,495		$25,688,459
		Per ton	$7.32		$6.81		**$6.45**
Difference from **lowest** average			$3,451,036		**$1,420,036**		
Difference from **highest** of each Option			$5,633,918		**$3,410,509**		
Difference from **lowest** of each Option		$1,838,589				**$1,316,468**	

* Options 1 & 2 assume an annual escalation of 3.5%, beginning in 1996.

** For option #3, the first two years use existing contract assumptions, with renegotiated prices for MCS. The third year assumes 1996 prices can be reduced by 3.5% due to bidding as a package (7% savings reduced 3.5% due to inflation) and improved specifications. The fourth and fifth years assume a 3.5% escalation.

***For Option #3, the lower price is used since this is the negotiated price reflecting the equipment sale contemplated under Change Order No. 15 to the MCS contract.

ATTACHMENT NO. 3

Metro Central Transfer Station Rolling Stock Appraisal and Proposed Purchase Price

Quanity	Description	Retail Price	Wholesale	Original Purchase Price	Proposed Purchase Price
1	Caterpillar V200B Forklift	20,000	12,000	37,900	14,000
3	Komatsu WA320 Loaders	68,000	55,000	122,866	62,000
1	Komatsu WA380 Loader	72,000	53,000	138,811	63,500
1	Condor Boomlift	14,000	8,000	39,950	10,000
1	John Deere Sweeper *	6,000	3,000	24,200	4,500
1	Hyster Forklift *	3,000	1,500	13,300	2,000
	Total	319,000	242,500	622,759	280,000

*Estimated Prices for retail and wholesale

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 94-2019 FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION TO THE REQUIREMENT OF A COMPETITIVE PROCESS FOR THE SALE OF EQUIPMENT AT METRO CENTRAL STATION, AND AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE CHANGE ORDER NO. 15 TO THE CURRENT OPERATIONS CONTRACT FOR METRO CENTRAL STATION

Date: August 22, 1994 | Presented by: Jim Watkins

Proposed Action

Adopt Resolution No. 94-2003 to permit the Executive Officer to execute Change Order No. 15 to the current operations contract for Metro Central Station.

Factual Background and Analysis

In December, 1989, Metro entered into Construction and Operation agreements with Trans Industries for Metro Central Station. As part of these agreements, the rolling stock described in Attachment No. 1 (Change Order No. 15) was purchased. Ownership of the rolling stock was retained by Metro. As described below, and in Attachment No. 2, it is in the public interest to transfer ownership of the rolling stock to Trans Industries over the remaining life of the current operations contract for Metro Central Station. Metro will be reimbursed for the equipment through a reduction in unit price payments to the Contractor.

Attachment No. 2 recommends that the current operations contracts for Metro South and Metro Central stations be continued until October, 1996, at which time the two contracts would be rebid as a package. The analysis contained in the attachment shows that substantial savings are available to Metro through this approach (see updated table to attachment.) The analysis assumed that changes to the current operations contract for Metro Central would be negotiated which would result in savings to Metro for the period of October 1, 1994 through September, 1996. Metro has completed the negotiations contemplated in the analysis and the result is Change Order No. 15 to the Metro Central operations contract with Trans Industries. One of the changes contained in the change order which lowers costs to Metro is the sale of the existing rolling stock to Trans Industries (TI).

An appraisal of the equipment which would be sold to TI was conducted several months ago and is contained in Attachment No. 3. The wholesale price is an approximation of the value of the equipment to an equipment dealer and the retail price is an estimate of the price the dealer could receive after reconditioning. The proposed purchase price of $280,000 (or $.39/ton) is the amount Metro would receive through the change order (see Section 9).

It should be noted that this equipment is being used for the movement of solid waste which is extremely harsh on equipment. Also, much of the equipment has been adapted to this environment which limits its use in other applications. At the end of a five year period, it is expected that the equipment's value will be for salvage (approximately 15% of the purchase price or $94,000.) The main reasons for transferring the equipment to the current operator are that Metro will receive more value than by retaining ownership and that by transferring ownership to the Contractor Metro avoids liability for maintenance costs and the Contractor gains tax advantages by depreciating the equipment.

Change Order No. 15 also modifies a number of other provisions in the current contract. These major modifications include:

- Lowering the "put or pay" threshold from 35,000 tons per month to 20,000, a level which should be exceeded each month;

- Replacing the current unit price schedule with lower unit prices;

- Limiting Metro's ability to terminate the contract "without cause" to the end of the first three years of the contract;

- Making the Contractor responsible for routine maintenance costs and limiting Metro's costs for catastrophic repairs to a percentage contribution for the equipment listed in Exhibit 7.2 of the change order, thereby reducing Metro's exposure for maintenance costs from an estimated $237,000 to $25,000 annually;

- Other changes include eliminating pass through costs for shuttling, litter pickup and lab costs for water monitoring, and incorporating the current rebate for decreased water usage due to the installation of a wash water recycling system into the reduced unit prices. The impact of the above changes other than the equipment purchase is a per ton reduction of approximately $2.00.

Metro Code 2.04.070 requires that approval for the sale of goods follow those for purchasing goods. In order to sell the equipment directly to TI, the Metro Contract Review Board must exempt the sale from the competitive bid process. 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 contract, 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 findings in support of an exemption from public bidding requirements for the sale of equipment listed in Change Order No. 15 to the operations contract for Metro Central Station are contained in Exhibit "A" to Resolution No. 94-2019.

Budget Impacts

Transfer station payments to the Contractor would be reduced by approximately $114,000 in FY1994-95, $144,000 in FY1995-96, and the remaining $22,000 in FY1996-97.

Executive Officer's Recommendation

The Executive Officer recommends adoption of Resolution No. 94-2019.

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SOLID WASTE COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 94-2019, FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION TO THE REQUIREMENT OF A COMPETITIVE PROCESS FOR THE SALE OF EQUIPMENT AT METRO CENTRAL STATION AND AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE CHANGE ORDER NO. 15 TO THE CURRENT OPERATIONS CONTRACT FOR METRO CENTRAL STATION

Date: September 14, 1994 Presented by: Councilor Hansen

Committee Recommendation: At the September 13 meeting, the Committee voted 5-0 to recommend Council adoption of Resolution No. 94-2019. Voting in favor: Councilors Buchanan, Hansen, McFarland, McLain, and Monroe. Councilor Wyers was absent.

Committee Issues/Discussion: The purpose of this resolution is authorize the Executive Officer to execute Change Order No. 15 to the current operations contract at Metro Central and provide an exemption from competitive bidding that would allow Metro to sell certain equipment to the current station operator.

Jim Watkins, Solid Waste Engineering and Analysis Manager, and Chuck Geyer, Senior Solid Waste Planner, presented the staff report. He noted that staff had provided the committee with an analysis potential options for addressing the rebidding or extension of existing operating contracts at Metro Central and Metro South. Under the terms of the existing Metro Central contract, Metro could rebid the contract as early as October 1994. Watkins noted that the committee had encouraged the staff to attempt to renegotiate the terms of the existing contract prior to considering any rebidding option. Proposed Change Order No. 15 is the result of the renegotiation of the contract.

Change Order No. 15

The change order includes a total of 13 separate changes in the existing contract terms. These changes deal with six major subject areas: 1) the put or pay provisions, 2) unit disposal prices, 3) simplification of the payment structure, 4) the proposed equipment sale to Trans Industries (TI), 5) responsibility for maintenance, and 6) changes requested by bond counsel. The actual language of the change order is included as Attachment 1 to the proposed resolution.

Put or Pay. The terms of the existing contract set a minimum put or pay level of 35,000 tons/month. Thus, when actual tonnage is less than 35,000 in a given month, Metro pays for more tonnage than it actually sends to the station. Since Metro has seldom exceeded the 35,000 ton monthly level, it has been estimated that Metro has paid several hundred thousand dollars in additional payments to the station operator under the existing put or pay provisions.

One of Metro's principal goals in renegotiating the existing contract was the elimination or significant reduction in the put-or-pay tonnage level. Since Metro's bond counsel advised that some form of put-or-pay would have to be retained to satisfy existing bond covenents, Change Order No. 15 provides for a reduction in the put-or-pay level from 35,000 to 20,000 tons/month. Since monthly tonnages have rarely fallen below 25,000/month, staff estimates that the potential of falling below the new put-or-pay level is minimal.

Unit Prices. Change Order No. 15 also provides for a revised schedule of per ton disposal costs. At all monthly tonnage levels up to 43,500 tons, the total disposal costs would be less than under the existing contract. For example, at 20,000 tons, the monthly payment would be about $31,000 less; at 28,000 tons it would be about $65,000 less; and at 35,000 tons about $35,000 less. Since the maximum capacity at Metro Central is about 45,000 tons/month, the new unit prices will be lower than the existing rates unless the facility is virtually operating at full capacity.

Payment Simplification. The original contract terms and a series of change orders have resulted in eight different adjustments to the basic monthly payments. Adjustments that add to the monthly payments include payments of Metro's share of certain lab, litter and maintenance costs and bonus payments for maximizing load sizes in Jack Gray trucks bound for Columbia Ridge. Adjustments that reduce the monthly payments include rebates for water recycling and shuttle services not provided by TI, Metro's share of the sale of recycled materials and deductions for Jack Gray truck overloads. Though the amount of these adjustments fluctuate from month to month, staff estimates that there is an average $10,000 net reduction in monthly payments.

During the contract renegotiation process, Metro sought to simplify this payment structure. Under Change Order No. 15, adjustments related to shuttling, water recycling, lab and litter have been rolled into the basic per unit disposal costs. Adjustments related to Metro's share of the sale of recycled materials and adjustments related to truck load size remain.

Equipment Sale. Under the terms of the original contract, Metro purchased and retained ownership of certain smaller pieces of equipment at the facility. The original purchase price was $622,759 and an independent appraisal estimates that the current wholesale value of this equipment is about $242,500 and the retail value is $319,000. Change Order No. 15 includes acceptance of an offer from TI to purchase this equipment for $280,000. Staff notes that for Metro to obtain the retail price, certain equipment repairs would have to be made. In addition, they note that by the end of the current operating contract, the equipment will have only a salvage value of $94,000. Staff recommends acceptance of the TI offer.

If accepted, Metro would receive payment for the equipment through a $.39/ton adjustment in the monthly payment for the remainder of the contract or until the total adjustment reached $280,000. Should any amount remain to be paid at the end of the contract, Metro would receive a lump sum payment from TI.

Maintenance. Under the terms of the existing contract, Metro and TI split the costs of all normal maintenance items at the station. Staff estimates Metro's share of these costs to be about $237,000 annually. Under Change Order No. 15, TI would assume all ordinary maintenance costs. Metro would remain responsible for extraordinary repairs or the replacement of certain larger pieces of equipment, such as the compactor.

Bond Counsel. Metro's bond counsel reviewed Change Order No. 15 and recommended several technical changes to insure that the bonds issued to finance Metro Central would retain their tax-exempt status. Federal IRS rules governing such bonds limit the extent to which a private operator can profit from such a facility. In the case of Metro Central, TI's receipts from activities such as the sale of recycled materials, sale of fuel pellets and avoided cost payments from Metro cannot exceed the fixed payments from Metro (approximately $3.4 million). Bond counsel advice led to amendments that would protect Metro from certain "worst-case" scenarios that could result in a violation of the IRS requirements.

Fiscal Impact

Staff presented data which estimated that the net effect of Change Order No. 15 will be to reduce total payments to TI under the operating from $3.94 million to $3.06 million, a reduction of 22.3 percent. The per ton disposal cost would be reduced from $10.89 to $8.46, a reduction of $2.43. Annual savings are estimated to be $880,000. It should be noted that the adopted budget for the current fiscal year did not include any estimated savings from revisions in the Metro Central contract.