Agenda

SWPAC - SOLID WASTE POLICY ALTERNATIVES COMMITTEE

METROPOLITAN SERVICE DISTRICT 527 S.W. HALL ST., PORTLAND, OREGON 97201 503 221-1646
Providing Zoo, Transportation, Solid Waste and other Regional Services

Date: December 5, 1983

Day: Monday

Time: 12:00 Noon - 2:00 p.m.

Place: Metro Offices: Council Chamber

SPECIAL MEETING

1. Roll Call

2. West Side Transfer Station Implementation Alternatives. Doug Drennen

WASHINGTON COUNTY TRANSFER STATION
IMPLEMENTATION PROCESS

STEP	RFP/FRANCHISE	RFP/CONTRACT
1	Develop RFP (6 mos.)	Develop RFP (4 mos.)
2	Preparation RFP (3 mos.)	Prepare RFP (3 mos.)
3	Evaluate Proposals (6 mos.)	Evaluate Proposals (4 mos.)
4	Award Franchise (3 mos.)	Award Contract Administer Fee (1 mos.)
5	Firm Selects Site (10-12)	Firm Selects Site (12)
6	Conditional Use Permit Obtained (10-12)	Conditional Use Permits Obtained (12)
7	Complete Design (10-12-)	Complete Design (10-12)
8	Construction (10-12)	Construction (10-12)
9	Operation	Operation Metro - Gatehouse Fiscal Administration
	(38-42)	(34-36)

MAJOR DIFFERENCES

		RFP/FRANCHISE	RFP/CONTRACT
1.	Operations Contract	Permanent	Temporary
2.	Property & Building	Owned Private	Owned Public
3.	Fiscal Administration Gatehouse	Private/Public Audit	Public
4.	Conditional Use Permit	Monitor Compliance	Metro Approval
5.	Rates	Regulate Profit	Pay Tip Fee
6.	Termination/Default	Metro must prove Negligence	Metro Assume Operation-Default
7.	Assignment	Acceptable-Metro must prove reason for denial	Metro Approval
8.	Changes to System	Negotiated with Owner	Metro Approval

STAFF REPORT

Agenda Item No. ___________

Meeting Date ___________

CONSIDERATION OF OPTIONS FOR IMPLEMENTING A TRANSFER STATION IN WASHINGTON COUNTY

Date: November 10, 1983

Presented by: Dan Durig and Doug Drennen

FACTUAL BACKGROUND AND ANALYSIS

Anticipating the eventual closure of landfills in and near the urbanized area, the Solid Waste Management Plan adopted in 1975 recommended that a transfer station, to be publicly owned, be constructed to provide disposal service to Washington County.

In 1982, the Metro Council passed Resolution No. 82-336 establishing a committee to consider the alternatives for implementing a transfer station. The committee, made up of representatives of local jurisdictions, concluded their deliberations by recommending that Metro proceed with building a transfer station. As a result of these events there are several issues that now need to be considered by Metro.

- Should Metro proceed to implement this part of the Management Plan.

- Should Metro solicit bids to procure the facility.

- Should Metro site the facility.

- Does Metro contract to design the facility or simply approve the concept.

- Should Metro go for a long-term franchise arrangement or contract the operations on a short term.

- Should the facility be publicly owned?

In reviewing the recommendation of the local committee appointed by Council, the decision to support a transfer facility is primarily tied to making sure the public has a place to take their waste. The Hillsboro Landfill, ~~is~~ the only facility in Washington County, serving the general public, is expected to close in three years. And, although commercial haulers still have access to both St. Johns and CTRC, some haulers would experience increased hauling time when Newberg closes. These facts, along with the likelihood that any new landfills will require waste be delivered in transfer trailers, resulted in the committee's conclusion to proceed.

Several meetings with the Regional Service Committee have ~~taken~~ OCCURRED ~~plan to~~ further considering the remaining issues.

On Wednesday, October 19, 1983, at a special meeting of the Regional Services Committee, consideration was given to four basic approaches for constructing and operating the Washington County Transfer Station. The options for designing, constructing and operating the facility are:

1. Award a sole source franchise;

2. Request proposals for awarding a franchise;

3. Request proposals to award full service contracts with a short-term operation agreement; and

4. Follow the conventional or CTRC approach.

Discussion at the meeting centered on advantages and disadvantages of these approaches. The Committee agreed that the approach should include a competitive process which was not proposed in option 1. The Committee also agreed that option 4 is always an alternative, and since it was used to procure CTRC, it is one that Council is most familiar. As a result, the Services Committee asked the Executive officer to provide additional information on the processes that would be utilized in awarding either a franchise, or a full service contract (options 2 and 3).

This report includes an outline presenting the process that would be followed considering either awarding a franchise or a full service contract (Attachment A). The processes shown were developed to take advantage of factors such as having the operator involved with the design and having private sector perform the siting and obtain permits. Both processes could be accomplished within the same time frame.

In addition to the steps required to complete these processes, the corresponding Council decisions are also shown in the far right-hand column. Many of the decisions specific to the design and operation of the facility under either of these options must be made when the initial proposal documents are prepared. In the case of franchising revisions to the existing ordinance need to be considered.

Some of these revisions are the following:

1. Section 7 - <u>Application</u> - Changes in the application requirements will need to be made in order to make the award.

2. Section 9 - <u>Term of franchise</u> - The five-year term would need to be extended. It is also recommended that specific conditions for renewal be adopted, or establish conditions for cancellation.

4. Section 10 - <u>Transfer of franchise</u> - Council currently <u>cannot</u> unreasonably deny transfer of a franchise. Conditions for approval need to be developed.

5. Section 13 - <u>Responsibilities of franchise</u> - Any

specific conditions for this operation would need to be developed and adopted under this section. Also consideration of waiving hauler participation would be under this section.

After awarding a franchise any revisions to the agreement will be on a negotiated basis since they will require consent of the owner. This is partially true under the RFP/contract process except that Metro can incorporate changes into contract documents, and re-bid the operations at a later date.

Also, included with Attachment A is a summary of the differences in the two procurement approaches. The primary difference is whether or not the facility is publicly owned. As with any public utility the benefits of public ownership are that it provides the best control to ensure the public's interest for providing service. Lower rates can be achieved through the exemption from paying property taxes and use of tax exempt financing. And finally, surplus revenues can be used to expand services or to reduce fees. If the facility is privately owned Metro is relieved of making day-to-day administrative decisions, but still must regulate to protect the interest of public.

Another significant difference in the two processes is that a franchise is a permanent arrangement with one firm. Conditions can be written to allow for the public to take control and even buy out the private firm, but this, as will any major change in the facility, require consent of both parties.

In summary, the two approaches are very similar in both process and time frame to accomplish the work. They both allow for maximum participation from private industry and encourages competition to provide incentive to be cost-effective. Bidding is the simplist form of regulation, and should be considered important since the facility represents an initial cost estimated at $3 million and about $2-3 million per year in operation. Owning and contracting provides the most control and flexibility for Metro. Private ownership and franchising restricts Metro's role to one of regulating.

FINDINGS AND CONCLUSIONS

Staff has completed the analysis of the various procurement approaches available for implementing a transfer station in Washington County. This review has resulted in the following findings:

1. Metro has the legal ability to either franchise or contract for the operation of a transfer station.

2. The basic decision to be made is not one of public versus private operation, but rather the more narrow question regarding ownership of the physical plant. It is currently assumed that under a franchise or contract, the private sector will design, construct and operate the facility.

3. Under the two basic choices available to Metro, facility ownership carries with the implication that the

franchising format would be followed.

4. A franchise period, in excess of five years, would be required due to the need to provide an acceptable time to recoup the original investment in the plant.

5. The granting of a franchise creates a substantially different relationship between the franchisee and Metro than does a contract. A franchise carries with it a grant of authority, tenure and value far in excess of that contained in a contract.

6. The Metro solid waste system continues in a state of evolution.

7. When establishing franchise conditions, Metro should have a reasonably good knowledge of potential future unknowns.

8. The experience gained during the work at CTRC, and recent statements from the industry, clearly indicate that several firms have an interest in competing for work at WTRC.

9. A transfer station (or any other individual solid waste disposal component) is a part of the overall solid waste disposal system.

10. Typically, public ownership is surrendered when the public agency lacks either the financial resources, legal

authority or knowledge base to own a public facility.

11. Solid waste management in the United States is in its formative stages with substantial changes yet to come in both technology and private sector organizational structure.

12. A review of the current franchise ordinance suggests that the primary purpose for its development was the regulation of limited-purpose landfills.

13. Currently, the commercial collectors are paying $0.11/ton through the regional transfer charge and the the public $1.95/trip for CTRC (CTRC was partially built with grant funds from DEQ).

These fundings have resulted in these conclusions:

1. A fixed-term contract is preferable to a franchise because it requires the contractor to periodically compete with other potential operators. This enables Metro (and the public) to judge whether the public is receiving the most economical price in an open, public process that takes advantage of the competitive market place. A franchise essentially eliminates the question of whether someone else can do the job more economically and instead only concentrates on the franchisee's lack of compliance.

2. A fixed-term contract expires at a predetermined date.

This enables Metro to unilaterally add, delete or modify conditions to meet changing needs. A franchise is subject to negotiation which suggests that a thorough and comprehensive set of conditions be included at the initial franchise award. Due to the evoluntionary nature of both the solid waste industry and Metro Solid Waste System, it is highly unlikely that all contingencies could be identified and incorporated into the original franchise.

3. A long-term franchise would elimiate the flexibility currently available to Metro in both a financial and an operational sense. For example, the opportunity to bid the system, as a total package in the future years, is eliminated when a portion is not owned by the agency. If Metro were to decide that a transfer station or stations were to be retrofitted or modified into processing centers, the ability to unilaterally make this change is severely limited after having granted a franchise.

4. The franchisee's in the total solid waste system may not always be in harmony with Metro's needs. For example, if an exclusive transfer station franchise were granted for Washington County, a current discussion with another landfill operator, regarding the construction of a smaller reload transfer facility in Washington County for the purpose of directing waste away from St. Johns Landfill could fact sustained and lengthy legal opposition. This would not be surprising since the transfer station operator is compensated on the basis of tonnage

transferred.

5. While the legality of franchising transfer stations under Metro's current authority is clear, it is also clear that Metro has authority to build, construct, and operate or contract for these services. Although landfill sites are admittedly limited by their very nature, and there are very few interested parties attempting to enter ths aspect of solid waste management; the same cannot be said of transfer station operation. Numerous corporations have indicated a desire to enter this business within the Metro region. The monopoly aspect of a transfer station is created by the action of Metro authorizing construction, not environmental forces.

6. Metro has the capability to administer the siting, designs and construction of a transfer station as evidenced by the successful operation of the CTRC. An extensive base of knowledge, using this format, is available with in the solid waste department. While this knowledge has some transferability to the turnkey (option 3) and franchise (option 2) methods, a significant relearning process would need to be undertaken. Employing the model used to construct CTRC, offers a faster start since all key decisions are not required to be made at the very beginning of the process.

7. The franchise ordinance, as currently drafted, would require a substantial amount of reworking to bring into

compatibility with previous discussions regarding the siting of transfer stations. In effect, this major reworking would be better handled through an individual RFP tailored to the particular needs for a transfer station in Washington County. It should be noted that the franchise ordinance currently applies to KFD and would also be used as the benchmark for future limited-purpose, landfill siting efforts.

8. Franchising creates a monopoly and then proceeds to regulate in order to protect the public interest. Although it is understandable that this approach be undertaken when considering public utilities such as electric, telephone, gas and water server, it is questionable whether this approach is applicable to an individual solid waste transfer station. Based upon the concept that franchisees have historically been a <u>grant of authority</u> to use the <u>public streets</u> and ways on a <u>more than temporary basis</u>, it becomes questionable whether this mechanism is the most appropriate for this type of solid waste facility.

<u>EXECUTIVE OFFICER'S RECOMMENDATION</u>

Upon reviewing the facts regarding the implementation of a transfer station to provide disposal service to Washington County, I propose that Council adopt the attached resolution.

<u>COMMITTEE CONSIDERATION AND RECOMMENDATION</u>

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Attached to this report is an outline presenting the process that would be followed considering either awarding a franchise or a full service contract. The processes shown were developed to take advantage of factors such as having the operator involved with the design and having private sector perform the siting and obtain permits. Both processes could be accomplished within the same time frame.

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2. Section 9 - Term of franchise - The five-year term would need to be extended. It is also recommended that specific conditions for renewal be adopted.

4. Section 10 - Transfer of franchise - Council currently cannot the unreasonably deny transfer of a franchise. Conditions for approval need to be developed.

5. Section 13 - Responsibilities of franchise - Any specific conditions for this operation need to be developed and adopted under this section. Also consideration of waiving hauler participation would be under this section.

6. Section 15 - Franchise Fee - Establish annual fees to cover Metro's cost to regulate.

After awarding a franchise any revisions to the agreement will be on a negotiated basis since they will require consent of the owner. This is partially true under the RFP/contract process except that Metro can incorporate changes into contract documents, and re-bid the operations at a later date.

Finally, the report contains a summary of the differences in the two procurement approaches. The primary difference is whether or ot the facility is publically owned. As with any public utility the benefits of public ownership are that it provides the best control to ensure the public's interest for providing service. Lower rates can be achieved through the exemption from paying property taxes and use of tax exempt financing. And finally, surplus revenues can be used to expand services or to reduce fees. If the facility is privately owned Metro is relieved of making day-to-day administrative decisions, but still must regulate to protect the interest of public.

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EXECUTIVE OFFICER'S RECOMMENDATION

COMMITTEE CONSIDERATION AND RECOMMENDATION

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11/15/83

SOLID WASTE ADVISORY COMMITTEE

GUESTS AND ADVISORS IN ATTENDANCE

DATE 12-5-83

GUEST OR ADVISOR	AFFILIATION
Carl R. Miller	Industry
W. Alex Cross	Genstar
Norm Harker	Clark County
Evelyn Brown	Metro
Teri Anderson	Metro
Pete V Viviano	Industry
Delyn Kies	City of Portland
Norm Wietting	Metro
DANIEL F. DURIG	METRO
Dennis O'Neil	Metro
David Phillips	Clackamas County DES
PAUL H. JOHNSON	CONSTRUCTION/
JOHN TROUT	COLLECTION INDUSTRY
Robert W. Harris	Public - Clackamas Co.
GARY NEWBORE	KFD
Mike Sandberg	Wash Co.
Lee Kell	atty - Genstar
Jim Cozzetto	Industy (Hauler)
Dennis Mulvihill	Metro
Olson	Council
Pat Kuivala	Metro