

BEFORE THE METRO CONTRACT REVIEW BOARD

RESOLUTION OF THE METRO COUNCIL ) RESOLUTION NO. 17-4821  
ACTING AS THE METRO CONTRACT REVIEW )  
BOARD, FOR THE PURPOSE OF ) Introduced by Chief Operating Officer Martha  
AUTHORIZING AN EXEMPTION TO THE ) Bennett, with the concurrence of Council  
COMPETITIVE BIDDING PROCEDURES AND ) President Tom Hughes  
AUTHORIZING PROCUREMENT BY REQUEST )  
FOR PROPOSALS FOR FOOD WASTE )  
PROCESSING SERVICES )

WHEREAS Metro is responsible for solid waste planning within the region through implementation of the Regional Solid Waste Management Plan (RSWMP) and other policies, programs, and actions and pursuant to Metro’s constitutional, statutory, and charter authority; and

WHEREAS, the RSWMP identified commercial food waste as a priority area of focus reflecting the significant quantity of this material remaining in the region’s waste stream, and the potential environmental and economic benefits of recovery; and

WHEREAS, in October 2016, the Metro Council directed staff to, among other things, issue a request for proposal for commercial food waste processing services; and

WHEREAS, Metro issued a request for qualifications for food processing services and, in April 2016, issued a Notice of Qualification in which it deemed nine firms qualified to bid on a request for proposal; and

WHEREAS, Metro issued a request for proposal for food processing services in 2017 and is seeking responders that have a verifiable and demonstrated record of successful project implementation; and

WHEREAS, Metro has not decided whether the food processing facility will be publicly owned, privately owned, or a combination public and private partnership and will encourage responders to indicated the type of arrangement that will best suit the proposed facility; and

WHEREAS, Metro is seeking this exemption in the event the successful proposal includes some form of public ownership of the facility that requires a competitive bid; and

WHEREAS, ORS 279C.335 and Metro’s Local Contract Review Board “Administrative Rules” require that all Metro public improvement contracts shall be procured based on competitive bids (Administrative Rule 49-0130), unless exempted by the Metro Council, sitting as the Metro Contract Review Board (Administrative Rule 49-0620); and

WHEREAS, ORS 279C.335(2) and Administrative Rule 49-0620 authorizes the Metro Contract Review Board to exempt a public improvement contract from competitive bidding and direct the appropriate use of alternative contracting methods that take account of the public benefits, reduced risks, and efficiencies of such alternative methods, so long as they are consistent with the public policy of encouraging competition; and

WHEREAS, recognizing the unusual and complex qualities of the commercial food waste processing procurement, Metro seeks to obtain an exemption from competitive bidding for the project in the event the resulting contract could be considered a public improvement; and

WHEREAS, ORS 279C.335(2) and (4), and Administrative Rule 49-0620, require that the Metro Contract Review Board hold a public hearing and adopt written findings establishing, among other things, that the exemption of a public improvement contract is unlikely to encourage favoritism in the awarding of public improvement contracts, the exemption is unlikely to substantially diminish competition for the public improvement contracts; and that the exemption will likely result in substantial cost savings to Metro; and

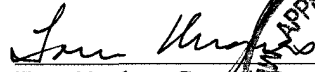
WHEREAS, in accordance with Administrative Rule 49-0630(7), notice of this hearing was published in at least one trade newspaper of general statewide circulation a minimum of fourteen (14) days before this hearing, which notice stated that the purpose of this hearing is to take comments on Metro's findings regarding an exemption from the competitive bidding requirements, and the draft findings were available to the public at the time of the published notice; now therefore:

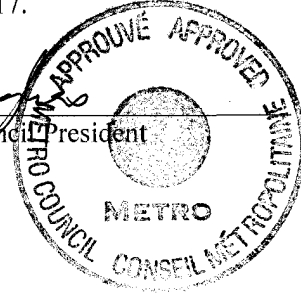
BE IT RESOLVED THAT THE METRO CONTRACT REVIEW BOARD:

1. Exempts from competitive bidding the procurement and award of a public contract for commercial food waste processing; and
2. Adopts as its findings in support of such exemption the justifications, information, and reasoning set forth in the attached Exhibit A, which is incorporated by reference as if set forth in full; and
3. Authorizes the Chief Operating Officer to proceed with the form of Request for Proposals that the Office of Metro Attorney has approved and Metro has issued for food waste processing services that includes as evaluation criteria for contractor selection: Contractor's proposed contract management costs for pre-construction services, contractor's proposed overhead and profit costs for construction services, contractor's demonstrated project experience, contractor's record of completion of projects of similar type, scale and complexity, contractor's demonstrated quality and schedule control, contractor's experience in incorporating sustainability construction practices and design into projects, and contractor's demonstrated commitment to workforce diversity and record of use of businesses Certified by the Office of Business Inclusion and Diversity (COBID) and any other criteria that ensures a successful, timely, and quality project, in the best interest of Metro and in accord with ORS 279C.335(4)(c) and Administrative Rule 49-0620; and
4. Authorizes the Chief Operating officer to receive responsive proposals for evaluation in accordance with Administrative Rule 49-0690; and

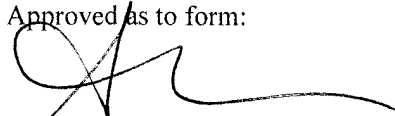
5. Following evaluation of the responses to the Request for Proposals authorizes the Chief Operating Officer to execute a contract that is most advantageous to Metro, regardless of whether the contract is a public improvement contract.

ADOPTED by the Metro Council this 20 day of July 2017.

  
Tom Hughes, Council President



Approved as to form:



Alison R. Kean, Metro Attorney

## EXHIBIT A

### Findings in Support of an Exemption from Competitive Bidding Process (Request for Bid) for Metro Council Resolution 17-4821

Pursuant to ORS 279C.335(2) and (4), and Administrative Rule 49-0630, the Metro Contract Review Board makes the following findings in support of exempting the procurement Commercial food waste processing from competitive bidding through a Request for Bid (RFB), in favor of a Request for Proposals (RFP) solicitation for a possible public improvement construction contract.

#### **The exemption is unlikely to encourage favoritism or substantially diminish competition.**

The Metro Contract Review Board finds that exempting the procurement of a facility for processing food waste collected at Metro Central Transfer Station from competitive bidding is “unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts” as follows: The RFP will be formally advertised with public notice and disclosure of the planned alternative contracting method and made available to all contractors. Award of the contract will be based on the identified selection criteria and dissatisfied proposers will have an opportunity to protest the award. Full and open competition based on the criteria set forth in the Metro Contract Review Board resolution will be sought, with the contract award going to the contractor that is the most advantageous to Metro. Competition will be encouraged by: posting on ORPIN (Oregon Procurement Information Network), contacting local sub-contractors, including COBID certified business, and notifying them of any opportunities within their area of expertise; utilizing the Oregon Daily Journal of Commerce and a minority business publication for the public advertisement; performing outreach to local business groups representing minorities, women, disabled-veterans, and emerging small businesses; and by contacting contractors known to Metro to potentially satisfy the RFP criteria. Given the type of project, it is likely that the same general contractors that would have bid on the project will also submit a proposal in response to the RFP.

The Metro Contract Review Board finds that the use of an alternative competitive process (RFP) in the procurement of commercial food waste processing services is “unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts” as follows:

#### **The exemption may result in cost savings and other benefits to Metro.**

The Metro Contract Review Board finds that the use of an alternative competitive process (RFP) in the procurement of commercial food waste processing services for food waste collected in the region from a competitive bidding process (RFB) will likely result in costs savings and other benefits to Metro, considering the following factors:

##### **a. Limited number of persons available to bid.**

This factor is not applicable. As the response to the Request for Qualifications indicated, staff anticipate that numerous firms are interested in participating in the procurement.

##### **b. Construction budget and project operational costs for the completed project.**

Utilizing an RFP process to select a food waste processing services will allow Metro to obtain the best option for these services. As set forth in the staff report, Metro seeks proposals across a spectrum of ownership, financing and technology options. Given the unusual nature of the project, it is in the

interest of Metro and the region to move forward with an RFP process that identifies several priority factors used for proposal evaluation.

Given the high degree of complexity of the project and the need to integrate with pre-existing infrastructure (such as cooperation with existing solid waste haulers and private transfer stations); Metro anticipates that the RFP will ensure all public benefits are achieved, including lower overall project costs.

**c. Public benefits in granting exemption.**

Using the alternative RFP process will promote the efficient and effective completion of the project, thereby providing processing services for use by the public as soon as possible. Through this process Metro will ensure that commercial food processing services will be implemented within a timeframe that is consistent with the overall Food Scraps Program goals and timelines. Public benefits associated with this project include, but are not limited to: protect people's health, protect the environment, get good value for the public's money, keep Metro's commitment to the highest and best use of materials and ensure services are accessible to all types of customers.

**d. Value engineering techniques.**

Value added engineering techniques are generally responsible for adding value to food waste processing services in a number of ways, including but not limited to: increased processing efficiencies, the strengthening of environmental controls and increased end product value. Because this is an alternative procurement process, technology choice is important to the proposal and is an important evaluation criterion.

**e. Reduced risks to Metro or the Public.**

The selection of a proposer with demonstrated experience, success and expertise in food waste processing services will result in a lower risk to Metro. The RFP process will take into account each proposer's past performance with similar technology, technical knowledge, and sub-consultant experience.

**f. Impact on source of funding.**

The alternative contracting process allows greater flexibility in the use of public and private funding mechanisms.

**g. Impact on agency's ability to control costs and time necessary for completion.**

The alternative contracting process will allow the agency to more effectively and efficiently control the project and ensure its timely completion. The project will not involve off-the-shelf installations. Rather, it will require a high level of coordination both within Metro and with Metro's stakeholders, including local governments, private entities, and individuals. This procurement alternative gives Metro more flexibility as well a more informed decision making process.

**h. Technical complexity of project.**

This procurement is a technically complex project in a variety of ways. For example, proposers have many food waste processing technologies to choose from; a variety of facility site location options; funding mechanism options; end product options and their benefits; and differences in cost-to-build scenarios depending on technology choice and end product. The selection of a proposer with demonstrated experience and success in implementing food waste processing services projects will result in a substantially lower risk to Metro, because it increases the likelihood of the project being completed on budget, with fewer delays, resulting in lower costs and increased benefit to Metro and the region. The RFP process will take into account each contractor's past performance and technical

knowledge. Based on the necessary quality and quantity of the process products, and the uniqueness of the undertaking, the Procurement Officer believes an alternative contracting process to be necessary and in the best interest of the agency.

**i. New construction.**

The project may result in new construction. The need to ensure that this project is properly, safely, efficiently, and successfully implemented is of importance. Some of the design limitations and conditions are likely to be unknown until uncovered by work performed under an early work assignment; a proposer with experience in food waste processing services, facility design, technology expertise, construction development and facility operation will be more likely to limit and plan for foreseen and unforeseen problems in facility development. An RFP process allows for these factors to be integrated into the decision making process.

**j. Experienced agency staff.**

Metro staff, including project managers, the Finance and Regulatory Services Department, and Office of Metro Attorney, has the expertise and substantial experience in the RFP contracting method and have worked together to develop the alternative contracting method to be used in awarding and executing on this public improvement contract. Agency staff will also help negotiate, administer and enforce the terms of the public improvement contract.

## STAFF REPORT

### IN CONSIDERATION OF RESOLUTION NO. 17-4821, METRO COUNCIL, ACTING AS THE METRO CONTRACT REVIEW BOARD, FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION FROM COMPETITIVE BIDDING AND AUTHORIZING PROCUREMENT BY REQUEST FOR PROPOSALS FOR FOOD WASTE PROCESSING SERVICES

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Date: July 20, 2017

Prepared by: Lisa Heigh, Ext. 1611

## BACKGROUND

Metro is responsible for solid waste planning within the region through implementation of the Regional Solid Waste Management Plan (RSWMP) and other policies, programs, and actions. City and county governments are primarily responsible for development and implementation of local collection programs, with collection services provided by franchised, permitted or otherwise regulated privately-owned haulers.

The RSWMP identified commercial food waste as a priority area of focus reflecting the significant quantity of this material remaining in the region's waste stream, and the potential environmental and economic benefits of recovery. Over 206,000 tons of food waste was sent to landfills from the region in 2010, which represents 18 percent of the disposed waste stream. Metro estimates that 55 percent of disposed food waste is generated by the commercial sector and 45 percent by the residential sector. The goal of collecting food waste is to capture the environmental and economic benefits of turning that material into useful products, returning nutrients to the soil, creating energy, supporting agriculture and reducing the negative environmental impacts associated with disposal. Annually 28,000 tons of commercially-derived source separated food waste is currently delivered to private and public transfer stations. Metro seeks processing capacity to recover 50,000 tons per year of food waste from the commercial sector with a preference for a facility located in or closely proximate to the Portland Metro area.

Metro wishes to ensure that the region manages food waste in a manner that protects human health and the environment while providing good value for the public's money. Increasing the recovery of food waste reflects Metro's commitment to the highest and best use of materials by getting both nutrient and energy value from food waste while remaining adaptive and responsive in managing materials now and in the future and making services available to all types of customers.

On January 22, 2016 Metro issued a Request for Qualifications (RFQu) in order to pre-qualify firms to provide food waste processing services to the region. Thirteen firms responded and on April 7, 2016, Metro pre-qualified nine (9) of those firms.

On May 25, 2017 Metro issued a Request for Proposals (RFP) for food waste processing services to secure capacity to process 50,000 tons per year of source-separated commercial food waste in an economically and environmentally sound manner to produce energy and/or agricultural supplements. Recognizing the unique aspects of this project, staff determined that the public would benefit if respondents could propose the type of financing arrangement that they felt would best meet Metro's project objectives including a public-private partnership, private-only financing, or public-only financing. Because of the opportunity for financing flexibility in this RFP, the procurement may result in the award of a contract that includes a publically-financed construction project. In order to be prepared for this possible outcome, staff is requesting an alternative to the Request for Bid requirement for publically-financed construction projects.

The resolution and attached findings describe the specialized nature of this technical and unique project. Based on these findings, staff believes that a value- and experience-based selection process (RFP) is more appropriate than a traditional, RFB competitive bid (which looks solely at lowest bid price) and

will result in a more beneficial result for Metro and the region.

#### **ANALYSIS/INFORMATION**

1. **Known Opposition:** None known.
2. **Legal Antecedents:** Oregon Revised Statutes 279C.335; Metro Local Contract Review Board Rule 49-0600 through 49-0630.
3. **Anticipated Effects:** Procurement process will be open and competitive, but items other than cost will be considered in the awarding of the contract. Increased use of COBID certified subcontractors is anticipated.
4. **Budget Impacts:** The alternative procurement process offers safeguards for cost control of the project, including involvement by the construction contractor from the design phase through construction documents and construction cost development process, as well as limiting change orders.

#### **RECOMMENDED ACTION**

Approve an exemption from competitive bidding, authorizing Metro to procure the Food Waste Processing Services Contract through an RFP.