

METROPOLITAN EXPOSITION-RECREATION COMMISSION

Resolution No. 08-01

For the Purpose of Accepting AGG Enterprise's Proposal for Refuse Removal Services and Authorizing the Chief Executive Officer to Enter Into a Three Year Agreement

WHEREAS, on October 8, 2007, MERC staff issued the formal Request for Proposal (RFP) #07-03, Refuse Removal Services on behalf of all three venues; and

WHEREAS, staff received four responsive, responsible proposals before the RFP submittal deadline; and

WHEREAS, an evaluation committee comprised of operations staff from each venue unanimously scored AGG Enterprises highest; and

WHEREAS, no appeals or protests were received within the allotted appeal period; and


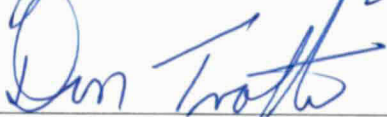
WHEREAS, based on refuse removal expenditures of all three venues in the last year it is expected that MERC will spend approximately \$140,000 per year for this service,

BE IT THEREFORE RESOLVED AS FOLLOWS:

- The Metropolitan Exposition-Recreation Commission hereby finds that it is in the public interest to accept the proposal that AGG Enterprises submitted in response to RFP #07-03, Refuse Removal Services,
- Approves the award of a three year contract with AGG Enterprises, substantially in the form as attached hereto, and
- Authorizes the Chief Executive Officer to execute the contract to provide refuse removal services for the three MERC venues on its behalf.

Approved as to form:
Daniel B Cooper, General Counsel

By: 
Nathan Sykes, Metro Attorney


Chair

Secretary-Treasurer

MERC STAFF REPORT

Agenda Item/Issue: For the Purpose of Accepting AGG Enterprise's Proposal for Refuse Removal Services and Authorizing the Chief Executive Officer to Enter Into a Three Year Agreement

Resolution No.: 08-01

Date: January 28, 2008

Presented by: Julie Hoffman

Background: On October 8, 2007, MERC issued a formal Request for Proposals for Refuse Removal Services for Portland Center for the Performing Arts, the Oregon Convention Center, and the Portland Exposition Center. Notice was sent to over 50 local refuse haulers and posted in the Portland Daily Journal of Commerce. Four responsive, responsible proposals were received and evaluated by an operations team member from each venue. The evaluation criteria were: qualifications and competencies, capability, history, and price, with the emphasis on price. The Evaluation Committee unanimously scored AGG Enterprises the highest. Notice of Intent to Award the contract was sent out on November 26th, 2007. No appeals were received.

Refuse removal expenditures for the three venues for FY 06-07 were approximately \$132,000. Because of the uncertainty of services to be needed (i.e. the amount of refuse generated at scheduled events) and the fact that tip fees and the market rates of refunds on cardboard and other recyclables are not steady, staff recommends that the contract amount be based on a not-to-exceed price of \$140,000 per year. AGG Enterprises may request modification to the contract price at the contract anniversary. Requests must include the formula on which the increase is based and documentation of any actual changes in the cost of components, i.e. dumping fees, involved in the contract.

Fiscal Impact: It is estimated that the three year agreement will not exceed \$420,000. AGG Enterprises may request modification to the contract price annually. Requests must include justification for increase. Appropriation for refuse removal is included in the budget annually and funded from operating revenues.

Other Considerations: None

Recommendation: Staff recommends that the Commission by Resolution 08-01 authorize awarding the contract to AGG Enterprises and authorize the Chief Executive Officer to execute a contract.

Standard Public Contract

For Public Contracts Greater than \$20,000

CONTRACT NO. _____

PUBLIC CONTRACT Refuse Removal Services

THIS Contract is entered into between Metropolitan Exposition-Recreation Commission ("MERC"), whose address is 777 NE Martin Luther King, Jr., Blvd., Portland, Oregon 97232-2742, and AGG Enterprises, whose address is PO Box 17163, Portland OR 97217, hereinafter referred to as the "CONTRACTOR."

THE PARTIES AGREE AS FOLLOWS:

ARTICLE I SCOPE OF WORK

CONTRACTOR shall perform the work and/or deliver to MERC the goods described in the Scope of Work attached hereto as Attachment A. All services and goods shall be of good quality and, otherwise, in accordance with the Scope of Work.

ARTICLE II TERM OF CONTRACT

The term of this Contract shall be for the period commencing February 1, 2008 through and including January 31, 2011.

ARTICLE III CONTRACT SUM AND TERMS OF PAYMENT

MERC shall compensate the CONTRACTOR an amount not to exceed \$420,000 (four hundred twenty thousand dollars) for work performed and/or goods supplied as described in the Scope of Work. MERC shall not be responsible for payment of any materials, expenses or costs other than those which are specifically included in the Scope of Work.

ARTICLE IV LIABILITY AND INDEMNITY

CONTRACTOR is an independent contractor and assumes full responsibility for the content of its work and performance of CONTRACTOR'S labor, and assumes full responsibility for all liability for bodily injury or physical damage to person or property arising out of or related to this Contract, and shall indemnify, defend and hold harmless MERC, its agents and employees, from any and all claims, demands, damages, actions, losses, and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Contract. CONTRACTOR is solely responsible for paying CONTRACTOR'S subcontractors and nothing contained herein shall create or be construed to create any contractual relationship between any subcontractor(s) and MERC.

ARTICLE V TERMINATION

MERC may terminate this Contract upon giving CONTRACTOR seven (7) days written notice. In the event of termination, CONTRACTOR shall be entitled to payment for work performed to the date of

termination. MERC shall not be liable for indirect, consequential damages or any other damages. Termination by MERC will not waive any claim or remedies it may have against CONTRACTOR.

ARTICLE VI INSURANCE

CONTRACTOR shall purchase and maintain at CONTRACTOR'S expense, the following types of insurance covering the CONTRACTOR, its employees and agents.

A. Broad form commercial general liability insurance covering personal injury, property damage, and bodily injury with automatic coverage for premises and operation and product liability shall be a minimum of \$1,000,000 per occurrence. The policy must be endorsed with contractual liability coverage. MERC, its appointed officials, departments, employees and agents shall be named as an ADDITIONAL INSURED.

B. Automobile bodily injury and property damage liability insurance. Insurance coverage shall be a minimum of \$1,000,000 per occurrence. MERC, its appointed officials, departments, employees, and agents shall be named as an ADDITIONAL INSURED. Notice of any material change or policy cancellation shall be provided to MERC thirty (30) days prior to the change.

This insurance as well as all workers' compensation coverage for compliance with ORS 656.017 must cover CONTRACTOR'S operations under this Contract, whether such operations be by CONTRACTOR or by any subcontractor or anyone directly or indirectly employed by either of them.

CONTRACTOR shall provide MERC with a certificate of insurance complying with this article and naming MERC as an additional insured within fifteen (15) days of execution of this Contract or twenty-four (24) hours before services under this Contract commence, whichever date is earlier.

CONTRACTOR shall not be required to provide the liability insurance described in this Article only if an express exclusion relieving CONTRACTOR of this requirement is contained in the Scope of Work.

ARTICLE VII PUBLIC CONTRACTS

All applicable provisions of ORS chapters 187 and 279A & B, and all other terms and conditions necessary to be inserted into public contracts in the State of Oregon, are hereby incorporated as if such provision were a part of this Agreement. Specifically, it is a condition of this contract that Contractor and all employers working under this Agreement are subject employers that will comply with ORS 656.017 as required by 1989 Oregon Laws, Chapter 684.

For public work subject to ORS 279C.800 to 279C.870, the Contractor shall pay prevailing wages and shall pay an administrative fee to the Bureau of Labor and Industries pursuant to the administrative rules established by the Commissioner of Labor and Industries. Contractors must promptly pay, as due, all persons supplying to such contractor labor or material used in this contract. If the contractor or first-tier subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within 30 days after receipt of payment from the public contracting agency or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus shall pay interest in accordance with ORS 279C.515. If the contractor or first-tier subcontractor fails, neglects, or refuses to make payment, to a person furnishing labor or materials in connection with the public contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. Contractor must pay any and all contributions and amounts due to the Industrial Accident Fund from contractor or subcontractor and incurred in the performance of the contract. No liens or claims are permitted to be filed

against MERC on account of any labor or material furnished. Contractors are required to pay the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

For public improvement work all contractors must demonstrate that an employee drug-testing program is in place.

ARTICLE VIII ATTORNEY'S FEES

In the event of any litigation concerning this Contract, the prevailing party shall be entitled to reasonable attorney's fees and court costs, including fees and costs on appeal to any appellate courts.

ARTICLE IX QUALITY OF GOODS AND SERVICES

Unless otherwise specified, all materials shall be new and both workmanship and materials shall be of the highest quality. All workers and subcontractors shall be skilled in their trades. CONTRACTOR guarantees all work against defects in material or workmanship for a period of one (1) year from the date of acceptance or final payment by MERC, whichever is later. All guarantees and warranties of goods furnished to CONTRACTOR or subcontractors by any manufacturer or supplier shall be deemed to run to the benefit of MERC.

ARTICLE X OWNERSHIP OF DOCUMENTS

Unless otherwise provided herein, all documents, instruments and media of any nature produced by Contractor pursuant to this agreement are Work Products and are the property of MERC, including but not limited to: drawings, specifications, reports, scientific or theoretical modeling, electronic media, computer software created or altered specifically for the purpose of completing the Scope of Work, works of art and photographs. Unless otherwise provided herein, upon MERC request, Contractor shall promptly provide MERC with an electronic version of all Work Products that have been produced or recorded in electronic media. MERC and Contractor agree that all work Products are works made for hire and Contractor hereby conveys, transfers, and grants to MERC all rights of reproduction and the copyright to all such Work Products.

ARTICLE XI SUBCONTRACTORS

CONTRACTOR shall contact MERC prior to negotiating any subcontracts and CONTRACTOR shall obtain approval from MERC before entering into any subcontracts for the performance of any of the services and/or supply of any of the goods covered by this Contract.

MERC reserves the right to reasonably reject any subcontractor or supplier and no increase in the CONTRACTOR'S compensation shall result thereby. All subcontracts related to this Contract shall include the terms and conditions of this agreement. CONTRACTOR shall be fully responsible for all of its subcontractors as provided in Article IV.

ARTICLE XII RIGHT TO WITHHOLD PAYMENTS

MERC shall have the right to withhold from payments due CONTRACTOR such sums as necessary, in MERC's sole opinion, to protect MERC against any loss, damage or claim which may result from CONTRACTOR'S performance or failure to perform under this agreement or the failure of CONTRACTOR to make proper payment to any suppliers or subcontractors.

If a liquidated damages provision is contained in the Scope of Work and if CONTRACTOR has, in MERC's opinion, violated that provision, MERC shall have the right to withhold from payments due CONTRACTOR such sums as shall satisfy that provision. All sums withheld by MERC under this Article shall become the property of MERC and CONTRACTOR shall have no right to such sums to the extent that CONTRACTOR has breached this Contract.

ARTICLE XIII SAFETY

If services of any nature are to be performed pursuant to this agreement, CONTRACTOR shall take all necessary precautions for the safety of employees and others in the vicinity of the services being performed and shall comply with all applicable provisions of federal, state and local safety laws and building codes, including the acquisition of any required permits.

ARTICLE XIV INTEGRATION OF CONTRACT DOCUMENTS

All of the provisions of any procurement documents including, but not limited to, the Advertisement for Bids, Proposals or responses, General and Special Instructions to Bidders, Proposal, Scope of Work, and Specifications which were utilized in conjunction with the bidding of this Contract are hereby expressly incorporated by reference. Otherwise, this Contract represents the entire and integrated agreement between MERC and CONTRACTOR and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by both MERC and CONTRACTOR. The law of the state of Oregon shall govern the construction and interpretation of this Contract.

ARTICLE XV COMPLIANCE

CONTRACTOR shall comply with federal, state, and local laws, statutes, and ordinances related to the execution of the work. This requirement includes, but is not limited to, non-discrimination, safety and health, environmental protection, waste reduction and recycling, fire protection, permits, fees and similar subjects.

ARTICLE XVI ASSIGNMENT

CONTRACTOR shall not assign any rights or obligations under or arising from this Contract without prior written consent from MERC.

CONTRACTOR

**METROPOLITAN EXPOSITION-RECREATION
COMMISSION**

By: _____

By: _____
David Woolson

Title: _____

Title: Chief Executive Officer

Date: _____

Date: _____

Attachment A Scope of Work

Contract Contacts

AGG Main Contact: Ken Scholes, 503-

AGG Dispatch: 503-283-2015

AGG Emergency Contacts (before 6:00AM and after 5:00PM):

OCC Contact: Paul Stanley 503-731-7861

PCPA Contact: Tom Bugas 503-796-6506

Expo Contact: Randy Downs 503-736-5204

MERC Contract contact: Julie Hoffman 503-731-7905

Material Pickup

- Specific pickup schedules and container locations shall be coordinated with each separate facility. Contractor shall respond to requests for changes in pickups and or containers within one (1) business day.
- All containers MUST be in place at the inception of the contract.
- The Contractor shall provide sufficient motor equipment to remove refuse and recyclables from the designated areas on the days of the week specified.
- The Contractor shall examine any and all peculiarities and limitations of the spaces available at each facility and shall exercise due caution to ensure that all parts of the work are performed quickly, and that easy accessibility is maintained for maintenance purposes. Before proceeding with the work, the Contractor shall check and verify all dimensions and shall assume all responsibility for the fitting of his equipment and materials to other equipment and structure.
- Collection service on all capacity receiver boxes shall be provided (7) days per week on an on-call basis between the hours of 6:00AM and 5:00PM. Contractor may arrange for earlier service.
- Turnaround service must be provided within four (4) hours of notification to the Contractor for pickup during the above stated business hours of 6:00AM and 2:30PM. Although it is preferred to have same day turn around until 4:00, especially at Oregon Convention Center, calls received after 2:30PM may be responded to before 7:00AM the following day.
- Miscellaneous items of work and materials necessary to the complete performance of the work shall be provided whether or not mentioned in this contract.

Solid Waste Management

- Provide garbage removal for all facilities, properties, and buildings owned, leased or occupied by MERC
- Coordinate all service with each facility including days and times of service
- Provide a sufficient number of containers for garbage collection
- Ensure that exterior containers are lockable and in a child safe condition
- Ensure the areas around the containers are cleaned and that no debris remains after the containers have been emptied
- Provide labeling of containers as necessary and ensure that containers are in compliance with all city, state, MERC and Metro rules and regulations
- Dry Waste must be taken to a facility with a Metro Approved recovery program

Recycling

- Provide recycling services for all facilities, properties and buildings owned, leased or occupied by MERC
- Provide all bags/labels/containers needed to implement its recycling program. Exterior containers must be lockable, child safe, and carry a contact telephone number

- Collect all recyclables in a timely manner
- Collect recyclables such that the materials are suitable for acceptance regional materials recovery facilities
- Front, side and rear loading collection trucks of the fully enclosed, water tight, packer type or drop boxes shall be used in fulfilling the terms of this contract for recyclables collection. The recyclables shall be loaded into the vehicle in a manner that minimizes glass breakage and ensures no mixing of glass with paper recyclables.
- The term "recyclables" or "recyclable materials" shall include, at a minimum, the materials listed below and any other materials mutually agreed to by the MERC:
 - food and compostable paper, including waxed cardboard and food-soiled paper, vegetative matter including grass, leaves, prunings, garden plants, brush;
 - pallets and untreated dimensional lumber, painted or unpainted;
 - glass bottles and jars;
 - aluminum, tin, and bi-metal food containers, and aerosol cans;
 - ferrous and non-ferrous scrap metal;
 - plastic bottles and tubs that are more than 6 ounces and less than 5 gallons, plastic flower pots and buckets less than 5 gallons;
 - plastic pallet wrap and polyolefin bags;
 - newspaper with colored inserts;
 - magazines and catalogs;
 - corrugated boxes (excluding waxed cardboard or pizza boxes) which may be or may not be broken down and up to 48" x 72" maximum size shall be collected;
 - paperboard boxes (with food liners removed and no food contamination);
 - envelopes;
 - junk mail;
 - computer printouts;
 - carbonless paper;
 - brown paper bags;
 - telephone books;
 - office papers;
 - gable top and aseptic cartons.
- Any contaminated loads shall be reported to the facility contact.
- All recyclables shall go to high-end uses as practical: ie glass bottles must go to new containers or fiberglass end uses
- Advise MERC of any enhanced or additional recycling services as they become available, including recycling opportunities for additional materials

Complaint Handling

- Work cooperatively and in the spirit of good faith with MERC promptly resolve any concerns that occur relative to providing services as may be required
- Respond to complaints by staff, residents, MERC representatives within one business day
- Handle all queries and complaints, including recording all inquiries and complaints, taking appropriate action, and providing documentation of queries and complaints to MERC Representatives
- Provide a dedicated telephone number for service requests, complaints, and queries. This number must be present on all exterior containers (garbage and recycling) and must be provided to each facility manager

Reporting

To the fullest extent possible, the contractor shall:

- Provide reports in Microsoft Excel to each MERC facility on a monthly or quarterly basis that meet the following requirements:
 - the quantity of wet waste removed per month from each facility in tonnage, cubic yards and number of containers
 - the quantity of dry waste removed per month from each facility in tonnage, cubic yards and number of containers

- For each separate facility monthly weight/yardage reports, recyclables shall be cumulative and broken down by distinct recyclable categories. These reports will include analysis of calculation of numbers
- Audit reports. These audits shall be signed by the preparer and signed and verified by a company representative that can legally bind the company.
- Conduct an annual waste audit for each facility
- Conduct additional waste audits as requested

Site Maintenance

- Carry litter clean-up equipment, such as a broom and a dustpan, and use it in the event of spillage or breakage by the collection crew
- Immediately pick-up and/or clean-up any refuse or recyclable materials (especially glass and paper) dropped while in the process of collections
- Carry absorbent material on the collection truck to be placed on the roadway by the contractor in the event of an engine or hydraulic oil leak or any other type of fluid leakage from the vehicle as a result of hose breakage or leakage of liquids collected. The absorbent material shall be cleaned up and removed by the Contractor.

Equipment

- Keep all vehicles clean and presentable and clearly marked on the exterior with the name and telephone number of the Contractor and any appropriate permit shall be clearly mounted on the vehicle
- The Contractor shall be solely responsible for all maintenance, repair, and upkeep of all contractor provided collection equipment. The Contractor shall supply all fuel, oil, lubricants, parts, and service.
- Contractor shall carry litter clean-up equipment, such as a broom and a dustpan, and use it in the event of spillage or breakage by the collection crew
- Equipment shall be in satisfactory operating condition, and have current registration and tags
- Equipment failure resulting in delay of collection shall be reported to the facility contact within two hours by the Contractor

Safety

- Services shall be conducted in a responsible manner, taking care not to harm persons, damage MERC property or MERC equipment
- Precautions shall be exercised at all times to ensure the protection of all persons and property, and that the safety provisions of applicable laws, rules, regulations, building and construction codes shall be observed. Any fines levied by the above mentioned authorities for failure to comply with these requirements shall be borne solely by the responsible vendor.
- Barricades shall be provided by the vendor when work is performed in areas traversed by the public, or when deemed necessary by MERC

Ongoing relationship management

- MERC must be informed in writing and approve of any change in the ownership of firm and any change in the firm's ability to perform
- Contractor shall maintain a current Emergency Contact
- Provide MERC with copies of notices of violation or legal actions taken by all Regulatory Agencies against the Contractor within 14 days of receipt
- Provide copies of complaints filed with the Department of Labor against the firm or principals of the firm

Pricing Escalation

Modification in the contract price shall be allowed only on the anniversary date of the contract. Prices throughout the initial one (1) year term of the contract shall remain firm/fixed. Written requests for price revisions after the first year period shall be submitted in advance of receipt of order to MERC Purchasing Department. Requests must include the formula on which the increase is based and documentation of any actual changes in the cost of the components, i.e. dumping fees, involved in the contract. MERC reserves the right to reject any price increase and to immediately terminate the contract.

Pricing Structure

Expo Center 2060 N Marine Drive Contact: Randy Downs 503-736-5204

Container	Type	Schedule	Per Haul	Per Ton	Rebate
20/30 yard	Solid waste	On-call	\$52	\$71.14	
20/30 yard	Cardboard	On-call	\$52	n/c	Market rate*
20 yard	Co-mingled recyclables	On-call	\$52	n/c	Market rate*
60 gallon	Paper to be recycled	On-call	n/c	n/c	n/a
60 gallon	Plastics to be recycled	On-call	n/c	n/c	n/a
60 gallon	Tin to be recycled	On-call	n/c	n/c	n/a
60 gallon	Organic waste to go to a qualified composter	Weekly	\$14	n/c	n/a
60 gallon	Glass to be recycled	On-call	n/c	n/c	n/a
20/30 yard	Wood	On-call	\$75	n/c	n/a
20/30 yard	Metal	On-call	\$52	n/c	Market rate*
20/30 yard	Yard Debris	On-call	\$52	\$40	n/a

*MERC shall have the right to request documentation of "market rate."

Oregon Convention Center (OCC) 777 NE MLK Contact: Paul Stanley 503-731-7861

Container	Type	Schedule	Per Haul	Per Ton	Rebate
25 yard compactor receiver box (supplied by OCC)	Dry Waste	On-call	\$52	\$68	n/a
25 yard compactor receiver box (supplied by OCC)	Wet Waste	On-call	\$52	\$71.14	n/a
15 yard compactor receiver box (supplied by OCC)	Cardboard to be recycled	On-call	\$52	n/c	Market rate*
20 yard compactor receiver box (supplied by OCC)	Organic material to go to a qualified composter	On-call	\$52	\$47.50	n/a

Bales	Cardboard to be recycled	On-call	n/c	n/c	Market rate*
20/30 yard container	Wood	On-call	\$75	n/c	n/a
20/30 yard container	Yard Debris	On-call	\$52	\$40	n/a
20/30 yard container	Wet mixed debris	On-call	\$52	\$71.14	n/a
20/30 yard container	Dry mixed debris	On-call	\$52	\$78	n/a
20/30 yard	Metal	On-call	\$52	n/c	Market rate*

*MERC shall have the right to request documentation of "market rate."

Portland Center for the Performing Arts (PCPA)

Hatfield Hall 1111 SW Broadway Contact: John Kowalis 503-274-6559

Arlene Schnitzer Concert Hall 1037 SW Broadway Contact: Mark Rogers 503-274-6559

Keller Auditorium 222 SW Clay Contact: Jim Benson 503-432-2925

Container	Type	Schedule	Per Dump
2 yard container	Solid waste	Check daily	\$14.50
2 yard compactor receiver box (supplied by PCPA)	Solid waste	Check daily	\$29
3 yard container	Solid waste	Check daily	\$21.75
90 gallon	Co-mingled and glass recyclables	Check daily	n/c
Large container	Cardboard	Check daily	n/c
2 yard container (must be no larger than w 62" x d 33")	Cardboard	Check daily	n/c

Billing and Payment Procedure

- a. The Contractor shall submit to each facility for payment an itemized invoice in a form and in sufficient detail to determine the work performed for the amount requested. The invoice shall contain at a minimum:
 - Invoice date
 - Work done
 - Billing rate applied
 - Contract number
- b. The form shall be determined by the MERC. Invoices may be submitted monthly, or at such other interval as is specified by the Facility Contact.
- c. MERC shall process payment in its normal course and manner for accounts payable, **NET 30 DAYS**. Discounts offered by the Contractor for earlier payment are encouraged, but MERC shall not be obligated to make payment in less than 30 days from the date the invoice is received.