MINUTES OF THE COUNCIL SOLID WASTE COMMITTEE OF THE METROPOLITAN SERVICE DISTRICT

August 22, 1989

Council Chamber

Committee Members Present: Gary Hansen (Chair), Tom DeJardin (Vice

Chair), Roger Buchanan and Mike Ragsdale

Committee Members Absent: Judy Wyers

Other Councilors Present: Larry Bauer, Tanya Collier, Richard Devlin,

Ruth McFarland and George Van Bergen

Also Present: General Counsel Dan Cooper

Chair Hansen called the regular meeting to order at 5:35 p.m.

1. Consideration of Minutes of June 13 and June 27, 1989

Motion: Councilor Ragsdale moved for approval of the minutes.

Vote: Councilors Buchanan, DeJardin, Hansen and Ragsdale voted

aye. Councilor Wyers was absent. The vote was unanimous

and the minutes were approved.

Consideration of Request for Bids (RFB) for Household Hazardous Waste Collection Events

Chair Hansen said the Solid Waste Committee could authorize a formal RFB or release the RFB directly. He noted Household Hazardous Waste Collection Days had been discussed extensively by the Committee in the past.

Rob Smoot, Associate Engineer Planner, said the RFB was the same as previous Household Hazardous Waste Day RFPs and that staff chose to make this document an RFB for expediency. He said added to this scope of work and not found in previous contracts was a performance bond to equal the cost of one Household Hazardous Waste Collection Day; that the contractor direct traffic rather than Metro staff; and three added requirements per the request of Fire Department personnel—1) Protective clothing and equipment to be used adequately; 2) That storm drains be sealed; and 3) To provide a decontamination area. He said additional language clarified contractor billing and payment. Mr. Smoot said the RFB was complete and comprehensive.

Councilor Ragsdale asked if Council staff reviewed the RFB. Ray Barker, Council Analyst, recommended the RFB be directly issued because the next Household Hazardous Waste Day Collection Event was scheduled for October.

<u>Motion</u>: Councilor Ragsdale moved to directly release the Household Hazardous Waste Collection Events RFB.

Vote:

Councilors Buchanan, DeJardin, Hansen and Ragsdale voted aye. Councilor Wyers was absent. The vote was unanimous and the motion passed.

<u>General Staff Reports</u> Unscheduled Agenda Item

Bob Martin, Director of Solid Waste, said he had been requested to give a detailed briefing on Metro's waste services transport contract with Jack Gray Transport, Inc. (JGT) at this meeting. He said the question had been raised whether JGT had operated in good faith since the contract was signed in March. He said since March attack on the contract had been He said Metro had won a dispute with a disappointed vendor unprecedented. on weight limits, axle load configurations and bridging formulas. the Oregon Department of Transportation (ODOT) had ruled JGT's proposed trailer and tractor configurations were adequate to meet weight limitations on Oregon highways. He said a temporary restraining order filed on MBE/WBE issues was denied. He said a Land Use Board of Appeals (LUBA) petition filed by the American Automobile Association (AAA) and other parties looked resolvable based on assurances given them and the affected Gorge communities with regard to the mode of operation. He said a referendum attempt was made which the court ruled was not referable. Mr. Martin noted the referendum did not receive enough signatures to go on the ballot. said an injunction to prevent Metro and JGT from proceeding with the contract while signatures were gathered was also denied. He said the Cascade Locks City Council considered a resolution opposing the contract and did not adopt it. He said Wasco County considered a similar resolution which they did not adopt. He said the Multnomah County Board of Commissioners considered and adopted a similar resolution. He said a legislative effort made to interfere with, or prevent the execution of, the contract failed.

Mr. Martin said JGT recently applied for industrial development bonds. Mr. Martin said the State of Oregon denied JGT's application but the Port of Arlington granted JGT an industrial development bond. Mr. Martin said left to consider was the certificate of authority from the Public Utilities Commission (PUC) for the contract and a modification to the conditional use permit allowing JGT to use as a staging and maintenance area the already permitted landfill site in Arlington. Mr. Martin said the JGT contract had endured an unprecedented amount of controversy and effort to contravene, stall and disrupt. He said JGT had survived all hurdles to this date and had sustained approximately \$750,000 in unanticipated legal fees. He said JGT had demonstrated good faith in meeting all challenges. He said it was disingenuous for JGT opponents to say the contract was not on schedule because they were among those responsible for JGT being in that position.

Mr. Martin discussed permit issues. He said Metro staff and JGT attorneys would follow the issues closely. He said PUC requested internal financial information used by JGT in their bid preparation. He said the PUC made

that request because they wished to analyze compensatory issues and whether the contract had been fairly awarded. Mr. Martin said such issues had been addressed during the public bid process, but said PUC staff wished to analyze how JGT assembled the bid. Mr. Martin said JGT did not object to the release of that information, but said JGT competitors had asserted their right to see that information and JGT resisted making financial information available to parties besides the PUC. He said the Hearings Officer ruled against JGT on the issue. He said JGT would appeal that decision immediately. Mr. Martin said staff considered it a procedural matter which would be resolved and the PUC would then hear the main issues. Mr. Martin said there were some public PUC hearings which consisted of testimony from individuals and disappointed vendors.

Mr. Martin said the PUC was most interested in safety issues. He said one issue raised was that JGT received a conditional use permit from the Federal Highway Administration (FHA). He said the conditional rating resulted because JGT had acquired an operation in Montgomery, Alabama, with a historically bad safety record. Mr. Martin said after an audit, Gary Goldberg, JGT president, admitted the problem, took aggressive action, fired personnel and enrolled remaining employees in a training program. He said repeat audits had shown a steady safety record from that time to June 1989. Mr. Martin said staff had a complete file on the safety violations and action taken to correct them. Mr. Martin discussed JGT's Hempstead operation, similar to shipping waste to Arlington, and said the company's safety record in Hempstead was a good one.

Mr. Martin addressed fuel consumption issues and noted there was controversy over JGT's use of fuel. He said trucking as a transportation mode used more fuel than other modes, but said trucks would use less fuel in the metropolitan area because of greater payloads and straight hauls. He said if fuel consumption were a barometer with which to prevent or restrict trucking vendors or contracts, there were other trucking companies in operation which consumed fuel and asked if they would be prevented from operating.

Councilor McFarland asked if JGT had placed orders for tractors and trailers as required by the contract. Mr. Martin had said he reviewed with JGT their contract compliance with regard to stipulated equipment purchases. He said JGT had delayed ordering equipment before industrial development bonds issues were decided because equipment purchases made before would not have been eligible. Mr. Martin said JGT had issued and received bids from several manufacturers. He said a tipper required for the Arlington Landfill was ordered in June. He said an additional tipper would be ordered after full operations began. He said JGT placed an initial order for 100 trailers August 18 with Fruehauf and delivery was scheduled December 1, 1989. He said JGT had received two bids for 15 tractor units and would decide on those bids at the end of this week and said the unit delivery date was 75 days after the bid was selected. He said the proposers to submit bids were Freightliner and Peterbilt. He said

JGT would order "yard goats" which required delivery 60 days after the order was placed. He discussed office construction and said the office would be built by the end of October. He said Motorola would provide communications equipment.

Mr. Martin said the Gilliam County Land Use board had scheduled three hearings for September 11, 18 and 25. He said he spoke with Gilliam County and JGT and that both parties had expressed optimism about the process. He said Gilliam County had requested information which JGT had provided.

Mr. Martin discussed contract compliance issues. He said the 90-day report was submitted in a timely manner and made available to affected Gorge communities and other interested parties for review. Staff set a three-week deadline to receive comments. He said comments received by citizens stated they did not like the trucks but said no specific comments were received. He said comments received from the Gorge Commission sought assurance that a previous commitment to outline JGT's operating plan details would be included in the 90-day reports. Mr. Martin said some operating plan details had been obscure and staff concurred with the comments received from the Gorge Commission.

Mr. Martin said satisfactory resolution was reached with JGT on questions staff had and that several more meetings between JGT and staff would take place. Mr. Martin discussed insurance binders which appeared to be responsive to contract requirements, but said language would be redone on whether the insurance company would provide Metro with 60 days advance notice of any intention to terminate.

Mr. Martin discussed Metro South Station and a conditional use permit from Clackamas County to obtain a staging area. He said Metro could operate from Rossman Landfill on a temporary basis if necessary until the permit was obtained. He said the compactor bid had been awarded to AMFAB.

Mr. Martin concluded staff's report and stated JGT had fulfilled their contractual commitments to Metro at this date.

Councilor McFarland referred to the draft operating plan and mileage necessary to ship waste to the Arlington Landfill. She said the operating plan required drivers to either break the speed limit or drive more than 10 hours per day and objected to JGT's mileage plan. Mr. Martin said JGT's operating manager was present and could answer questions from the Committee. Mr Martin said he had seen JGT's scheduling plans and believed JGT would comply with state laws and regulations. Councilor McFarland expressed concern that truck drivers would drive too fast on the highway and speed up and slow down excessively and disrupt traffic.

Councilor DeJardin recommended meeting with JGT's operating manager on these issues. Chair Hansen agreed and said JGT could also explain

alternative plans JGT had in the case of inclement weather and other obstacles.

Councilor McFarland stated for the record Metro would be liable for any damages if Metro agreed to an untenable or illegal operating plan. She said she hoped the Metro Council would not be liable in any future litigation over these and other related issues. Mr. Martin said JGT operated in 48 contiguous states and would submit an acceptable schedule to the approving regulatory agencies.

Councilor Devlin asked, relative to the industrial development bond and approval of which by the Port of Arlington, if there was a process by which such a bond could be appealed. Dan Cooper, General Counsel, said he was not familiar with the process ports used to issue revenue bonds. He said there was state law procedure which governed city revenue bonds to give cities the authority to issue revenue bonds and provided for public involvement and ultimately elections. Mr. Cooper said he would research that issue relative to port authorities.

Councilor Devlin asked Mr. Martin if Metro's contract with JGT would continue if they did not obtain state funding. Mr. Martin said JGT held a \$200 million contract with a governmental agency and would have no difficulty obtaining financing. Mr. Martin noted JGT had Mellon Bank's full backing and would try to obtain the best interest rates possible.

Councilor Devlin said there was no other factor in the solid waste functional plan more crucial than the fulfillment of the JGT contract. He requested staff update the full Council on the JGT contract on a monthly basis. Chair Hansen concurred with Councilor Devlin. Chair Hansen noted separate governmental timelines did not always match. He asked if it were possible to obtain interim permits. Mr. Martin said temporary authorization was used when an operation needed to go into effect before the PUC rendered a full decision. He said it was possible to obtain sixmonth temporary authorization.

Councilor Van Bergen asked about the new compactor at, and modifications of, Metro South Station. Mr. Martin said staff was scheduled to meet with the consultant on issues related to Metro South before the Planning Commission hearing. He said staff worked with Oregon City staff on buffering and landscaping the facility to meet local concerns. He said the staging lay-out was dedicated to screening the site from the community. Councilor Van Bergen expressed concern about the filed petition and requested staff track the situation closely. Mr. Martin said a consultant had been hired to track the issues. Councilor Van Bergen asked if use of the Rossman Landfill was an outright permitted use. Mr. Martin said it was not.

3. Consideration of Resolution No. 89-1131, For the Purpose of Authorizing Negotiations with Trans Industries to Obtain the Metro East Station

Chair Hansen said the purpose of this agenda item was to receive comprehensive information from the proposer and Metro staff. He said this agenda item was not scheduled to receive public testimony and that public testimony would be received Tuesday, September 5, 1989.

Mr. Martin said four proposals were received from: Trans Industries, Rose City Resource Recovery, Riedel/Wastech, and Norcal. Staff distributed "Metro East Station Proposal Evaluation August 1989." Mr. Martin said staff would outline staff's evaluation of the four proposals and staff's recommendation of Trans Industries as the first ranked proposer and said their proposal would be a turn-key operation. Mr. Martin noted the four proposers' sites as well as private sites reviewed by R. W. Beck & Associates (RWB) on a map. He noted the recommended site was outside the footprint of the transportation contract and a small adjustment would be necessary in the transport contract if Trans Industries was selected as the proposer.

Mr. Martin discussed RWB's "Technical Studies for the Metro East Transfer and Recycling Station" June 1989 report. He said three of the private sites RWB recommended had merit, but said there were drawbacks to those sites. He said RWB's report was helpful in cost assessment and other considerations. Mr. Martin said staff felt faster results could be achieved with the four proposals received and had reserved the RWB report for background information and reference.

Mr. Martin explained the site Trans Industries proposed was the existing American Steel building located at 6161 N.W. 61st Avenue; Riedel Waste Disposal Systems, Inc. and Wastech, Inc. proposed a combination of three sites--OPRC at 701 N. Hunt Street, RTC at 5601 N.E. Columbia Blvd., and KPTC at N.E. 75th Ave; Rose City Resource Recovery proposed a site at the S.E. corner of the intersection of N. Marine Drive and N. Force Ave.; and Norcal Solid Waste Systems proposed a site at 9901 N. Hurst.

Mr. Martin said Norcal had the lowest cost, but had an irresolvable problem with transportation access. He said the Trans Industries site was sited in an outright industrial use area. He said staff hoped to avoid residential areas. He said the Trans Industries site had good transportation arterials and said the access issues were good and straightforward. He said the site had a structure which could be modified. He said the building covered three acres and said it had good floor space with spans and flexibility. He said Trans Industries proposed a 25 percent recyclable rate. Mr. Martin said Trans Industries had BFI's financial backing. He said the Trans Industries proposal would be a turn-key site and therefore would be a revenue bond issue. He said once the facility was

constructed, Rabanco and Trans Industries would operate only which avoided public versus private issues and the issue of vertical integration.

Mr. Martin said staff and the Evaluation Committee reviewed every aspect of the evaluation. He said staff's presentation would detail the evaluation methodology and staff conclusions. Mr. Martin commended Jim Watkins, Engineering & Analysis Manager, and his staff, and said they had all done an excellent job. Mr. Martin said the process had been thorough.

Councilor Wyers asked if the Council would approve Addendum No. 1 which stated proposers had to meet the minimum criteria.

Mr. Martin said "Minimum Qualifications" were explained on page 3 of the "Proposal Evaluation" and that each criteria received a weight and points which were then totalled. He noted the table on page 5 showed that Trans Industries received four of the highest scores and two of the second highest in the different criteria. He said comparative scoring was used and said the main exception was when no criteria or a zero was given. He said if no criteria was given, a score of one was given.

Mr. Martin explained "Technical Section" and technical scoring. He said technical scores were the culmination of several areas. He said the greatest obstacle to the Norcal site were three railroad tracks and that the public had to cross a busy highway to unload.

Mr. Watkins referred to page 14, "Technical Proposal" which described sites and site feasibility. He discussed the sites submitted by the four proposers. Councilor Bauer asked when the Trans Industries building was built.

<u>Rich Owings</u>, Trans Industries project manager, said the building had been built over four different stages over 20 years. He discussed the site's traffic access pattern.

Mr. Watkins described the drive time relative to the centroid of waste and said Wastech was closest, Norcal and Rose City Resource Recovery second, and Trans Industries was farthest away. Mr. Watkins discussed the feasibility of unit equipment and proposed solid waste processing technology. He said Norcal rated first, Wastech second, Rose City Resource Recovery third, and Trans Industries rated fourth because it had no similar facility in operation with the type of equipment offered for this proposal.

Mr. Watkins further discussed the "Technical Proposals" section including soundness of operations and maintenance plans including flexibility of the system with regard to fluctuations of contingency capabilities of the system (p. 28); consistency, accuracy and reasonableness of process flow diagram (p. 30); reliability/availability of system (p. 31); ability to prepare recovered materials for sale to the appropriate markets (p. 32); configuration of facility site plan (p. 33); demonstration that proposal is

capable of complying with environmental regulations (p. 34); progress in meeting mitigation requirement (p. 35); energy and water conservation measures indicated in design operation (p. 37); commitment of contractor to operate the facility to maximize materials (p. 38); and environmental condition of the site (p. 39).

Mr. Watkins said staff received a letter from DEQ which stated there was no undue contamination of the site because it was adjacent to a hazardous waste operation. He said it was not a factor to prevent the Trans Industries site from consideration.

Chair Hansen asked if Trans Industries could give guarantees or accept liability for site contamination during the negotiation process. Mr. Martin said detail would be needed on past activity on the site. He said if a problem became apparent later, Metro could hold whoever caused it responsible. He said all four sites proposed had a history of previous industrial activity. He said how far the negotiations went depended on what was found with regard to contamination. Councilor Ragsdale asked if the Trans Industries site, also known as the American Steel site, had had an environmental audit. Mr. Martin said soil and water testing had been done. He said the DEQ did not think the site was a problem. He said the site did not constitute a Level I investigation. Councilor Ragsdale said he expected the proposer to be prepared to do a Level I investigation and to hold Metro harmless. Councilor Devlin said that expectation would hold true for all proposed sites as negotiations progressed.

Mr. Watkins discussed the "Management Proposal" section. He discussed techniques and controls for project management (p. 43); reasonableness of construction schedule (p. 45); safety policies (p. 47); maintenance philosophy and policies (p. 48); soundness of acceptance plan (49); proposed working/operational relationship and procedures with 1) Metro, 2) the recovered materials markets, 3) transportation contractor, and 4) regional landfill operator (p. 50); parent company and subcontractor staff support (p. 52); ability to meet commercial operation date (p. 53); demonstration of programs to increase efficiency and maximize recovery of materials (p. 54); creative elements of the proposal which will encourage and enhance the degree of source separation by generators of waste (p. 55).

Mr. Watkins discussed the "Cost Proposal" section which he said dealt mainly with Alternate #1, in which the proposer designed, constructed and operated the facility for 19 years and retained ownership at contract expiration; Alternate #2 in which the proposer designed, constructed and operated the facility for 19 years and Metro obtained ownership at the end of the contract; and turn-key operations. Mr. Watkins discussed the "Cost Proposal" section further.

Councilor Van Bergen asked staff if contract approval under Metro ordinances and enabling statutes lay with the Council or the Executive Officer; if the site proposed met east wasteshed needs and fit in with

Metro's regional scheme for transfer stations; if Metro would continue to pursue a Washington County transfer station or stations; if an additional east county transfer station would be needed; and to what extent the Council could, after selection of the vendor, change the transfer station proposals in contract negotiations and if there were any limitations to that. Councilor Van Bergen requested a summary review of the reason why the mitigation agreement with the City of Portland was a consideration. He asked what involvement Trans Industries as a joint venture and the individual companies had with solid waste collection in the area encompassed by the Metropolitan Service District and if the Metro Code contained prohibitions to those companies which provided household or commercial collections service. He asked who presently owned the proposed Trans Industries site. He asked, if the owner was not Trans Industries, if Metro had access to the earnest money or purchase agreement. Councilor Van Bergen noted the proposed site was next to a Super Fund site. He asked what were Metro's liabilities for cleaning up the Super Fund site. He asked what were Metro's potential costs for cleaning up its own site as a result of any spill over from the Super Fund site. He asked how the Trans Industries proposal met public ownership option objectives. He asked when Metro would own the facility. He asked what the impact of Metro East Station financed through the sale of revenue bonds would be, combined with the impact of the Riedel composter facility financed through revenue bonds, on Metro's ability to finance other facilities through the sale of revenue Councilor Van Bergen noted Resolution No. 89-1131 gave the bonds. Executive Officer the authority to terminate negotiations with the successful vendor and start negotiation with the next preferred vendor or vendors. He asked whether the Council should have a role in the termination and assumption of said negotiations. Councilor Van Bergen asked if the contract would contain a non-assignment clause which would prohibit the vendor from assigning the contract to another party without Metro's approval. Councilor Van Bergen said he would submit all questions in writing to staff for their response.

Councilor Van Bergen also asked what expertise the Evaluation Committee had; why people were not picked from other jurisdictions to serve on that committee; who owned Rabanco Industries and what record did Trans Industries and Rabanco have of anti-trust violations; what contributions to whom had the two companies made in the last general three elections; and if a detailed aquifer study would be made of the site next door. Councilor Van Bergen asked what would happen if Trans Industries declared bankruptcy. He asked the effect of the seventh, eighth and ninth Whereases in Resolution 89-1131 which authorized the Executive Officer to determine the next best vendor. Councilor Van Bergen said he conceptually approved staff's actions, but did not want any surprises a year after the contract was determined.

Chair Hansen said Councilor Van Bergen's questions were valuable. He said the "Proposal Evaluation" gave a great deal of information, but that there unanswered questions such as those Councilor Van Bergen asked. Councilor

Van Bergen asked what right or option losing vendors had in challenging the Evaluation Committee's criteria, and if there was a review process for them, or if they would have to sue Metro.

Mr. Martin said at the September 5 Solid Waste Committee meeting all four vendors would have the opportunity to testify on scoring criteria used.

Chair Hansen recessed the meeting at 8:29 p.m. The meeting reconvened at 8:44 p.m.

Mr. Watkins concluded the "Cost Proposal" section and discussed subsidiary ownership. Mr. Watkins then discussed "Performance Standards," including ranking and analysis (p. 74); minimizing risk to Metro, such as hazardous waste detection, processing performance, and traffic separation of public and commercial (p. 76); competitiveness and reasonableness of proposed materials recovery rate (p. 78); and markets for recovered materials (p. 80).

Mr. Watkins discussed "Qualifications," including overview of qualifications (p. 81); rankings and analysis (p. 84); demonstrated capability to perform all required tasks (p. 88); and technical reliability (p. 94).

Mr. Watkins discussed "Vertical Integration" and said all vendors received superior scores in that category. Mr. Watkins discussed recycling in the region (p. 104); proposer of parent ownership interests in licensing rights, manufacturing, or distribution of solid waste equipment in the region (p. 105) on which all proposers scored superior except Norcal because of the compactor; outcome of past civil suits, anti-trust actions, and governmental regulatory agency actions relative to the proposer's or parent's solid waste business activities (p. 106) on which he said Trans Industries scored poor because of Browning-Ferris Industries' (BFI) disclosure of lawsuit litigation and did not report the outcome of the litigation; and overview of bonus - special waste substreams and household hazardous waste (p. 108).

Mr. Martin thanked the Committee for their patience while staff reviewed the "Evaluation Proposal" document and said thoroughness was necessary. He said staff was interested in proposers' reactions to scores given. Mr. Martin discussed Metro West Station issues in conjunction with Metro East Station issues.

Councilor Devlin said he had many of the same questions Councilor Van Bergen asked staff. He said it was obvious Norcal could not have been the successful bidder. He said he would like to see more detail about conflict with railroad traffic. He said other issues related to timelines. He asked what would happen if the Council did not accept staff's recommendation at the September 14 meeting. He discussed future neighborhood hearings sponsored by the Public Affairs Department.

Chair Hansen said at the Council meeting there should be a motion to accept the Evaluation Committee and a motion to accept the successful proposer. He said after the vendor was selected, details and the mode of negotiation could be selected. Councilor Ragsdale said it would be difficult to approve a vendor with unexplained litigation issues. Councilor DeJardin said the purpose of such a motion would be to clarify what would happen in negotiations. Mr. Martin said staff would need to know what the Council wanted to negotiate. Mr. Martin said he would like to keep negotiations separate from who was negotiating with whom. Councilor Devlin suggested a work session meeting.

Mr. Owings said Trans Industries was pleased with the scoring results. He said comments on Trans Industries joint venture through Rabanco and BFI would be submitted at the September 5 meeting. He said the company was confident about the recycling rate promised and said recycling would prolong the life of the landfill. He invited the Committee to Seattle to observe a transfer station similar to the proposed Metro East Station.

Greg Apa, BFI district manager, said Trans Industries was eager to provide Metro with a transfer station to meet regional needs. He said the litigation mentioned at this meeting had been pending for a long time. He said the RFP asked for disclosure because of possible financing impact. He said the company would not know the final results of litigation for awhile. Councilor Ragsdale said he knew litigation issues were confidential, but said such issues were indicative of company character and how it operated. Councilor Buchanan said he had visited solid waste facilities in the past and would like to visit the facility in Seattle as suggested.

Chair Hansen adjourned the meeting at 9:31 p.m.

Respectfully submitted,

Paulette Allen Committee Clerk

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