

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

October 5, 1989

Council Chamber

Committee Members Present: Gary Hansen (Chair), Roger Buchanan and Judy Wyers

Committee Members Absent: Tom DeJardin (V. Chair) and Mike Ragsdale

Other Councilors Present: Richard Devlin, Jim Gardner and Ruth McFarland

Also Present: General Counsel Dan Cooper

Chair Hansen called the special meeting to order at 5:45 p.m.

1. Metro East Station
o Staff Update on Negotiations

Dan Cooper, General Counsel, briefed the Committee on Metro's negotiations with Trans Industries (TI) to the date of this meeting. He said he was asked whether this briefing would be an Executive Session and explained it would not because the contract did not only cover acquisition of real property, circumstances under which an Executive Session could be utilized, but also for construction and operation of the facility after the acquisition of real property. Mr. Cooper said he and Bob Martin, Director of Solid Waste, might be reluctant to give details of issues not completely agreed upon at this meeting. He said if Councilors had questions, or required further information, to contact him or Mr. Martin. He said to discuss certain issues at a minute level of detail for the public record could prejudice unresolved issues.

Mr. Cooper said September 14, 1989, the Metro Council authorized negotiations with TI and staff began to meet with TI and to set a schedule for completion of negotiations. He said the most important task was to reconcile the Request for Proposals (RFP), for transfer station franchises and Addendum No. 1, an RFP for a publicly-owned transfer station. He said the first meeting identified the key issues: Terms and conditions for Metro to acquire the property; the schedule to do so; environmental condition of the property; allocation of risk associated with environmental conditions; and indemnification of Metro to protect it from assuming risks Metro should not assume in the acquisition of real property.

Mr. Cooper said negotiations had to resolve differences between public and private proposals submitted by TI; reach an agreement on performance standards; the handling of special waste streams; the process for the acquisition of city and DEQ permits; requirements for employment of subcontractors; a process to review construction design and issuing change orders if necessary; agreement on what general conditions were; and agreement on what facility construction payment schedule would be. He said it was necessary to resolve on the operational side similar differences

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between the public and private ownership proposals; performance standards during the operational phase; and community impact including traffic, odor and noise.

Mr. Cooper discussed tax-exempt bonds and said there were possible restrictions on the tax-exempt status of the bonds Metro intended to issue on the operating agreement. He said Metro's RFP indicated Metro would enter into a five-year operating agreement, and said if Metro wanted tax-exempt financing, the contract could be limited to a three-year operating contract with options to renew for an additional two years. He said Metro had to negotiate the pricing structure for tonnage less than 35,000 tons per month. He referred to previous Council and Solid Waste Committee discussion about the firm price offered by TI for 35,000 tons per month when the RFP indicated Metro would need a pricing structure down to 15,000 tons per month and said that issue had to be resolved. He said negotiations had to resolve how to administer actual payment to TI for cost avoidance to Metro for materials that would not be landfilled.

Mr. Cooper said Metro and TI met September 20 for a one day negotiation session. He said the negotiating teams were not able to meet last week because of schedule conflicts, but did produce the first draft of a working document. He said staff and TI met again this date in an all day session to resolve what he said was the most important issue--what indemnification agreement on potential environmental liability Metro would receive from the parties including the parent company to BFI's Oregon affiliate. Mr. Cooper said staff was not prepared at this time to tell the exact details of indemnification or how that agreement would work and said that agreement was at the conceptual stage. He said the language would be issued next week in a draft document. He said he and Mr. Martin believed the Council would find it acceptable. He noted in the negotiations on that environmental guarantee, TI requested in return for that guarantee, Metro increase the price to be paid on tonnage handled through the facility. Mr. Cooper said Metro indicated that was unacceptable and TI withdrew the request for compensation in return for the indemnification agreement.

Mr. Cooper discussed remaining issues. He said staff anticipated a second draft of the negotiation document would be out next week. He said the first draft document, which numbered 116 pages, would be made into three separate agreements; 1) Acquisition of Site, 2) Construction of Facility, and 3) Service Agreement for the operating phase after the facility was accepted by Metro. Mr. Cooper said the three documents would return to Council for approval at the same time as a package. He said Metro had already signed the design reimbursement agreement and TI had already begun design work. He said as part of that design work, TI would prepare preliminary applications for DEQ and city building permits. He said those applications would be filed, after Metro approved language, next week.

He said staff planned a meeting October 16 to continue discussion and bring closure to as many issues as possible. He said the targeted date for

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completion of negotiations and a document signed-off by the two negotiating teams was November 1. He said that document could be filed with the Council November 6 for consideration at the Solid Waste Committee November 14 and Council consideration November 21. Mr. Cooper said staff felt the schedule was tenable.

Councilor McFarland asked how much Metro would pay for tonnage less than 35,000 tons processed per month. Mr. Cooper said that was still under discussion. Councilor McFarland asked if environmental liability issues were resolved. Mr. Cooper said staff believed that issue was resolved and that there was a conceptual agreement on it. He said no language was yet drafted but would be ready next week. Councilor McFarland asked if Metro was committed to the ownership proposal agreed to September 14. Mr. Cooper said Council action authorized negotiation of the TI proposal for Metro ownership. He said that if Council negotiations were unsuccessful, or if the conclusion was unacceptable to the Council, then the Council would need to approve what alternative would be pursued next.

Councilor McFarland asked about bond financing to fund capital expenditures. She asked what institutions were likely to fund such bonds. Mr. Cooper said discussions were held with PaineWebber who served as underwriter to Metro for the Riedel mass composting facility and who would be available to underwrite for revenue bonds. Mr. Cooper said PaineWebber had advised revenue bonds could be sold.

Chair Hansen noted Councilor Gardner requested an Executive Session on a separate issue. Mr. Cooper stated the Executive Session would be held pursuant to ORS 192.660(1)(h).

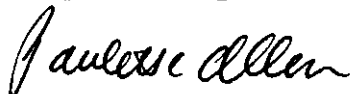
Chair Hansen recessed the meeting at 6:00 p.m.

ADDITIONAL AGENDA ITEM

Executive Session, Held Under the Authority of ORS 192.660(1)(h) to Discuss Litigation Matters with General Counsel

Chair Hansen called the Executive Session to order at 6:05 p.m. Those present: Councilors Buchanan, Devlin, Gardner, Hansen, McFarland and Wyers. Staff present: Mr. Cooper; Vickie Rocker, Director of Public Affairs; Ray Barker, Council Analyst. The Executive Session ended at 6:25 p.m. and Chair Hansen adjourned the meeting.

Respectfully submitted,



Paulette Allen
Committee Clerk
SWC89.278