
MEMORANDUM

DATE: June 8, 1999
TO: Becky Shoemaker, Council Archivist
FROM: Aaron Brondyke, Assistant to the Director of REM
RE: Disposition of Resolution No. 98-2703

This resolution was withdrawn from consideration.

REM drafted legislation and a staff report for a "Request for Proposals" for provision of diesel fuel. However, Marv Fjordbeck of OGC rejected this RFP. The Fuel Bid ended up going to Council as a "Request for Bids" instead.

[See Resolution No. 98-2713]

BEFORE THE METRO CONTRACT REVIEW BOARD

FOR THE PURPOSE OF AUTHORIZING AN) RESOLUTION NO. 98-2703
EXEMPTION FROM THE COMPETITIVE BID)
PROCESS AND AUTHORIZING ISSUANCE OF) Introduced by
RFP 98R-58-REM FOR THE PROVISION OF) Mike Burton, Executive Officer
DIESEL FUEL)

WHEREAS, Metro has executed Change Order No. 15 to the Waste Transport Services Contract which provides for a reduction in unit prices for solid waste transported to the Columbia Ridge Landfill; and

WHEREAS, Under Change Order No. 15, Metro must purchase fuel for the Waste Transport Services Contractor in exchange for the reduction in unit prices; and

WHEREAS, As a result of this arrangement Metro has realized monthly savings in excess of \$300,000 per year in federal excise tax savings; and

WHEREAS, Metro is currently purchasing fuel utilizing emergency agreements which expire in November 1998; and

WHEREAS, It is in Metro's best interest to continue to purchase fuel utilizing a request for proposal rather than the competitive bid process for the reasons stated in accompanying staff report and EXHIBIT "B"; and

WHEREAS, Metro Code Section 2.04.054 (c) authorizes the Metro Contract Review Board, where appropriate, to exempt a public contract from competitive bidding, subject to the requirements that the exemption will not encourage favoritism or substantially diminish competition for public contracts, and that such an exemption will result in substantial cost savings; and

WHEREAS, EXHIBIT "B" to this resolution contains findings which satisfy the requirements for such an exemption; and

WHEREAS, This resolution was submitted to the Executive Officer for consideration and was forwarded to the Contract Review Board for approval; now therefore,

BE IT RESOLVED,

1. That the Metro Contract Review Board adopts as findings the information and reasoning contained in EXHIBIT "B", made part of this resolution by reference, and concludes that:
 - a) It is unlikely that exempting the purchase of diesel fuel from the competitive bid process will encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts; and
 - b) The exemption will result in substantial cost savings to Metro; and

Therefore, exempts the contracts to be solicited through RFP #98R-58-REM from competitive bid requirements.

2. That the Metro Council authorizes issuance of RFP #98R-58-REM attached as EXHIBIT "A".
3. That the Metro Council, pursuant to Section 2.04.026(b) of the Metro Code, authorizes the Executive Officer to execute contracts with qualified proposers.

ADOPTED by the Metro Council this _____ day of _____, 1998.

WITHDRAWN
Jon Kvistad, Presiding Officer

Approved as to Form:

Daniel B. Cooper, General Counsel

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 98-2703 FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION FROM THE COMPETITIVE BID PROCESS AND AUTHORIZING ISSUANCE OF RFP 98R-58-REM FOR THE PROVISION OF DIESEL FUEL

Date: September 3, 1998

Presented by: Bruce Warner

PROPOSED ACTION

Adopt Resolution No. 98-2703 to permit the Executive Officer to issue a request for proposals for the purchase of diesel fuel.

FACTUAL BACKGROUND AND ANALYSIS

In April, 1994, Metro began purchasing diesel fuel required to transport waste from Metro facilities to the Columbia Ridge Landfill per Change Order No. 15 to the Waste Transport Services Contract. The reason Metro initiated this action was to avoid payment of the federal excise tax of \$0.24 per gallon. These savings accrue to Metro only since a private party is prohibited from sharing in these savings. Metro currently saves over \$300,000 annually due to federal excise tax savings.

Metro has received additional savings due to the low price of fuel. When Metro negotiated Change Order No. 15, STS' per load price reduction was based on an assumed price of fuel used in their original bid that included the excise tax. Metro saves the \$0.24 federal excise tax by purchasing the fuel, but also accrues savings if the price of fuel is lower than that used to lower their per load payment in Change Order No. 15. For FY1997-98, the average price for fuel purchased by Metro (less the excise tax) was \$0.628. The price of fuel used for STS' per load payment reduction was equivalent to \$0.75. Metro therefore accrued savings of \$0.12 per gallon (or about \$170,000 annually) in addition to the excise tax savings. These unanticipated savings would have accrued to STS had they not agreed to allow Metro to purchase the fuel.

In January 1995, Metro issued a request for proposals for an eastern and western diesel fuel supplier. Four proposals were received. In April, 1995, Metro entered into contracts with two suppliers for 14 months, with the option to extend for up to three additional years. Extensions were to be in one year increments and required Council approval. Two extensions were granted. The Metro Council did not approve the contract extensions for the final year, requesting that staff prepare a request for bids to obtain replacement contracts.

In June, 1998, staff released a request for bids for the provision of diesel fuel (RFB-35-REM). Two bids for the eastern supply point were received. No bids were received for the western supply point. Both bids were rejected as nonresponsive. The Metro executive then declared an emergency and entered into contracts with the two previous suppliers for a period not to exceed November 1998.

Staff is now recommending the use of a request for proposals process to obtain replacement contracts. The proposed RFP is attached to Resolution No. as EXHIBIT A. The salient features of the RFP are as follows:

- Both eastern and western supply locations are requested as in the past
- Metro expects to enter into contracts with multiple firms (even in the same area) as suppliers
- STS (the Waste Transport Services Contractor) will choose which locations to use and under what conditions
- Metro will contain costs through contract negotiation and the use of incentives and disincentives with STS to utilize lower cost suppliers

This approach differs from previous procurements in that more than two suppliers are expected to execute contracts with Metro. The reason for this approach is that, particularly at the eastern supply point where the majority of fuel is purchased, there is price competition but radically different service levels. While Metro wishes to minimize costs, our agreement with STS states that the fuel will be supplied consistent with historical service levels obtained by STS. Metro is well positioned to meet its service level commitment due to the low price of fuel and the resulting unexpected savings. These accumulated savings will more than offset minor price differences submitted during the recent unsuccessful bid process for the length of this contract.

By providing multiple locations for STS to fuel, Metro is able to meet its commitment to provide service levels consistent with those STS enjoyed when it was free to choose suppliers. These multiple suppliers will also provide some price competition pressure. If significant price differentials exist, Metro can encourage STS to utilize lower cost suppliers for a portion of the work, even though such suppliers may offer a lower level of service. This provides Metro with an opportunity to utilize a supplier that may have been unable to comply with service requirements for a large number of trucks, but that can offer a lower price.

In addition to offering supply and price flexibility, use of a request for proposals process is also expected to attract more potential suppliers than a bid process. A recent request for bids for this project resulted in only two bids (for the same geographic area), both of which were rejected. This was due mainly to the inflexibility of the bid approach that generally does not permit varying service levels or the negotiation of alternative arrangements from a strict specification. The previous procurement for the provision of diesel resulted in four proposals and the execution of contracts.

Resolution No. exempts the RFP 98R-58-REM, from the competitive bid process, authorizes release of the RFP, and execution of contracts with qualified proposers.

BUDGET IMPACTS

Metro would continue to save over \$300,000 per year in excise tax savings.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Resolution No..