



CITY OF OAKLAND

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MEMORANDUM

TO: HONORABLE MAYOR &
CITY COUNCIL

FROM: Vitaly B. Troyan, P.E.

SUBJECT: Revised Zero Waste Agenda Report

DATE: February 16, 2012

City Administrator
Approval

Date

2-16-12

INFORMATION

Attached is a revised Council Agenda Report, "Resolution Adopting The Recommended Process And Schedule, And Protocol For Process Integrity, For A Request For Proposals For Zero Waste Service Contracts," showing the amendments made by the Public Works Committee on February 14, 2012. Additions are shown in underline, and deletions are shown in strikeout. Amended language is found on pages 1, 5, 6 and 7.

Respectfully submitted,

Vitaly B. Troyan, P.E.
Director, Public Works Agency

For questions please contact Susan Kattchee, Environmental Services Manager, 238-6382.

CITY OF OAKLAND

AGENDA REPORT

REVISED

TO: Office of the City Administrator
ATTN: Deanna J. Santana
FROM: Public Works Agency
DATE: February 21, 2012
RE: **Resolution Adopting The Recommended Process And Schedule, And Protocol For Process Integrity, For A Request For Proposals For Zero Waste Service Contracts**

SUMMARY

The recommended resolution adopts a process and schedule for competitive procurement through a Request for Proposals (RFP) to establish Zero Waste Service Contracts (Contracts). In addition, the recommended resolution adopts a protocol for process integrity to foster transparency, consistency, and fairness in the solicitation and evaluation of proposals, and to establish a code of conduct for participants in the RFP process. The new Contracts for garbage and organics collection, recycling collection, and landfill disposal would replace existing agreements that expire on June 30, 2015.

On January 17, 2012 the City Council adopted a Zero Waste System Design (System Design) which provides the framework for developing new Contracts. The RFP for these Contracts represents one of the City's largest competitive procurements, with an estimated total value over \$60 million per year for a term of 20-30 years, including contract extension options. With contracts at such high estimated value, it is important to have clear ground and engagement rules to not create any actual or perceived conflict of interest.

Before issuing the RFP the City must establish a process and schedule for the procurement, and a protocol to ensure process integrity. As described in this report, the recommended RFP process involves:

- soliciting proposals for three new Contracts
- conducting a comprehensive evaluation of the proposals
- conducting exclusive negotiations with the respondents who submit the top-ranked proposal or proposals for each Contract
- developing and executing new Contracts

The recommended RFP schedule includes authorization from City Council at several key points including prior to entering into exclusive-negotiations on the top-ranked proposals, and prior to executing new Contracts. The recommended Protocol for Process Integrity (Protocol) will

Item: _____
City Council
February 21, 2012

maintain transparency, ensure consistency and fairness, and set a code of conduct for the participants.

This report recommends that the City Council approve the attached resolution adopting a process and schedule for the RFP, and a Protocol for Process Integrity.

FISCAL IMPACT

There are no direct fiscal impacts associated with the adoption of this recommendation. Staff will return to the City Council with recommendations related to the costs and revenues associated with the Contracts.

BACKGROUND

The City of Oakland's Franchise Agreement for Solid Waste and Yard Waste Collection and Disposal Services (Franchise Agreement) with Waste Management of Alameda County (WMAC), and the Agreement for Residential Recycling Service with California Waste Solutions (CWS) expire on June 30, 2015.

In 2006 the City adopted a Zero Waste Strategic Plan that included developing a new System Design to be used in a RFP process to procure new Contracts. On January 17, 2012 the City Council adopted a System Design which provides the framework for developing new Contracts under a single franchise for citywide garbage and organics collection services, a single franchise for citywide residential recycling, and landfill capacity procured separately from collection and processing services.

Existing Solid Waste and Recycling Services

The Franchise Agreement was approved in 1995 after exclusive negotiations with WMAC, the incumbent garbage franchisee, for an initial term ending December 31, 2010. The 1995 Franchise Agreement has been extended twice. Two years were added in 2005 when the City implemented one-cart residential recycling. In 2011 the term was extended by two-and-one-half years to June 30, 2015 in order to maintain the stability of the existing rate structure for Oakland residents and businesses during the current economic downturn, to maintain stable revenues to the City provided by the Franchise Agreement, and to allow sufficient time to complete System Design and establish new Contracts. Services provided by WMAC under the Franchise Agreement have never been procured competitively, with the exception of residential recycling services that were awarded to WMAC through a competitive RFP procurement in 1993.

The Recycling Agreement with CWS for residential recycling in the northern half of the city was established in 2005 through exclusive negotiations with the incumbent. CWS had previously been awarded residential recycling contracts through a competitive RFP procurement in 1993

Item: _____
City Council
February 21, 2012

and 1997. In 2011 the term was extended by two-and-one-half years to June 30, 2015 to align with the extended term of the Franchise Agreement so that both services could be included in the RFP.

KEY ISSUES AND IMPACTS

The RFP to establish new Contracts represents one of the City's largest competitive procurements, with an estimated annual value over \$60 million dollars per year for a term of 20-30 years. Oakland's limited history of competitive procurement for solid waste and recycling services requires the City to exercise particular care in conducting the RFP process. At the same time, establishing new Contracts through a RFP allows the City an unprecedented opportunity to set contract terms, service standards, and performance outcomes.

Staff developed the recommendations in this report based on research of similar competitive procurements in other jurisdictions, input from the City's technical assistance consultant, and discussion of process integrity procedures with the Office of the City Attorney. The recommendations are intended to ensure a clear, fair, transparent, and thorough process for soliciting and evaluating proposals, and establishing new Contracts.

This report will cover:

- Benefits of the RFP Process and New Contracts
- Improvements Under New Contracts
- RFP Process and Schedule
- Protocol for Process Integrity

Benefits of the RFP Process and New Contracts

Contracting for recycling, composting, and solid waste services through a RFP to obtain the best value for services is a well-established strategy of many jurisdictions in the Bay Area and throughout the state. Replacing expiring service agreements with completely new Contracts awarded through a RFP process provides particular benefits for implementing Oakland's Zero Waste System Design, and for improving services and contract management tools.

Awarding new Contracts using a RFP puts the City in a stronger position to set contract terms, service standards, and performance goals. Setting these terms and standards is necessary to implement changes in services and contract structures called for under the new System Design. Having set the terms and standards for new Contracts, the RFP process provides the companies that provide these specialized services with an equitable opportunity to compete for desirable multi-year contracts.

The expiring WMAC Franchise Agreement was developed in the 1990's through the best available information at the time, and through exclusive negotiations with the incumbent service provider. New Contracts established using a RFP will incorporate the latest contracting terms and standards, and incorporate lessons learned in Oakland and other jurisdictions including stronger contract management tools to enforce high performance standards for the service providers. Setting contract terms up-front will enable the City to address issues of concern, such as bulky collection services for multi-family dwellings to reduce illegal dumping associated with tenant move-outs.

The new Contracts will also incorporate goals developed by StopWaste.Org's Franchise Task Force. The Task Force researched and consolidated experiences and best practices for designing, developing, and administering service agreements. In developing these policy-level goals the Task Force recognized that franchise systems are enormously complex, with many interrelated issues and challenges.

The Task Force recommended that the Goals of an Ideal Franchise System are:

1. Achieve high diversion with minimal contamination and maximum quality of recovered commodities.
2. Provide cost efficient services with stable rates for customers.
3. Minimize risk.
4. Include provisions for ease of contract administration and transparency.
5. Provide adequate and stable financial resources for government and service providers.
6. Provide flexibility and discretion.
7. Promote multiple benefits.
8. Enjoy customer and public support.
9. Protect the public and meet regulatory requirements.

Improvements Under New Contracts

New Contracts would incorporate provisions that address current and future needs, lessons learned from prior service agreements, and the most current technology advancements. The resulting improvements and benefits under new Contracts would include:

- Bulky collection services for multi-family dwellings to reduce illegal dumping associated with tenant move-outs
- Bulky item drop-off "amnesty days" for Oakland residents to reduce illegal dumping
- City-designated collection services to clean up illegal dumping

item: _____
City Council
February 21, 2012

- Multi-family dwelling rate structure that provides a minimum mandatory level of service to protect health and safety, while also providing a financial incentive to reduce waste
- Access to recycling services for all businesses, eliminating existing service gaps and enabling businesses to comply with pending state and county recycling mandates
- More recycling and organics container size choices for single family residences
- A new generation of collection vehicles that are more energy efficient, less polluting, and potentially quieter
- Integration of technology advancements for customers, such as SeeClickFix smart phone apps for reporting basic service issues (e.g., missed pick-up, broken cart)
- Comprehensive special events collection services, including recycling and organics services
- Mulch and finished compost from collected organics returned to the City for community benefit
- A turn-key system for street litter container services
- Stronger contract performance enforcement through the addition of administrative assessments for basic contract violations, augmenting established liquidated damages assessments for chronic violations and breach of contract for major violations
- Integration of technology advancements to improve service provider performance, such as on-board wireless communication and global positioning in collection vehicles

RFP Process and Schedule

It is recommended that procurement for Zero Waste Service Contracts be through one RFP that solicits proposals for three contracts, per the framework adopted for the System Design:

1. Garbage and Organics Franchise for citywide collection of garbage, organics, and commercial recycling; organics processing; and transfer and transport to landfill (10-year term, with two 5-year extension options)
2. Residential Recycling Franchise for citywide collection and processing of residential recyclables (10-year term, with two 5-year extension options)
3. Landfill Disposal Contract for landfill capacity (20-year term, with two 5-year extension options)

Respondents to the RFP would be able to submit proposals for, and could be awarded, more than one contract. This submittal arrangement provides the City with the greatest flexibility in awarding new Contracts. Proposals for each contract would be evaluated separately, and the City would accept alternative proposals for multiple contracts. Respondents would be able to

Item: _____
City Council
February 21, 2012

establish joint venture partnerships for the purpose of submitting a proposal, subject to partnership disclosures and other requirements detailed in the RFP. The RFP would provide potential respondents with comprehensive background information and data, specific requirements for services to be provided, detailed proposal instructions, and submittal requirements. The RFP will include a procurement schedule, proposal evaluation criteria, description of the selection process, and model contracts. More information on these items will be included in a report to City Council in late March.

The RFP process will begin with the City announcing the release of the RFP, and follow the schedule in Table 1 below. It is critical that the RFP process for new Contracts move forward with release of a RFP by May 2012 to allow adequate time to complete the entire RFP process in a thorough manner and obtain the best value for services. The recommended RFP process schedule details the steps and timing necessary to establish and implement new Contracts before current service agreements end in June 2015.

Table 1 RFP Schedule	
<ul style="list-style-type: none"> • Mandatory RFP Release Conference • <u>Start of Communications Limitations under Protocol for Process Integrity</u> 	Wednesday, May 23, 2012
Mandatory Pre-Proposal Conference	Wednesday, June 13, 2012
Proposals Due	Wednesday, September 12, 2012
<ul style="list-style-type: none"> • <u>City Administrator Memo Announcing Top-Ranked Proposals</u> • <u>Protest Period Begins</u> 	<u>December 2012</u>
<ul style="list-style-type: none"> • <u>Publication of Council Report Presenting Top-Ranked Proposals (10-day notice)</u> • <u>Protests Filed and Investigation Outcome Published</u> • <u>End of Communications Limitations under Protocol for Process Integrity</u> 	<u>Friday, January 18, 2013</u>
Council Report Presenting Top-Ranked Proposals Selected through RFP (Special Meeting, 5th Tuesday)	Tuesday, January 29, 2013
Council Report on Authorization to Enter Exclusive Negotiations with Top-Ranked Proposers	March 2013
Exclusive Negotiation Period Ends	August 2013
Council Report to Approve CEQA & Contracts	October 2013
Execution of Contracts	January 2014
Begin Operations	July 2015

Item: _____
City Council
February 21, 2012

Prospective respondents would be required to attend a mandatory proposal release meeting. At the meeting they would receive the RFP and become an eligible respondent by signing an affidavit acknowledging receipt of the RFP and agreeing to adhere to the Protocol for Process Integrity (discussed below). The City would provide written RFP addenda to all eligible respondents for any necessary amendments or clarifications to the RFP resulting from questions and issues raised by eligible respondents. Based on Oakland's size and location, staff anticipates multiple responsive proposals will be submitted through the RFP process.

Proposals received by the submittal due date would be screened to confirm that they are complete and responsive, and then reviewed and ranked under a detailed and thorough evaluation process. The entire RFP process would be managed by a Project Manager, and conducted by a designated Process Coordinator who would facilitate the review and evaluation work of several teams composed of City staff, the City's technical assistance consultant, and other experts in the field. The evaluation process will involve several distinct steps, including screening to confirm that proposals meet minimum qualifications, extensive technical and financial review and analysis, facility investigation, review of performance in other jurisdictions, interviews, and finally scoring and ranking.

The evaluation process will identify a top-ranked proposal for each of the three contracts, which would be published in a City Council report. Following announcement of the top rankings, a protest period will provide an opportunity for a designated staff member assigned as a Protest Hearing Officer to hear and address any protest issues raised by respondents. Upon completion of the protest period and disposition of any protests by the Hearing Officer, staff will seek City Council authorization to enter into exclusive negotiations with the respondent submitting the top-ranked proposal or proposals for each contract in order to finalize Contracts. Staff will return to City Council with a recommendation once negotiations are completed.

Protocol for Process Integrity

The City's mission and goals for procurement include upholding the highest ethical and professional standards. Recognizing the value and length of the agreements for new Contracts as well as the expense for the City and respondents to participate in the process, a Protocol for Process Integrity (Protocol) for this RFP expanding on the City's high standards and safeguards will be established as detailed in *Attachment A*.

The intent of the Protocol is to ensure an impartial climate, and establish a transparent system for communication between the City and prospective respondents to the RFP that guarantees consistency and fairness. The Protocol sets a code of conduct for participants in the RFP process, and provides mechanisms for ensuring that this code is observed. Affected parties under the Protocol would be those involved in a proposal submittal, proposal evaluation, and contract

Item: _____
City Council
February 21, 2012

award including: City staff, City agents such as consultants, prospective respondents and their agents, and City elected officials.

The Protocol informs any person involved in proposal submittal, proposal evaluation, and contract award about potential conflicts of interest, and provides a procedure for screening potential conflicts of interest. It includes specific provisions for the proposal evaluation period to protect the confidentiality of the evaluation process and of information in proposal responses.

Specific provisions of the Protocol include:

- A Code for Communications (*Attachment B*):
 - After issuance of the RFP and until the announcement of the top-ranked proposals, all communication between eligible respondents who have received the RFP (and intend to submit a proposal) and the City must be in writing and through the designated Process Coordinator
 - After the announcement of the top-ranked proposals, communication between eligible respondents and the City must be in writing and through a designated Protest Hearing Officer
 - After completion of the protest period, contact between eligible respondents and City staff, City agents, or elected officials is permissible
- Eligible respondents will submit any partnership disclosures by the due date, avoid collusion with one another, and ensure compliance with the Protocol by their employees and agents
- City staff and City agents such as consultants participating in proposal review and evaluation will sign a confidentiality agreement (*Attachment C*) and complete a conflict of interest form (*Attachment D*).
- The City will follow procedures detailed in the Protocol for investigating any allegations of conflict of interest or misconduct by any participant in the RFP process

Additional process integrity safeguards will be implemented to supplement the specific provisions of the Protocol. Prospective respondents would be required to attend a mandatory proposal release meeting in order to receive the RFP and become eligible to propose. A designated Process Coordinator will serve as the point of contact and conduit for all communications between the City and respondents, and among and between work teams performing proposal review, evaluation, scoring, and ranking. The entire RFP process will be overseen by an Executive Management Team, which would include the Public Works Director and representatives from the City Administrator's Office, Finance and Management Agency, and Office of the City Attorney.

Additional RFP Issues for City Council Consideration

Before issuing the RFP staff will return to City Council with additional issues for consideration including:

- Criteria for evaluating RFP responses
- Provisions for local employment, local business enterprise participation, and minimum wages and benefits
- Service provider performance incentives
- Adjustment method for rates paid by residents and businesses

SUSTAINABLE OPPORTUNITIES

Economic: Implementing a Zero Waste System in Oakland will help Oakland businesses and residents reduce waste and mitigate the long-term trend of increased disposal costs associated with landfill-based systems. Expanding and actively supporting use of discarded materials drives local economic and workforce development with 'green collar' jobs and value added production.

Environmental: Implementing a Zero Waste System will promote sustainability, conserve natural resources, reduce air and water pollution, protect habitat, and reduce greenhouse gas (GHG) emissions.

Social Equity: Implementing a Zero Waste System in Oakland will help provide new living-wage jobs for the community, as well as preserve and enhance natural systems that provide basic ecological services such as clean water, clean air, and safe food.

DISABILITY AND SENIOR CITIZEN ACCESS

This report will not have any direct impact on access for persons with disabilities or senior citizens.

RECOMMENDATION AND RATIONALE

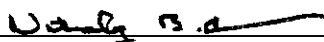
It is recommended that the City Council approve the attached resolution which adopts the RFP schedule and Process Integrity Protocol described in this report. The recommended RFP schedule will allow adequate time for completing the entire RFP process in a thorough manner to obtain the best services and value, and implementing new Contracts before current service agreements end in June 2015. The recommended Process Integrity Protocol will enhance the City's high standards for transparency, consistency and fairness, and establish a code of conduct for all participants.

Item: _____
City Council
February 21, 2012

ACTION REQUESTED OF THE CITY COUNCIL

It is recommended that the City Council adopt the attached resolution.

Respectfully submitted,



Vitaly B. Troyan, P.E.
Director, Public Works Agency

Reviewed by:
Brooke A. Levin, Assistant Director

Reviewed by:
Susan Kattchee, Environmental Services Manager

Prepared by:
Mark Gagliardi, Environmental Services Division

Attachments:

- A – Protocol for Process Integrity
- B – Code for Communications
- C – Confidentiality Agreement
- D – Conflict of Interest Form

APPROVED AND FORWARDED TO THE
PUBLIC WORKS COMMITTEE:

Office of the City Administrator

Item: _____
City Council
February 21, 2012