

**CITY OF ALBANY
CITY COUNCIL AGENDA
STAFF REPORT**

Agenda Date: October 3, 2011
Reviewed by: BP

SUBJECT: Update regarding status of negotiations with Waste Management of Alameda County and request to initiate a competitive solicitation process for collection, processing and disposal of solid waste, recycling and organics materials

REPORT BY: Nicole Almaguer, Environmental Specialist

STAFF RECOMMENDATION

That the Council:

1. Receive an update regarding status of negotiations with Waste Management of Alameda County for a renewed franchise agreement.
2. Authorize staff to utilize the remaining two 1-year extensions of the existing franchise agreement with Waste Management of Alameda County Inc. as necessary.
3. Authorize staff to initiate a competitive solicitation process for a new franchise agreement.
4. Approve a contract amendment with R3 Consulting to provide technical assistance throughout the competitive bid and negotiation process including development of a franchise agreement for collection, processing, and disposal of solid waste, recycling and organics materials.

BACKGROUND

On October 4, 2010 Council authorized staff to request a 1-year extension of the existing franchise, and begin negotiations to develop a new franchise agreement with Waste Management of Alameda County (WMAC). Staff met with WMAC regularly to identify opportunities for an enhanced franchise agreement, and returned to Council on June 6, 2011 and July 5, 2011 with updates and comparative data regarding other franchise agreements throughout the County. Per the direction provided by Council at the July 5, 2011 meeting, staff worked with WMAC to develop franchise and disposal agreements to meet the interests of the City.

As part of the proposed agreements, particular rates and increase structures were required by WMAC, including a base rate increase of 45%. Per WMAC, this base rate increase was necessary because the City's current franchise agreement does not fully cover the costs incurred by the company. WMAC also required a change in how the annual rate increase is calculated, switching from the current method using CPI to a Refuse Rate Index (RRI). The current franchise agreement utilizes the CPI with a cap of 5% to calculate the annual rate increase. In recent years, rate increases using the CPI have ranged between 0.107% and 2.164%.

The RRI is a method in which specific indices most relevant to the refuse collection industry, as well as CPI, are used to create a blended index that more closely resembles the trend in solid waste industry companies' expenses. The indices are all published by the United States Department of Labor, Bureau of Labor Statistics, which is the same federal agency that publishes the CPI. Changes in these indices are calculated in the same fashion as the CPI. The RRI method applies different weighting to these indices, based on the relative proportion of the company's operating expenses.

WMAC asked for a modified RRI that includes the labor rates associated with the Local 70 union agreement. Utilizing this modified RRI, WMAC has estimated that annual rate increases would fluctuate between 3.54% and 12.06%.

DISCUSSION

Staff negotiated with WMAC to identify mutually agreeable terms, and the agreements were drafted. However, upon review of the draft agreements, WMAC asked for several additional changes including:

- Eliminating the 5% cap on the annual rate increase. WMAC requested eliminating the cap on the annual rate increases to ensure the potential costs of conducting business, including escalating labor rates associated with the Local 70 agreement were fully covered by the rates. Staff was able to negotiate a 10% cap on the annual rate increase, however this cap is still high, particularly given the initial 45% base rate increase, and could potentially put rate payers at risk. Per WMAC, it is estimated that the annual rate increase would range between 3.54% and 12.06%, and anything below a 10% cap would not be acceptable.
- Mutually agreed upon extensions to the agreement. Currently, the City has sole discretion to extend the franchise agreement. WMAC asked that these terms be modified to allow for a mutually agreed upon extension. This could effectively limit the City's ability to extend the agreement.
- Strike Provisions. The City's current franchise requires WMAC to continue to perform services in the event of a strike. WMAC has requested significant modifications to this language to allow an approximate 10-day window in which WMAC would work towards, but not be required to perform service within the City. The terms allow for the City to retain an alternative service provider, however this task would pose an extreme burden on the City. Per WMAC, this item is non-negotiable.

ANALYSIS

Due to the non-negotiable items raised by WMAC that could potentially put the City at risk, it is difficult to continue development of the proposed collection and disposal agreements unless the City concedes to the terms required by WMAC. Given this issue, it now seems that the City's interests may be best served by initiating a competitive solicitation process for a new franchise agreement.

The current franchise extension was requested per Council direction in October 2010 and is in effect until April 30, 2012. Per the franchise agreement, request for an additional extension must be provided to WMAC 180 days prior to the expiration date which will be in early November

2011. The franchise includes the option of three 1-year extensions, leaving two remaining extensions available for use by the City until the new franchise is executed and services have commenced.

R3 Consulting has a significant amount of experience in developing franchise agreements and has been instrumental in assisting the City with the negotiations process to date. R3 has developed a solid understanding of the City's goals for a new franchise including:

- Fair terms and rate structures to balance the potential risk to rate payers against the costs incurred by the solid waste company, and
- Significant enhancements through the development of new programs and services to further the diversion capabilities of the community in recognition of the City's zero waste goal

Should the City initiate a competitive solicitation process, it is estimated the process would take approximately 7 months to complete. The selected company would then have approximately one year to prepare, including purchase of equipment and development of program materials, prior to rolling out service to the City. R3 has provided a project schedule which is included as an attachment to this report.

SUSTAINABILITY IMPACT

The City's new franchise agreement should comply with the goal outlined within the City's Climate Action Plan to create a zero waste community while limiting risk to the rate payers.

FINANCIAL IMPACT

Initiation of a competitive solicitation and negotiation process will require the assistance of a technical consultant, which is estimated at \$56,400 (R3 Scope of Services is attached to this staff report). This cost is typically reimbursed to the City by the successful contractor and absorbed within the franchise rates.

It should be noted that the proposals received will likely include some level of a rate increase based on the outcome of recent franchise agreements executed within the region. However, the City will have the opportunity to select the most competitive proposal, and have the ability to ensure that the services and programs provided warrant the proposed rates. As indicated in the July 5, 2011 staff report, the most recent franchise agreements and associated rate increases include the following:

- 2011 – Emeryville – 45% residential, 46.5% commercial (WMAC)
- 2010 – Livermore – 19% (Livermore Sanitation)
- 2009 – Castro Valley – 46% residential year 1 + 9% residential years 2 &3, 68% commercial + 9% commercial years 2&3 (WMAC)
- 2008 – Piedmont – 19% (Allied Waste Services)

Attachments

1. R3 Consulting Scope of Services

Work Tasks

This section details R3's proposed work tasks for providing comprehensive assistance to procure residential and commercial collection services.

Task 1: Initial Program Development and Evaluation

R3 will work with City staff to determine the best combination of solid waste collection, disposal and recycling programs for residential and commercial customers. The primary objective of this Task is to review the current programs and develop a "short-list" of viable alternatives for inclusion in the RFP.

Deliverables

Task 1 includes the following deliverables:

- Development of short list of viable program alternatives.

Task 2: Prepare, Issue and Evaluate Request for Proposals (RFP's)

Task 2.1 Develop Current Franchise Agreement Amendments

This phase of the preparation of the RFP document involves amending the current franchise agreement to account for program or other changes developed as part of Task 1. The amendments will be incorporated into the draft franchise agreement and distributed in the RFP package. Areas to be reviewed may include :

- Minimum waste diversion requirements;
- Vehicle emissions standards and requirements;
- Specifications for container size, color, and labeling;
- Public education program requirements (e.g., quarterly newsletter, annual campaigns, classroom presentations, etc.);
- Collection and recycling services to City offices, facilities and events;
- Time requirements for responses to customer calls regarding service complaints (i.e., missed collections, material spillage, hydraulic leaks, etc.);
- Time requirements for responses to customer calls regarding billing complaints, new accounts, etc.;
- Time requirements for cart or bin exchanges;
- Vehicle maintenance and replacement requirements;
- Minimum insurance coverage requirements; and

- Collection frequency and method.

Task 2.2 Develop Request for Proposals Document

R3 will prepare an RFP package based on information generated from Task 1, as well as our experiences working with the solid waste community. The RFP will include a collection agreement which will specify the conditions of the franchise (e.g., collection service requirements, performance standards, insurance, and liability/indemnification requirements), and cost forms for contractors to complete. The RFP will specify minimum requirements and qualifications, and will require contractors to submit work plans that specify how they will transition to new services, achieve diversion requirements, implement customer service programs, and promote public education activities. Separate sections of the RFP will include:

- General introduction to the RFP documents;
- Available demographic and service account data;
- Requested service requirements;
- Required work plans;
- Communication protocol for the contractors and the City;
- Required submittal format;
- Proposal cost and service forms;
- The method for evaluating responses; and.
- Draft collection service agreement.

Including the draft Collection Service Agreement as part of the RFP package significantly reduces the time and cost of negotiations, and contractually links the requested services to proposed costs as part of the evaluation process.

Accordingly, R3 will prepare the draft Collection Service Agreement to be included as part of the RFP document. Proposers will be required to specify any exceptions and provide language for any changes they propose as part of their proposal package.

In addition, proposers will not be allowed to make changes to the Collection Service Agreement after submittal of proposals. The agreement will include, at a minimum, the following primary sections:

- Definitions;
- Franchise term;
- Scope of services;
- Compensation;
- Operating assets;
- General requirements;
- Financial record-keeping and reporting requirements;

- Indemnity, insurance, and bond;
- Performance standards;
- Breach, default, and remedies;
- Diversion requirements; and
- Indemnification.

The Collection Service Agreement will establish the scope of services to be provided by the contractor and will specify performance standards. The agreement and cost forms included in the RFP package will be structured to ***allow the City to evaluate cost proposals for various service options*** that may be requested by the City.

R3 will assist in the preparation of presentation materials, and attend a Council meeting to present the details of the draft RFP for discussion and approval prior to release if requested by the City.

Task 2.3 Finalize & Issue RFP

R3 will finalize the RFP and provide the City with one “un-punched” original and ten (10) copies in three-ring binders.

Task 2.4 Conduct Mandatory Pre-Proposal Meeting and Prepare the RFP Addenda

R3 will conduct a mandatory pre-proposal meeting with prospective proposers. The pre-proposal meeting will provide the opportunity for the City to review the RFP with prospective proposers and answer questions as appropriate. R3 will prepare written responses to questions raised before and during the pre-proposal meeting for submittal to all parties at the meeting. In addition, R3 will prepare addenda to the RFP as necessary.

Task 2.5 Evaluation of Proposals

R3 will assist the City with the evaluation of proposals received in response to the RFP. This will include several meetings with City staff, and up to two presentations to the Council to present: 1) a summary of the proposals received, and 2) the results of the evaluation process.

At the conclusion of the evaluation process, R3 will assist staff in developing and presenting the final results and recommendations to the Council.

Deliverables

Task 2 includes the following deliverables:

- Preparing an RFP package for distribution to prospective proposers that includes the draft Collection Service Agreement, process rules, evaluation and selection criteria, project schedule, and all required forms;

- Preparing the Draft Collection Service Agreement;
- Providing process rules to guide the RFP process (e.g., how the proposers may communicate with City staff, the consultant, and the Council);
- Conducting a pre-proposal meeting;
- Preparing written responses to questions submitted before and during the pre-proposal meeting;
- Preparing addenda to the RFP, as required;
- Assisting with the evaluation of each proposers statement of technical feasibility, financial solvency and demonstrated success in the industry;
- Preparing an evaluation matrix to easily compare the proposed rates for each service or program;
- Preparing any written request for clarification to the proposers, as necessary;
- Scheduling and conducting interviews with the proposers;
- Assisting in the preparation of staff reports that summarize the proposals that were received;
- Assisting in the preparation of staff reports detailing results of the evaluation;
- Attending meetings with City staff;
- Facilitating the evaluation process;
- Presenting the draft RFP documents at a Council meeting; and
- Assisting in the presentation of a summary of proposals and the results of the evaluation process at one (1) Council meeting.

Task 3 **Negotiate with Top Ranked Contractor, and Finalize New Collection Service Agreement for Council Approval**

R3 will participate in franchise agreement negotiations with the top ranked contractor. Negotiations will focus on finalizing contractual language, and ensuring that the proposed collection rates are appropriate given the level of requested service.

Deliverables

Task 3 includes the following deliverables:

- Participating in negotiations with the top ranked contractor.
- Preparing a listing of outstanding service, cost, and Collection Service Agreement issues to be negotiated with the contractor;
- Revising the Collection Service Agreement based on the results of the negotiation sessions;

- Assisting in the preparation of presentation material; and
- Presenting the results of the final negotiations and the final Collection Service Agreement to the Council for approval.

Schedule

R3 has developed the following sample schedule to demonstrate the time needed to complete the major milestones in the RFP process. For purposes of this example, we have assumed that the process would begin the Week of October 3, 2011 and that Collection services would begin May 1, 2013. The goal of the process is to complete the award of the franchise between nine to twelve months before collection services are to begin in order to allow the contractor time to order equipment and prepare for transition.

Table 1
Collection Service RFP Schedule — Major Milestones

Task	Date (Week of...)
Kickoff Meeting	October 10, 2011
Draft RFP to Council	December 12, 2011
RFP Released to Haulers	December 19, 2011
Mandatory Pre-Proposal Conference	January 16, 2012
Proposals Due	March 5, 2012
Interview Qualified Proposers	March 19, 2012
Evaluation Team Completes Evaluation	April 3, 2012
Council Presentation (Initial Recommendations)	April 16, 2012
Complete Negotiations and Finalize Collection Service Agreement	May 7, 2012
Council Approval of Final Collection Service Agreement	May 21, 2012
Begin Service	May 1, 2013

Project Budget

We propose to complete Tasks 1 through 3 on a time and materials basis at our normal hourly rates as set forth below for a not to exceed total amount of \$56,400.

Technical Services

Principal	\$175 per hour
Project Manager	\$175 per hour
Consultant	\$175 per hour
Senior Manager	\$165 per hour
Manager	\$155 per hour
Senior Associate	\$145 per hour
Associate II	\$125 per hour
Associate I	\$100 per hour
Administrative Support	\$75 per hour

Reimbursable Costs

Consultants/Subcontractors	cost
Lodging and meals	cost
Travel — Private or company car	\$0.55 per mile
Travel — Other	cost
Delivery and other expenses	cost

Payments

Unless otherwise agreed in writing, fees will be billed monthly at the first of each month for the preceding month and will be payable within 30 days of the date of the invoice.