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2012 MAY -3 PM 6:24

AGENDA REPORT

TO: DEANNA J. SANTANA
CITY ADMINISTRATOR

FROM: Vitaly B. Troyan, P.E

SUBJECT: Supplemental Zero Waste
Request for Proposals

DATE: April 26, 2012

City Administrator
Approval

Date

5/03/12

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Resolution Adopting Zero Waste System Request For Proposals Economic Benefit Measures: Competitive Wages And Benefits, Job Retention, Local Business Participation, Local Hire Preference Points, In-County Landfill Preference Points, And Labor Peace; And Seeks Proposals From All Qualified Firms To Establish Competition To Avoid Significant Additional Costs To City Rate Payers.

REASON FOR SUPPLEMENTAL OR REPLACEMENT

On April 24, 2012, Public Works Committee requested that staff return with revisions to the Resolution that establishes economic benefits for the Zero Waste System Request for Proposals (RFP). These contracting policies will affect the cost proposals received in response to the RFP process, and will be incorporated into the resulting Contracts. The economic benefit policies included in the Revised Resolution are: (1) competitive wages and benefits, (2) local business participation, (3) local hire, (4) job retention, (5) in-county landfill preference and the addition of (6) labor peace.

Additionally, the Revised Resolution provides for all qualified firms to propose in response to the Zero Waste RFP, to stimulate competition among the qualified firms and to obtain the most cost-effective services for the ratepayers

The Public Works Committee asked for information on a number of other items that are addressed in this report.

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OUTCOME

Approval of the revised resolution will establish the inclusion in the RFP of the following economic benefit contracting provisions:

- Competitive Wages and Benefits – with “Competitive” Defined
- Maximization of Local Business Participation – with Preference Points
- Local Hire Requirement – 50% Minimum, and Preference Points for Exceeding Minimum
- Job Retention – for Existing Franchise and Recycling Contract Workers
- In-County Landfill Preference Points
- Labor Peace – Proposers to Describe Plans for Preventing Labor Unrest

Additionally the Resolution provides for all qualified firms to propose in response to the Zero Waste RFP, to stimulate competition among the qualified firms and to obtain the most cost-effective services for the ratepayers.

BACKGROUND/LEGISLATIVE HISTORY

The City of Oakland’s Franchise Agreement for Solid Waste and Yard Waste Collection and Disposal Services 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 Council adopted a Zero Waste Strategic Plan that included developing a new System Design to be used in a Request for Proposals (RFP) process to procure new Contracts. On January 17, 2012 the City Council adopted a System Design that provides the framework for developing new Contracts, including 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. On February 21, 2012 the City Council adopted a process and schedule for releasing a RFP for zero waste service contracts, including a Protocol for Process Integrity. On April 3, 2012, Council adopted several policies related to the RFP, including proposal evaluation criteria and weighting, method for adjusting customer rates, diversion performance measurement, and continued participation in Alameda County Measure D.

January 17, 2012, the City Council adopted Resolution No. 83689 C.M.S., establishing a framework for the Zero Waste System Design. On February 21, 2012, the City Council adopted Resolution No. 83729 C.M.S., establishing a process and schedule for releasing a RFP to procure new contracts to provide the services that the System Design comprises. On April 3, 2012, the City Council adopted Resolution No. 83783 C.M.S., establishing proposal evaluation criteria weighting, approving use of an industry-related index for adjusting customer rates, providing Contract diversion performance incentives, and continuing participation in Alameda County Measure D fees.

ANALYSIS

To refine the application of proposed economic benefit measures to the Zero Waste System RFP, this supplemental report revisits the following policy recommendations: competitive wages and benefits, maximization of local business participation, local hire, and job retention. The report also responds to issues raised by the Public Works Committee, labor lock-out provisions, and “ban the box” fair hiring policy for formerly incarcerated workers, outsourcing of work, and differential in pay between recycling workers and garbage workers.

Policy Recommendations

This section describes the recommendations for the application of specific economic benefit provision in the RFP. The City’s contracting and purchasing policies and ordinances do not apply to these Franchise Contracts, but only to the City’s purchase of goods and services. When the City is spending its own money, it is not subject to certain constitutional restrictions, and thus the City has broader power to implement economic benefit policies than it does when it is simply regulating as in the case of a franchise. This RFP is for franchise services where the services provided are paid directly by the user or customer and not by the City.

Competitive Wages and Benefits

All the major companies anticipated to respond to this RFP have collective bargaining agreements that cover most or all of their non-management staff. In all cases, the Teamsters represent the drivers, in many cases the International Association of Machinists represent the mechanics, and in Alameda County the International Longshore and Warehouse Union (ILWU) represents the sorters and other employee classes. It is important to recognize that these companies have collective bargaining agreements with different Teamsters locals (e.g., Locals 70, 315, 350). The language proposed allows for the companies to propose using their collectively bargained wages and benefits agreements with the labor union locals that represent their employees. These negotiated agreements provide for competitive and equitable worker wages and benefits.

A company that does not have collectively bargained labor agreement may submit a proposal if it provides its employees competitive wages and benefits comparable to collectively bargained agreements for similar operations in the Bay Area. Additionally, the City’s Living Wage language will be included in the contracts as a backstop to the competitive wages and benefits requirement – should there be a new job classification created over the term of the contract or other factors where competitive wages and benefits would not apply.

Public Works Committee members discussed further defining “comparable” as those wages and benefits provided “in the five largest cities in the Bay Area.” Because Teamsters locals are determined by county, the more appropriate comparison would be between Alameda, Contra Costa, San Francisco, San Mateo and Santa Clara Counties, where the most likely of the competitive companies for this RFP are located.

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Definition of Competitive Wages and Benefits - It is recommended that the RFP require proposers to provide competitive wages and benefits defined as wages and benefits comparable to collectively bargained contracts within the Bay Area region (which for this purpose includes) the five Bay Area counties: Alameda, Contra Costa, San Mateo, Santa Clara, and San Francisco for the Garbage and Organics, and Residential Recycling Collection Franchise Contracts. Proposers will be required to submit evidence of a collectively bargained contract or that the wages and benefits paid meet those of collectively bargained contracts within the Bay Area region, as defined above. The resolution has been changed to reflect this definition.

Prevailing Wages - Public Works Committee members asked why the term “prevailing wages” is not used to describe the competitive wages and benefits provisions of the RFP. Staff specifically chose not to use the term “prevailing wages” in order to distinguish the requirement from the body of law governing prevailing wages. Prevailing wages are established for construction projects and are determined by the Department of Industrial Relations. There are no established prevailing wages for the work performed under the franchise agreements. Staff recommends not using the term “prevailing wages” because using the phrase could lead to disputes over whether provisions of the state Prevailing Wage Law or regulations apply. It is in the City’s best interest to maintain the maximum flexibility to determine the scope of the requirement.

Local Business Participation

As noted, the City’s Local and Small Local Business Enterprise Program ordinance does not apply to franchise agreements. However, it is recommended that the Garbage and Organics and Residential Recycling Franchise Contracts maximize local business participation.

The Public Works Committee recommended the addition of two (2) preference points above the 100 established evaluation points be awarded for proposals that demonstrate maximum local business participation. These preference points are reflected in the revised resolution.

Companies proposing on this RFP could achieve local business participation points by locating some or all portions of their operations in Oakland; for example, truck dispatch, processing, fueling, or call center. Additionally, companies could demonstrate local participation through the goods and services that they buy in Oakland such as trucks, automotive and janitorial supplies, and professional services – such as graphic designers, insurance and bonding.

Local business participation would be evaluated based on participation over the term of the contract and on an annual basis. The assessment will be conducted through submittal of cost sheets for the initial proposal and through the rate adjustment process annually to track fulfillment over the term of the contract. Both the company’s operations in Oakland and its purchase of goods and services in Oakland would be considered and discussed in the RFP. The commitments for the selected proposer(s) will be memorialized in the contracts.

Local Hire Preference Points

Staff recommended that the Garbage and Organics and Residential Recycling procurement include up to an additional five (5) preference points above the 100 points established, for "local hire" to reward proposers for giving preference to Oakland residents as new hires.

The Public Works Committee requested that the RFP require proposers to commit that at least 50% of new hires be City of Oakland residents. Proposers could earn an additional three (3) preference points above the 100 established for any or all of the following: (1) commitment to hire Oakland residents above the 50% requirement, (2) commitment to train and hire disadvantaged workers, and (3) commitment to maintain a certain total percent of Oakland residents in their workforce. This language has been added to the Resolution.

For clarification, the workers that are identified in the section below on "Worker Retention" would not qualify as "new hires" under the local hire requirement.

Job Retention

Staff also recommended that the Garbage and Organics and Residential Recycling Franchisee(s) provide employment preference to the current employees of the incumbent solid waste franchise and residential recycling contractor.

For clarification, the use of the term "preference" instead of "retention" means that the new franchisees must *offer* open positions to the current employees of the incumbent companies, and it is up to the employee whether to accept the position offered. Using preference allows the employee the option to choose whether to take a position with the new company, stay with the old company, or sever employment.

The Public Works Committee requested that additional language be added to the resolution to including defining which employees would be affected by this provision, the number of days the franchisee would be restricted from discharging the employee, and the employment term after the initial period. The Committee clarified that it did not intend for the job preference provisions to apply to out-of-state employees that provide service on the Oakland contract.

In these types of contracts, for garbage and recycling services, the job classifications that typically are identified for retention are drivers, sorters, mechanics and customer service representatives. In this case, only local customer service representative positions would apply. The 90-day provision for workers that are offered employment, to only be dismissed with cause is a reasonable requirement and is seen in other contracts of these types. After 90 days the employee is a permanent employee of the company. The Resolution has been revised to add the prohibition of discharging qualified displaced workers for 90 days, except for cause.

Labor Peace

The Public Works Committee asked that a provision be added to the RFP for labor peace by requiring the proposers to describe their plans for preventing labor disputes or unrest during the franchise term. Such language is found in RFPs for similar type services and is an important addition that could protect the quality of service the Oakland customers receive. The Resolution has been amended to add a Labor Peace provision.

Other Issues Raised by Public Works Committee

- ***No Lock-Out:*** The Public Works Committee asked that a no lock-out provision be evaluated to add to the RFP. This provision would be pre-empted by the National Labor Relations Act. The RFP will, however, require that the proposers provide adequate notice to the City for lock-out action and sets sufficient performance standards with liquidated damages and other rights to cure should contract services be affected.
- ***"Ban the Box":*** This item relates to fair hiring for formerly incarcerated workers by removing the requirement on initial job applications that applicants check a box indicating whether they have conviction history. Such a requirement can be imposed on the contractors. Language will be included in the RFP instructing the contractors to remove, on the initial job application, requirement to disclose felony history as long as it complies with governing laws.
- ***Prohibit the Outsourcing of Work:*** This issue was raised specifically regarding customer service representatives. Such a requirement can be imposed on the contractors. However, there are compelling reasons to allow the proposers to configure their proposals and operations as they see fit to provide the quality service the City is requiring. Allowing the proposers to design their operations for maximum efficiency and redundancy to meet the performance standards imposed through the contracts can result in quality customer service. It is proposed that maximization of local business participation be awarded two preference points, where the proposer would commit to local business operations. This should be used as the method to address outsourcing. Additional requirements for keeping aspects of the business local can result in increased costs to the customer.
- ***Differential In Pay Between Recycling Workers And Garbage Workers:*** This issue was brought up because of the testimony in the public comment period at the meeting. As discussed in the section on competitive wages and benefits, the workers associated with the existing contracts are represented by both the Teamsters and ILWU under collective bargained agreements. The Teamsters, representing the drivers, have the same wage rate for the garbage as the recycling drivers. The sorters, represented by ILWU, are paid a wage that is less than the drivers. However, the sorter classification does not require the same skills, experience, and certifications as the drivers.

- **Enforcement:** The contracts have several methods to achieve enforcement of City requirements including liquidated damages for specific service failures, as well as inaccurate reporting. More egregious violations of the contract may be addressed as events of default or breach.

PUBLIC OUTREACH/INTEREST

This item did not require any additional public outreach other than the required posting on the City's website.

COORDINATION

Public Works staff has coordinated closely with the Office of the City Attorney, the Division of Contract Compliance, the Risk Management Division, and the Revenue Division for this report and the development of the RFP and model Contracts.

COST SUMMARY/IMPLICATIONS

There are no direct fiscal impacts to the City associated with the adoption of the resolution.

SUSTAINABLE OPPORTUNITIES

Economic: Expanding and actively supporting use of discarded materials drives local economic and workforce development with 'green collar' jobs and value added production.

Environmental: Waste reduction and recycling conserves natural resources, reduces air and water pollution, protects habitat, and reduces greenhouse gas (GHG) emissions.

Social Equity: The Zero Waste System will help provide new living-wage jobs for the community.

CEQA

Appropriate CEQA review will be conducted prior to the award of the Franchise Contracts.

For questions regarding this report, please contact Susan Kattchee, Environmental Services Manager, 510-238-6382.

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:
Becky Dowdakin, Solid Waste & Recycling Prog. Sup.
Environmental Services Division

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OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

Approved as to Form and Legality

City Attorney

RESOLUTION ADOPTING ZERO WASTE SYSTEM REQUEST FOR PROPOSALS ECONOMIC BENEFIT MEASURES: COMPETITIVE WAGES AND BENEFITS, JOB RETENTION, LOCAL BUSINESS PARTICIPATION, LOCAL HIRE PREFERENCE POINTS, LABOR PEACE, IN-COUNTY LANDFILL PREFERENCE POINTS; AND SEEKS PROPOSALS FROM ALL QUALIFIED FIRMS TO ESTABLISH COMPETITION TO AVOID SIGNIFICANT ADDITIONAL COSTS TO CITY RATE PAYERS

WHEREAS, the City of Oakland's Franchise Agreement for Solid Waste and Yard Waste Collection and Disposal Services with Waste Management of Alameda County, and the Agreement for Residential Recycling Service with California Waste Solutions expire on June 30, 2015; and

WHEREAS, on December 5, 2006 through Resolution No. 80286 C.M.S. the City Council adopted a Zero Waste Strategic Plan; and

WHEREAS, on January 17, 2012 through Resolution No. 83689 C.M.S the City Council adopted a Zero Waste System Design that 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; and

WHEREAS, on February 21, 2012 through Resolution No. 83729 C.M.S. the City Council adopted a process and schedule for releasing a RFP for three new zero waste service franchise contracts for solid waste/organic, recycling, and land fill disposal ("Franchise Contracts"), including a Protocol for Process Integrity; and

WHEREAS, on April 3, 2012 the City Council adopted a resolution estabshshing proposal evaluation criteria and weighting, a method for annually adjusting customer rates, diversion performance measurement, and continued participation in Alameda County Measure D; and

WHEREAS, the City Council has adopted Ordinances and Resolutions to enhance the economic benefits to Oakland and its residents and businesses when awarding construction contracts and professional services agreements; and

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WHEREAS, the City will use a competitive procurement through a Request for Proposals (RFP) to estabsh the Franchise Contracts for zero waste services and landfill disposal; and

WHEREAS, businesses interested in submitting proposals in response to the City's Zero Waste System Request for Proposals will invest significant money and time to prepare proposals; and

WHEREAS, allowing firms headquartered in Arizona the opportunity to participate in the RFP for Zero Waste Services and thus allowing more competition for the RFP for Zero Waste Services and subsequent Franchise Contracts will avoid significant additional cost to the City rate payers; and

WHEREAS, it is in the best interest of the City to avoid disruption in service to the residents and businesses of Oakland and therefore has a vested interest in the proposers plans for preventing labor disputes and unrest over the term of the contracts; and

WHEREAS, the City purchasing and development policies and ordinances applicable to contracts for the purchase of goods, construction, services and development projects do not apply to franchise agreements under which franchised businesses provide city services in exchange for fees paid by resident users or ratepayers; now for therefore be it

RESOLVED: that the City Council hereby adopts the following economic benefit provisions for the Zero Waste System RFP and subsequent Franchise Contracts:

1. Competitive Wages and Benefits defined as wages and benefits comparable to collectively bargained contracts in use in Alameda, Contra Costa, San Francisco, Santa Clara, San Mateo Counties, will be required of proposers of the Garbage and Organics and Residential Recycling Contracts relative to similar operations in the Bay-Area region; and
2. Maximization of Local Business Participation for the Garbage and Organics and Residential Recycling Contracts by providing up to two (2) preference points beyond the 100 points established for proposal evaluation; and
3. Local Hire Preference Points beyond the 100 points established for proposal evaluation; will be awarded for commitment to hire Oakland residents as new hires for the Garbage and Organics and Residential Recycling Contracts—will be required for that 50% of all new hires must be Oakland residents for the Garbage and Organics and Residential Recycling Contracts and award up to three (3) local hire preference points beyond the 100 points established for the proposal evaluation for any or all of the following: commitment to hire Oakland residents as new hires beyond the 50% requirement, commitment to train and hire disadvantaged workers, and commitment to maintain a certain total percent of Oakland residents in their workforce; and
4. Employment Preference shall be offered for the qualified displaced employees of the current solid waste franchise and residential recycling contractor by the Garbage and Organics and Residential Recycling Franchisees. The employees, for at least 90 days, shall not be discharged except for cause; and
5. In-County Landfill bonus points, up to three points, may be awarded for Landfill Disposal proposals including in-county landfills; and be it
6. Labor Peace, proposers will be required to submit plans for labor disputes or unrest during the franchise term, and be it

FURTHER RESOLVED the City seeks proposals for the Zero Waste Services from all qualified firms to establish competition to avoid significant additional costs to City rate payers.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF and PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

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