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AGENDA REPORT

TO: DEANNA J. SANTANA
CITY ADMINISTRATOR

FROM: Vitaly B. Troyan, P.E

SUBJECT: Supplemental Zero Waste
Request for Proposals

DATE: May 21, 2012

City Administrator
Approval

Date

5/31/12

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, Labor Peace, And Requires That Proposals Include A Call Center In Alameda County; 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 May 15, 2012, the Council requested additional information regarding policies in the Resolution that establish economic benefits for the Zero Waste System Request for Proposals (RFP). These contracting policies may affect the cost proposals received in response to the RFP process, to be incorporated into the resulting contracts, but also provide economic benefits to the community.

The economic benefit policies included in the Revised Resolution are: (1) competitive wages and benefits, (2) local business participation and presence that includes non-profits and public agencies, (3) 50% local hire, (4) job retention, (5) in-county landfill preference points (6) labor peace, and (7) a requirement for the proposers to the Zero Waste System RFP to include a call center in Alameda County and they may also propose an out-of-county call center, but must demonstrate how they will meet the RFP customer service standards.

The Council asked that staff return with additional information on the economic benefits provisions, specifically:

- Explore local business preference point award for past performance, and describe how points will be earned/ awarded for local business participation

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- Provide language that ensures franchisee compliance with local hire requirement, including a plan with benchmarks and deliverables
- Provide language on local hire enforceability/penalties
- Provide information on cost impacts of economic benefit measures upon customer rates
- Explore options to address the recycling sorter low wages
- Provide more information on “best and final offer” process

OUTCOME

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

- Competitive Wages and Benefits – with “Competitive” defined
- Maximization of Local Business Participation – with preference points and including local business presence (to include non-profits and public agencies)
- Local Hire Requirement – 50% minimum, preference points for exceeding minimum, and methods for enforcement
- Job Retention – for existing franchise and recycling contract workers
- In-County Landfill Preference Points
- Labor Peace – proposers to describe plans for preventing labor unrest
- Call Center – require that proposals include a call center in Alameda County while allowing proposals for a call center outside of Alameda County that meets the customer service standards and specifications of the RFP

Additionally the Resolution allows 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.

On January 17, 2012, the City Council adopted Resolution No. 83689 C.M.S., establishing a framework for the Zero Waste System Design 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 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 or

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adjusting customer rates, providing Contract diversion performance incentives, and continuing participation in Alameda County Measure D fees.

ANALYSIS

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. The purpose of conducting a competitive procurement is to allow market forces to set the cost for the service in a fair and transparent process. The proposals must meet diverse objectives, including providing consistent high-quality services to customers and contributing to achievement of the City's Zero Waste goal, while balancing cost considerations and accruing additional benefits to the community.

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, the City has more flexibility to implement economic benefit policies than it does, as in the case of a franchise. This RFP is for franchise services where the services provided by the franchisee are not paid by the City, but are paid directly by the user or customer to the franchisee.

While the RFP process must strike a balance between securing economic benefits for Oakland and achieving the best customer rates for the services, it must also guard against unintentional bias or infeasible requirements that would suppress competition, undermining the effort to solicit multiple cost-competitive proposals.

This section discusses the follow up direction from the City Council meeting on May 15, 2012 regarding the economic benefit provisions recommended for the RFP. The items requested are:

- Explore local business preference point award for past performance and describe how points will be earned/ awarded for local business participation
- Provide language that ensures franchisee compliance with local hire requirement, including a plan with benchmarks and deliverables
- Provide language on local hire enforceability/ penalties
- Provide information on cost impacts of economic benefits upon customer rates
- Explore options to address the recycling sorter low wages
- Provide more information on "best and final offer" process

Local Business Participation

The Public Works Committee recommended the addition of two (2) preference points above the 100 established evaluation points to be awarded for proposals that demonstrate maximum local business participation as a method to reward companies for their presence (business operations) in Oakland, and the purchase of goods and services from Oakland businesses.

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The RFP requires the Garbage and Organics and Residential Recycling Franchisees to have a business office in the City of Oakland that would be open to customers during regular business hours. The RFP will require proposers to submit, on a form, the local business participation based on dollar value of specific aspects of their proposals (e.g. labor, fuel, vehicle maintenance, material processing, call center, corporate office). As designed, the proposer with the highest value of business operations in Oakland will receive two preference points for local business participation on the Oakland franchise. The other proposers that provide the dollar value of local business participation will receive one preference point, unless the only presence they indicate is the required business office, in which case the proposal would receive zero preference points.

There are two alternative proposals listed in the section titled "Policy Alternatives" (1) for the awarding of preference points for local business participation that City Council may consider to increase the weighting for local business participation, and/or (2) award the points in a different manner to further distinguish the value of the local business participation.

The Council also asked whether preference points could be awarded for past performance. Past performance will be evaluated through the evaluation criteria of (1) experience and performance, and (2) references. Both of these criteria are weighted at 5%, for a total of 10 points allocated to addressing past performance of the 100 overall points available.

Local Hire Plan and Enforcement

The resolution to this report would 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.

The City Council requested a description of the method for how attainment of the 50% local hire requirement will be determined, and how the provision will be enforced for the term of the contract.

The 50% local hire requirement will be applied to all employees of the proposer, who are associated with the contract for collection and processing, except management. These long term contracts will have some fluctuation of employment opportunity over time and the process recommended ensures compliance over the term of the franchise contract.

A two-step process for compliance with the 50% local hire requirement is necessary for these long-term contracts to allow the franchisees to correct any short fall in a short-term window, and to provide a remedy for the franchisee's failure to live up to the commitments made in the proposal.

First, a requirement will be added to the reporting section of the contract requiring the franchisee to provide monthly reports on hiring, including total number of positions and total number of

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vacancies. The franchisee will be required to submit an annual report identifying the number of positions that came open during the reporting period and the number of Oakland residents hired, providing documentation of those employees including their address, classification/trade, basic rate of pay, and hire date. The percentage of Oakland residents should be equal to or greater than 50% of the total newly hired staff for the year. If the percentage does not meet the standard, then the franchisee would be required to work with the Office of Contract Compliance to provide a plan for corrective action in the following year. The annual hiring reports will allow for oversight on compliance with the 50% local hire requirement, correcting any deficiencies from one year to the following year. Failing to submit reports is addressed in the liquidated damages section of the contract.

The second step for compliance assessment will be in year seven of the contracts. Along with the assessment of achieving the specified diversion goals, an assessment of the franchisee's compliance with the 50% local hire will be conducted. The penalty for failing to comply with the 50% local hire requirement over the seven years will be the City not granting an extension of the franchise contract in year ten.

Cost Impacts of Economic Benefits upon Customer Rates

The purpose of establishing the new franchises for garbage and organics and residential recycling services through a request for proposal procurement process is to create a fair and transparent competitive environment with the objective of obtaining the best value to the rate payers for the services they receive.

As part of the full proposal analysis, staff will review cost impacts of the program and service alternatives specified in the RFP, such as the two lien options (described in the Council Report dated April 24, 2012) to understand the impact of the delinquent bill payment rate on the cost of service, the cost of in-county vs. out of county landfill disposal, and call centers located in Alameda County vs. locations outside of the county included in this resolution. It is not possible to conduct a cost analysis of options prior to the release of the RFP as any price received would not be in context to the overall proposals and not include the multifaceted and involved range and depth of services required of the proposers through the RFP. Any company providing a price before proposals are submitted, would be revealing their competitive edge, disadvantaging it in the RFP process.

As the RFP process is a competitive process, soliciting prices ahead of time for individual elements cannot take advantage of economies of scale nor address a company's strategic businesses decision to forgo some portion of its profit margin to secure its competitive edge. However, staff anticipates that the cost impact of

- Competitive wages should be minimal since all anticipated proposers either provide compensation through collectively bargained agreements, or provide compensation better than collectively bargained agreements.
- Local business participation is expected to be minor, but staff does not have sufficient information to state this with certainty.

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- Local hire is expected to be minor for the franchisees, but the City will incur additional staffing costs related to compliance and enforcement of such a requirement.

Recycling Sorter Wages

The purpose of establishing competitive wages and benefits in the RFP defined as “comparable to collectively bargained contracts in the five Bay Area counties” was to set a base for wages and benefits for companies that may propose and do not have collectively bargained contracts.

The language in the resolution addresses a situation for a proposing company that does not have collectively bargained labor contracts. The language in the resolution would require such a company to demonstrate that it pays wages and benefits comparable to not less than the lowest collectively bargained contract in the Bay Area. This language does not disadvantage any company that has collectively bargained contracts by requiring their contracts be renegotiated to a wage and benefit package determined by the City.

Representatives and members of ILWU Local 6, which represents recycling sorters for California Waste Solutions and Waste Management of Alameda County, have testified at the Public Works Committee and City Council that work performed by recycling sorters is hard, dirty, and low-paying compared to other jobs in the industry.

The workers on these contracts have the right to be represented by a labor union of their choice and to collectively bargain a labor contract that they ratify. The language in the resolution for competitive wages and benefits allows the workers to be represented by the union of their choice and the unions to collectively bargain the workers contracts. It follows a recognized and accepted worker/management process.

In order to attract competitive proposals from the greatest number of proposers for the purpose of providing the best value of services to the rate payers, the language provided in the resolution allows for union and non-union companies to participate, while protecting workers by setting wages and benefits no lower than those established by collectively bargained contracts to be used for the franchise contracts that begin in July 2015.

Best and Final Offer Process

A best and final offer process is one that allows proposers to make any final adjustments or clarifications to their proposals and/or submit revised pricing to their proposals. This process is sometimes used to help break ties at the end of an evaluation process or, with a redefined scope, to solicit new pricing. The best and final offer process is not a defined process that is used by the City in all its procurements.

However, the City reserves the right to accept or reject any or all proposals received through its RFP process. Further, the City reserves the unqualified right to modify, suspend or terminate at its sole discretion any and all aspects of the RFP and/or RFP process. Therefore, should the City find that certain provisions in the services required as part of the Zero Waste RFP need to be

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revisited, for example new or expanded services, the City could request that the proposers submit new rate sheets reflecting the requested change. The City may also use the best and final offer process to address a "tie" where two proposals score equally.

POLICY ALTERNATIVES

The Council could consider the following two policy alternatives to further emphasis local business participation as part of the Zero Waste RFP. Either or both policies could be selected to add value to businesses located in Oakland, and to encourage businesses to locate in the City of Oakland:

1. Local business participation: Council could elect to move one of the preference points from the local hire category to the local business participation category making local business participation three (3) preference points and leaving two (2) preference points for the alternatives listed beyond the 50% mandatory hiring of Oakland residents.
2. Local business participation: Council could elect to award preference points in half-point increments for local business participation. The method to apply the points would then rank all proposals from highest to lowest on value of business presence in Oakland awarding the proposal with the highest value of business presence in Oakland the two or three full points and down the ranking in half-point increments.

PUBLIC OUTREACH/INTEREST

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

COORDINATION

This report was coordinated closely with the Office of the City Attorney, the Division of Contract Compliance, the Risk Management Division, and the Revenue Division, and this close coordination is continuing with 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.

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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,

A handwritten signature in black ink, appearing to read "Vitaly B. Troyan" with a stylized flourish at the end.

VITALY B. TROYAN, P.E.
Director, Public Works Agency

Reviewed by:
Brooke A. Levin, Assistant Director

Prepared by:
Susan Kattchee, Environmental Services Manager