



**DEPARTMENT OF
PUBLIC WORKS**

OFFICE OF THE DIRECTOR

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May 14, 1991

Budget and Finance Committee/Transportation
and Community Development Committee
Sacramento, California

Honorable Members in Session:

SUBJECT: MATERIALS RECOVERY FACILITY CONTRACT NEGOTIATIONS POLICY CONSIDERATIONS

SUMMARY

This report recommends that the Joint Committee approve this report and its proposed Materials Recovery Facility (MRF) contract negotiations policies and considerations and that these policies be recommended for approval by the City Council. This report also contains an appendix that provides a definitive analysis of the proposed policies in a question and answer form.

BACKGROUND

On July 25, 1989, the City Council, by adopting Resolution 89-582, authorized the City Manager to execute a contract with the consulting firm of Brown, Vence & Associates to prepare the documents necessary to select a waste disposal Alternative to Direct Haul of Sacramento's municipal solid waste (MSW) to the Sacramento County landfill. By Resolution 88-673, the City Council requested that the Alternative to Direct Haul Selection Committee choose a vendor that could best provide (1) a 70% avoidance of landfilling, (2) accommodate recycling and reuse of MSW, and (3) possibly accommodate composting of the City's separately collected garden refuse.

Subsequent to the City's self-imposed recycling goals and the initiation of City activities to select a vendor that could provide the requested services, in October of 1989 the State of California enacted Assembly Bill (AB) 939 (Sher). This legislation mandated that every California city and county attain diversion goals of 25% by 1995, and 50% by the year 2000. AB 939 also established a hierarchy of diversion management that placed priority on (1) source reduction, (2) recycling and composting, and (3) transformation. It further specified that cities could be fined \$10,000 per day for failure to comply with its mandates.

After passage of AB 939, the Alternative to Direct Haul Selection Committee, which is comprised of Lyla Ferris, Jack Crist, Carl Hauge, Denny Kerton, and David Pelsler, had difficulty analyzing the proposals presented by the three finalists. The ability to ascertain which of the proposals would best meet the requirements of City Resolution 88-673 and AB 939, as well as the ability to assign like cost to each proposal, was complicated by the inconsistent and varying methods of data presentation used by the three vendors.

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In an effort to resolve the selection dilemma and in preparation for negotiation of a MRF contract, City staff developed a MRF Negotiation Task Force. It was the objective of this group to resolve the selection process problem and to develop those policies requisite to an equitable MRF contract. The Negotiation Task Force has, as its members, William Carnazzo, Jack Crist, Tom Friery, David Pelser, Betty Masuoka, Sabrina Thompson, and Reginald Young. The team is supported by the consulting firms of Brown, Vence & Associates (contract negotiations) and Hawkins, Delafield and Wood (contract legal counsel).

The City's legal staff has advised that a method of resolving the vendor response differences is to "clarify" the vendors' intent by including a vendors' clarification step in the alternative selection process. The clarification process requires that staff and its consultants develop a model contract and submit the identical contract to each of the three final vendors. The vendors' exemptions to the proposed contract will be analyzed and made a part of the vendor selection and recommendation process.

The staff and its consultants have developed proposed policy positions on the following: (1) facility ownership, (2) control of all mixed waste generated within the City, (3) assignment of risk during facility design, construction, and operation, (4) the processing of materials recovered from the City recycling project, (5) the potential for public drop off and buy-back of recyclable items, (6) the capability of public drop off for household hazardous waste, and (7) an evaluation of vendor ability to provide composting services.

It is staff's contention that all of the above issues can have a profound impact on the cost, utilization, and control of the facility. These items translate into the services our rate payers will get from the facility and the fees they will pay for these services. Attached Appendix A provides a definitive analysis of these policy positions in a question and answer form. A summary of staff's positions on the recommended policies and the rationale for the positions is as follows:

Facility Ownership

The proposed facility should be publicly financed and owned. However, a private vendor would site, build, and operate the facility. A staff analysis, by the City Treasurer, revealed that the most economical form of financing would be through the issuance of tax exempt financing supported by waste removal fees where the City owned the facility. City ownership of the facility assures the availability of lower cost, tax exempt financing, whereas a private company must compete for the limit amount of tax exempt financing available to the private sector.

Further, in order for the private operator to issue Tax Exempt Qualified Activity Bonds, the City must commit to pay the debt service on the bonds in advance of construction of the facility and whether or not the facility operates at, or processes sufficient waste, must commit to pay the debt service on the bonds. The City can minimize any risks it may have under public ownership by assuming ownership only after the constructed MRF has been demonstrated to meet all contractual requirements.

Finally, over the years as changes in the law, waste stream, or technology occur, the City will better be able to control operations and costs of the facility if the City owns the facility. The MRF facility will become an asset of the City with no issue as to purchasing it at a later date or if, in fact, the City terminates the operator for performance.

Flow Control

All mixed waste generated in the City, including that collected by private haulers, must be processed through the proposed facility. Source separated recyclables, except City collected recyclables, would not be required to come through the facility, thus permitting small recyclers to seek the purchasers of their choice. This provision would require adoption of a new City ordinance.

To comply with AB 939, each City must prepare a source reduction and recycling element (SRRE) for solid waste generated within the City. This plan requires the City to reduce all waste generated within the City from whatever source. The most expeditious method of ensuring compliance with this state mandate is to have all waste come to a point(s) of City control. Sacramento County currently exercises solid waste flow control by directing that all solid waste generated in the County go to its transfer stations or landfill. Flow control will require that the City Council establish a MRF "tipping fee" applicable to all City licensed haulers that are required to use the facility. A City employee(s) shall staff the MRF scale, and all pertinent data regarding tonnage, charges, and cash received, etc., shall be the property of the City's Finance Department.

Assignment of Risk

Under a public ownership position, various elements of risk have been assigned to either the City, the vendor, or shall be shared by the City and the vendor. Table 1 (below) reflects staff's proposed assignment of risk that is to be embodied in the proposed MRF contract.

TABLE 1

MATERIALS RECOVERY FACILITY

DESIRED CONTRACT RISK ASSIGNMENT UNDER A PROPOSED MRF FULL SERVICE PROCUREMENT

Risk Elements	Public Ownership	
	City	Vendor
A. Risk Prior to Acceptance		
1. Underestimation of Construction Costs		X
2. Additional Capital Investment to Pass Performance Testing		X
3. Changes to Scope of Construction at City's Request	X	
4. Cost Increases Due to Unforeseen Circumstances	Define and Share	
5. Facility Design Changes Necessitated by Revisions in Law or Regulation	X	
6. Failure to Achieve Guaranteed Operating Performances		X
7. Delays in Project Completion Not Specified Above		X
8. Finance Cost at Take Out	X	

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Risk Elements	Public Ownership	
	City	Vendor
9. Consequential Damages Arising From Labor Strikes Against Vendor		X
B. Operating and Maintenance Cost Risks After Acceptance Test (Both City and Vendor Would Approve the Acceptance Test)		
1. Facility Technical Failure		X
2. Residue Disposal Site Failure or Operating Problems	X	
3. Excessive Facility Down Time		X
4. Underestimation of Facility O&M Requirements (Labor, Materials, etc.)		X
5. Failure to Operate Facility in Compliance With Performance Guarantee		X
6. Changes in State and Federal Legislation that Affect Facility Operations	Shared	
7. Increase Cost of Non-processible Waste Disposal	X	
8. Inadequate Facility Management		X
9. Facility Utilities in Excess of Unit Quantities Specified in Proposal		X
10. Failure to Operate Facility in Compliance With Existing Laws		X
11. Failure to Operate Facility as a Result of Force, Majeure Event or Uncontrollable Circumstances	X	
C. Recovered Material Income Risks		
1. Incorrect Estimation of Material Recovery Efficiency		X
2. Significant Change in the Solid Waste Composition	X	
3. Incorrect Estimation of Solid Waste Quantities	X	
4. Fluctuation of the Price of Recyclables	Shared	
5. Inability to Meet Recovered Material Resale Specifications		X
6. Cost of Disposal of Recovered Material that Cannot Be Sold	Shared	
D. Tipping Fee Income Risks		
1. Over Estimation of the Solid Waste Stream	X	
2. City Reduction of Solid Waste Stream Through Continued Waste Reduction, Reuse, and Recycling Programs	X	

Facility Sizing

The decision to control the flow of City-generated solid waste will result in increasing the size of the facility when compared to what the three vendors previously submitted. The facility size requirement must now include data from current City studies as to what is our total City solid waste generation.

Curbside Recycling

The facility must be capable of receiving, processing, and packaging for sales all materials collected in the City's residential recycling program. A primary need of the City is to ensure that reuse of recycled materials does occur. Therefore, the processing of City separately collected recyclables is paramount to our purpose.

Public Recycling Drop Off or Buy Back

The facility shall have a capability to accommodate public drop-off and buy-back of recyclables. The City's need to ensure that all segments of the community can participate in recycling mandates that a buy-back program is available to those citizens who want to drop off for sale recyclable materials.

Household Hazardous Waste (HHW) Drop Off

It is agreed to include this capability in the proposed contract to acquire cost comparison data with a Sacramento County Environmental Department proposal to provide HHW drop-off services for the City. Thus, this item is to be included in a manner that affords the City the option of deleting the HHW drop off if it is not cost competitive with the County proposal.

Composting

It is agreed to include a composting capability in the contract either at the same facility or on a separate property within the City. Like HHW, the item is to be included in a manner that affords the City the option of deleting composting. However, the need for a composting program is a priority to meet our AB 939 mandates whether it is done by one of these vendors or others.

FINANCIAL

The ability to negotiate a Materials Recovery Facility contract utilizing the policies proposed in this report can result in vast cost savings to the City. While definitive dollars cannot be assigned at this time, the very premise of establishing these policies was to ensure that staff can negotiate a contract that enhances our ability to both comply with legislated recycling mandates and control costs, thereby providing the most cost-effective agreement for City rate payers. Once a contract has been negotiated, a detailed analysis of its impact on solid waste rates will be performed.

MBE/WBE

To the extent that City MBE/WBE policies are applicable to construction and operation of the MRF, these policies will be applied.

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POLICY CONSIDERATIONS

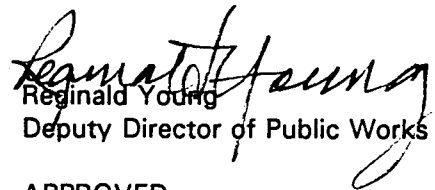
The City Council is being requested to approve the following Materials Recovery Facility contract staff negotiating policies and that the City shall:

1. Purchase and own, after it has completed and passed an acceptance/performance test, any solid waste recovery facility negotiated in this contract.
2. Promulgate the necessary ordinances to control the flow of mixed waste generated in the City, including that mixed waste collected by private haulers, to the City-owned facility.
3. Concur with the assignment of risk for contract negotiations consistent with those contained in Table 1 of this report.
4. Increase the size of the proposed facility to accommodate the entire mixed waste stream, both private and public, to support the City's control of the within City-generated, mixed, solid waste stream.
5. Take those actions necessary to have the facility process all recyclables collected by the City.
6. Take those actions necessary to have the facility include a public drop-off and buy-back capability.
7. Obtain the concepts and cost of providing both a HHW drop off and yard waste composting capability.

RECOMMENDATION

It is recommended that the Joint Committee approve this report and forward it to the City Council with a recommendation that the City Council approve the attached resolution.

Respectfully submitted,


Reginald Young
Deputy Director of Public Works

APPROVED:


Melvin H. Johnson
Director of Public Works

RECOMMENDATION APPROVED:


Jack Crist
Deputy City Manager

Contact Person:
Reginald Young, Deputy Director of Public Works
449-5283

May 14, 1991
All Districts

RESOLUTION NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

A RESOLUTION APPROVING THE POLICY CONSIDERATIONS TO BE EMBODIED IN A CITY MATERIALS RECOVERY FACILITY CONTRACT

The City Manager is hereby authorized to prepare a Materials Recovery Facility (MRF) contract that embodies the following policies:

1. The facility shall be publicly financed and owned after it has passed a performance test.
2. That all mixed waste generated in the City, including that mixed waste collected by private haulers, must be processed through the City MRF.
3. The City Manager can assign risk for the design, construction, and operation of the facility(s) as shown on Table 1 of this report.
4. The City Manager can determine the size of the facility consistent with City-mandated solid waste flow control requirements.
5. That the facility has the capability of processing all recyclables collected by the City.
6. That the facility has the capability to permit public drop off and buy back of recycled materials.
7. The contract include obtaining concepts and cost of providing both a HHW drop off and yard waste composting capability.

MAYOR

ATTEST:

CITY CLERK

FOR CITY CLERK USE ONLY

RESOLUTION NO.: _____

DATE ADOPTED: _____

POLICY QUESTIONS**Basic Policy Issue**

1. Why does the City of Sacramento need a materials recovery facility (MRF)?
 - A. The City has adopted a 70% diversion goal and AB939 mandates 25% and 50% diversion rates. Progressive source reduction and curbside programs are helpful, but the high diversion rates and efficiencies necessary to meet these diversion goals will require a processing facility. This facility should be equipped for systems for processing materials collected at the curb, drop-off recycling centers, composting, and mechanized materials recovery systems for processing the general waste stream.
 - B. Since the City landfill will soon reach design capacity, new waste management alternatives are necessary. In addition to reducing recyclable materials in the waste stream, a MRF will provide for transfer of residue waste to the county landfill.
 - C. For the purpose of achieving diversion goals, a MRF will allow the City to gain control of all types and quantities of solid waste generated in the City of Sacramento.

Facility Ownership and Private Sector Role

2. Why should the City hire a private company to site, design, build, and operate the MRF?
 - Full-service agreements are becoming mainstream. Under full service agreements, a private company is hired to site, design, construct, and operate the facility. The term "full-service" does not address facility ownership.
 - Facility siting and permitting time may be considerably less when conducted by the private sector.
 - Siting and permitting risk and responsibility are assumed by the private company under the proposed contract.
 - The City can take advantage of private sector expertise in design, construction, and operation of the MRF under the proposed contract.
 - Since the proposed contract specifies that the MRF be operated by the same company that builds it, at least for the first five years, the builder will have responsibility for overall facility performance and for fine-tuning equipment and operations.
 - Risks or problems associated with the MRF technology will be the private company's financial responsibility throughout the contract term.
 - The City will purchase the facility only after it has been proven to operate successfully.

3. Why should the City own the MRF?

- The City has ultimate responsibility for meeting the diversion goals of AB939 in the most economical way and bears the full risk of not achieving the goals. It is prudent, therefore, that the City maintain ownership and actual control of the MRF.
- Because the City would be the major client of the MRF, it would bear the brunt of capital, financing, and risk related costs even under private ownership. Thus control of the MRF would allow the city to have more control of costs.
- Unless the City owns the facility, it has little or no control over facility operations and the waste stream. This translates into a lack of control over service charges to customers and the potential for unfair pricing to different waste haulers.
- If the facility is privately owned, the City has no ability to change operations other than negotiating with a single company or discontinuing use of the facility. In the latter case, it would take many years for an alternative facility to be brought on line. Also, it is doubtful that a private company will build, own, and operate a MRF without a long term contract with the City to receive City waste.
- City ownership of the MRF will allow the City to change the recycling technologies utilized when necessary to meet diversion goals.
- Only City ownership of the MRF assures access to tax exempt financing. Thus, the cost of money may be substantially less under City ownership. With private ownership, higher financing costs would be passed along to rate payers.
- Under private ownership, the City could be in constant conflict with a poor performing private company while being "locked" into a long term contract.
- In the final analysis, the City and its rate payers are ultimately responsible under state law for meeting all state regulatory requirements. Costs will be directly transferred to disposal rates. Further, penalties resulting from failure to comply with AB939 would be levied directly against the City. Thus, City control of the facility is crucial, and control can be best achieved through public ownership.

4. What kinds of guarantees should the city demand of the private companies?

The City has chosen to deal only with financially strong companies. Companies not demonstrating sufficient financial strength and experience have not reached the final round of the selection process. The bidding companies must maintain their strong financial status throughout the contract.

The private company will make performance guarantees relating to the quantity of waste that can be processed, the extraction rates of recyclable materials, and environmental compliance.

The City will not purchase the MRF until it is fully constructed and proven to meet performance guarantees. If performance standards and financial requirements are not maintained after City purchase, there will be substantial financial penalties to the private operator and the contract may be terminated.

The MRF contract will require that the private companies' performance be assured through a variety of financial instruments, including:

- **Guaranty Form Agreement:** an unconditional guaranty of the private company's performance and payment obligations by its corporate parent or related third party;
- **Letter of Credit:** financial instrument used by a bank securing the private company's payment obligations under the agreement;
- **Performance Bond:** instrument issued by a surety or insurance company guaranteeing completion of the MRF according to contractual specifications;
- **Labor and Material Payment Bond:** bond issued by a surety or insurance company guaranteeing payment of subcontractors and suppliers;
- **Operations Performance Bond:** bond issued by surety or insurance company guaranteeing performance by the private company of its operation period obligations.
- **Various forms of insurance:** includes workers's compensation, public liability, casualty, and automobile, among others.

5. What are the major responsibilities of the City and the selected private company under the proposed contract with City ownership and private company development and operations?

The major responsibilities assigned to each party are as follows:

- | | | |
|-----------------|---|--|
| Private Company | - | site selection, entitlements, permits, and facility construction. |
| | - | makes sure facility is operational, meets initial performance standards, and operates according to performance standards. |
| | - | markets recovered materials. |
| City | - | delivers City collected waste to facility. |
| | - | insures, through ordinance, that all privately collected waste generated in the City of Sacramento is delivered to the facility. |
| | - | purchases the facility when complete, pays debt service and a service fee for operating the facility. |

6. Assuming a situation of material noncompliance and/or unsatisfactory performance, how can the City terminate the private company's contract and obtain another private company to operate the MRF?

The contract incorporates termination rights at any time for noncompliance and/or unsatisfactory performance (termination for cause). In order to terminate for cause, the City must give notice to the private operator including reasonable time for solving the problem. If the situation is not remedied, the private operator's contract can be terminated.

Under the proposed 20-year operations contract, termination "for convenience" is an option available to the City every 5 years. This option allows the City to terminate the operator's contract for reasons such as the desire to utilize another operator, to try operations by City staff, or to remove an operator whose performance has been poor, but not sufficiently substandard to clearly present a breach of contract. A 5-year termination for convenience option allows the City to switch facility operators at these 5-year intervals regardless of performance or compliance. If the City terminates the operator's contract for its convenience, a payment would be made to the operator.

Meeting Diversion Goals

7. How does the City make sure the City's diversion goals are achieved and AB939 noncompliance penalties are avoided with a MRF operated by the private sector?

The City will have a great deal of control over the MRF in that they will closely monitor design and construction and not purchase the facility until it is completed and performance tests are passed. Additionally, the operator will have to specify and guarantee operational performance in the contract. Substantial penalties will be paid by the operator if performance specifications are not met.

Unfortunately no one can guarantee that the MRF will achieve certain rates of waste diversion. This is because the composition of the waste and availability of markets for recovered materials will undoubtedly change over time. The best way to meet local goals and state mandates is the City will have control of the waste stream, the facility, and the operator. These means of control are as follows:

- | | | |
|------------------|---|--|
| Waste Stream | - | The City should require that all wastes generated within the City limits are processed at the MRF. |
| Facility Control | - | The City will closely monitor design and construction of the MRF and not purchase the facility until it meets performance standards. |
| | - | The City will own the MRF, make modifications necessary for waste stream changes, and update processing technology when appropriate. |
| | - | The City will have to approve any transformation (incineration) or disposal of recyclables other than their intended market. |
| Operator Control | - | The City can change operators if necessary. They can terminate the operations contract as described in question 6. Thus, they can choose the best private sector operator for their MRF. |

Waste Stream Control

8. Why should the city mandate that all private haulers must deliver all waste collected within the City limits to the City MRF (integrated waste management of City generated waste)?

The City has a diversion goal of 70% and AB939 has diversion mandates of 25% and 50%. Under these diversion percentages, the City is responsible for diversion of the entire waste stream generated within City limits, including privately collected waste. Since City residential collection includes a curbside program, the remaining most recoverable portion of the waste stream will be commercially generated waste (privately collected). There are 18 private haulers operating in the City of Sacramento; therefore, it is crucial that the City mandates integrated waste management of privately collected commercial waste into the facility in order to achieve local goals and state mandates.

9. Who will control the fee paid by waste haulers to dump at the facility (tipping fee)?

The City will operate the scale and paybooth, thus setting the tipping fee and eliminating the opportunity for unfair pricing.

10. How will the City prevent the situation in which the private companies "low ball" the initial prices charged City garbage trucks and private haulers and then later demand large rate increases to City rate payers?

An operations service charge will be paid by the City to the private operator; this fee will be proposed competitively, negotiated, and established in the contract.

The allowable escalation rate for the operations service charge will also be stipulated in the contract. Operations service charge increases will be limited to standard indices such as the Consumer Price Index; and escalation of fuel costs.

11. Accurate measurement of recyclables recovered is necessary for AB939 compliance. Assuming the City and private operator share revenue from resale of recyclables, how can the City be assured the reported materials tonnage is correct for revenue sharing and AB939 compliance?

The City will operate the scalehouse. All diverted recyclables will be weighed as they leave the MRF. Therefore, the City will measure the recyclables recovered. Requirements to quantify the waste stream source (City, County, or other) and type (commercial, residential, curbside, or other) and amount of materials recovered in a manner acceptable to the California Integrated Waste Management Board will be included in the contract. This reporting will enable the City to accurately quantify the waste stream and recyclables and comply with AB939 reporting requirements.

12. Will the MRF accept waste not generated within the City? For example, should Sacramento County garbage trucks be allowed to deliver waste to this facility?

Whether or not to accept waste generated outside the City is a City policy decision; this policy can be established and revised from time to time to best suit City's current waste generation rates. For example, in the early years of operation, the MRF's design capacity will exceed the City generated waste stream to allow for future growth. Until City generated waste quantities meet the facility's design capacity, it may be advantageous to accept outside waste to maximize the amount of waste processed, materials recovered, and revenues collected. However, when City generated waste quantities meet the MRF design capacity, the City may not want to accept outside waste.

13. **Must the facility accept all delivered waste or is there such a thing a "unacceptable waste" which the operator need not accept?**

The facility will not accept hazardous waste other than household hazardous waste (if included in the final design). Also not accepted will be waste that might jeopardize worker safety, damage equipment, or otherwise pose unacceptable burdens on the MRF system. Incoming waste loads will be inspected for hazardous waste and potentially damaging objects both at the gate and prior to loading onto the machinery.

The Bottom Line

The City is responsible for meeting AB939 and City mandated diversion goals, not the private haulers. Therefore, the City must have control over waste flow and the MRF in order to meet diversion goals in the most economical way.