
OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

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Preliminary Statement of Work for Landfill Operations

OVERVIEW

On June 22, 2011 the Rules Committee will be reviewing the Preliminary Statement of Work (PSOW) for the managed competition process for the Landfill Operations. The PSOW is also tentatively scheduled on the June 27, 2011 City Council agenda, pending a Rules Committee recommendation.

Current PSOW services include:

- Landfill Operations
- Greenery Operations
- Hazmat Landfill Load Check
- Fee Booth Operations
- Landfill Maintenance and Monitoring (LMM)

The Landfill Operations PSOW was first reviewed by the Rules Committee on May 18, 2011. Numerous issues were raised at this meeting, and the Committee directed the Business Office to return to Committee on June 22 to provide further information. The Business Office provided responses to that request in a June 14, 2011 memorandum to the Council President and City Council Members. Additionally, the PSOW was updated based on Rules Committee discussion, and information regarding the landfill divestiture effort was provided.

This report provides information on the managed competition process, issues for the Rules Committee to consider at the June 22, 2011 meeting, and information on next steps in the managed competition process.

FISCAL/POLICY DISCUSSION

Managed Competition Process

As mandated by City Charter Section 117(c), City Council is responsible for ensuring that service quality in the City is maintained when it has been determined by the Mayor that a function will undergo a managed competition process. Aside from approval of the Mayor's recommendation for award to an outside bidder, this is the only role of the City Council in the managed competition process. Council approval of the PSOW is an important step in the process, as it provides Council the opportunity to review service levels and performance standards for inclusion in the Request for Proposal (RFP) prior to its issuance. Once approved, the PSOW will form the foundation of the Final SOW that will be included in the RFP. Service levels cannot change between the PSOW as approved by Council and Final SOW/RFP.

According to the Business Office, more detailed performance data will be included in the more detailed SOW that will be developed next in preparation for issuing an RFP. Some data is not made available prior to developing the SOW due to procurement sensitivity. Review of the PSOW is the Council's only opportunity to provide input to help shape the Final SOW and RFP.

Issues to Consider

Service Levels

Although Council reviews and approves the PSOW, the Managed Competition Guide states "the purpose of the PSOW is to document the service levels associated with the delivery of the functions(s) selected for competition." The Miramar Landfill PSOW contains various sections:

- Functions and Services
- Locations and Operating Hours
- Technical Delivery Standards
- Performance Standards
- Service Provider Expectations

Page 11 of the PSOW states "we are describing all current functions, but judgments will be made in the Final Statement of Work as to what is 'in-scope' vs. 'out of scope,' based on our market assessment."

The Functions and Services section discusses the activities which will be considered for inclusion in the Final SOW. During our review, we identified several activities in the Functions and Services section for which the PSOW does not include performance standards or service levels.

To avoid degradation of current service levels related to landfill care, Council may want to require that current service levels (including current efforts underway which are designed to improve processes) be maintained by the chosen service provider. Then, as the SOW team works through the details of the Functions and Services activities, specific requirements would be developed that adhere to Council's mandate of current service levels, as appropriate.

Examples of areas where this would apply include:

- All environmental standards and regulatory mandates (including waste diversion and greenhouse gas emissions), as well as Navy lease requirements
- Landfill cover processes that minimize the utilization of landfill space (maximize landfill lifespan) while meeting regulatory requirements
- Material burial processes, such that slope and drainage are not negatively impacted by improper burial
- Acceptance of quantities of greenery materials that align with quantities that can be marketed to avoid utilizing landfill space for excess material and maximize beneficial use of such materials
- Evaluating the quantities and types greenery products available for sale
- Qualities of greenery products (mulch, compost etc.) to be sold
- Equipment maintenance and repair
- Required staff certifications

Additionally, locations and hours of operations are not contained in the Performance Standards section. The Business Office has indicated that once the PSOW is approved by Council, locations and hours of operation contained in the PSOW will be considered a service level that cannot be changed during the SOW development and remainder of the managed competition process. However, this is not noted in the Performance Standards section.

Lastly, during the May 18 Rules Committee meeting, the Director of the Environmental Services Department noted it is reasonably easy to achieve the 0.50 Airspace Utilization Factor for the landfill called for in the PSOW. Enhanced compaction would increase the Airspace Utilization Factor. As mentioned previously, the service levels approved by Council, including the Airspace Utilization Factor, cannot be changed during the SOW development. Council has been provided with a six-year comparison of the Airspace Utilization Factor, but has not received a recommendation for a standard other than the current service level of 0.50. Council may wish to discuss with staff whether the Airspace Utilization Factor service level required for the landfill competition should be at a higher level.

Legal/Contract Issues

Department of the Navy

It has been noted that the Navy has the ultimate authority in approving a private sector contractor to perform landfill operations. Navy approval of an independent contractor to operate the landfill cannot be obtained before details of a potential arrangement are known.

On May 26, 2011, the City sent a letter to the Navy and Marine Corps, requesting that the Navy provide the City acknowledgement that it does not object to the pending landfill managed competition process, as well as provide the City with any reservations or input it may have regarding the pending managed competition. The Navy and Marine Corps have expressed the following preferences, which the City will fulfill: that the City retain oversight of the landfill, particularly with respect to environmental issues; that the Navy continue to receive free waste disposal; and that the landfill gas collection system and cogeneration facilities agreements be maintained.

Enforcement Activities

The PSOW mentions that legal clarification is needed regarding whether certain enforcement activities, such as code compliance and hazmat load check functions, can be delegated to private contractors. On June 16, 2011, the City Attorney provided a Memorandum of Law (MOL) regarding enforcement functions at Miramar Landfill. The MOL concludes that "...persons not employed by the City may act in a limited role as enforcement officers, but they may not issue citations or notices of violation. Additionally, non-City employees performing any part of the enforcement procedures must be directly supervised by City employees...No person not employed by the City may exercise the full authority of an Enforcement Official." To address the City Attorney MOL, the SOW team will determine which activities will need to be modified or excluded.

Current City Contracts

At the May 18, 2011 Rules Committee meeting, a question was raised regarding which contracts would remain in place if a private contractor were to take over landfill operations. Attachment 1 of the PSOW indicates that there are over 80 agreements with contractors related to landfill activities. It also states that the SOW team will determine which contracts will remain in place (i.e. will become City-furnished contracts) should a private contractor be chosen to run the landfill operations.

The Pre-Competition Assessment report mentions that the following three contracts must be adequately addressed. Staff has determined these three contracts will remain in place and that City personnel will continue to coordinate the related activities:

- Fortistar Methane Group and affiliates – relating to the landfill gas collection system and cogeneration facilities

- Alan Company – for the Recycling Center
- Clean Harbors Environmental Services – for Household Hazardous Waste Transfer Facility operations

Other Issues

ISO 14001 Certification

During the May 18 Rules Committee meeting, members of the public questioned whether the selected service provider would be required to continually provide services that meet the ISO 14001 certification standard.

The City previously maintained an ISO 14001 certification for the Miramar Landfill, but the certification was allowed to lapse in 2010. Staff has indicated that the decision to allow lapsing of the ISO 14001 certification was due to the cost and staff time required to maintain the certification. Staff believes that benefits of the City's past participation in the ISO 14001 process still exist, including improved practices which have been continued.

City Liability

The Business Office's June 14, 2011 memorandum to the Council President and Council Members provided answers to questions asked during the May 18 Rules Committee meeting. Question 13 requests City staff to describe how the City will ensure that the contractor complies with the law. The answer addresses consequences to the service provider of failure to meet performance requirements. It also states that "if the service provider is an independent contractor, the City would ensure it is held harmless and that the service provider would be held liable for all damages." However, it is mentioned on page 4, in the answer to question 4, that "...the ultimate responsibility of meeting all regulatory and permitting requirements will in most cases continue to rest with the City."

As a means to hold the contractor liable, it is likely that the Miramar Landfill RFP will contain language similar to that in the Fleet Maintenance RFP, section 2.1, which states: "In the event the service provider refuses to perform the duties, is unable to perform them, or does not meet the performance standards that are specified in the contract, the City may select other service providers to do the work. In that event, the costs that the City incurs from the other service providers shall be deducted from the contract award including optional services that would otherwise have been made to the contracted service provider."

Fee Booth Operations – Revenue Collections

Concern with regard to revenue collections has been raised in light of the lack of financial oversight for the San Diego Medical Services Enterprise (SDMSE). Staff has noted that SDMSE was not developed under the managed competition process, which has

built-in monitoring requirements. For example, the Managed Competition Guide calls for the Mayor to complete annual performance audits.

Additionally, per the Guide, "...Within the term of a managed competition contract...the City Auditor shall conduct a performance evaluation of the service – determining whether cost efficiencies and performance standards have been achieved and identifying ways for the department to improve contract management." The request for such an audit would be brought to the Audit Committee for discussion. Whether revenue collections would be part of the audit could be addressed at that time.

Also, the Environmental Services Department plans to convert their fee booth and cash/check handling procedures into narrative form during the SOW development. Prior to that endeavor, the City Treasurer's office will be reviewing and advising Environmental Services on appropriate internal controls and cash handling techniques.

Piecemeal Competition

There are a number of broad functions covered by the PSOW, including landfill operations, greenery operations, hazmat landfill load check, fee booth operations, and landfill maintenance and monitoring. Bidders may be allowed to bid on some of these functions, rather than requiring a single bid on all functions. The determination to allow for piecemealed competition would only be made after market assessment has established that utilizing a single prime contractor to perform all in-scope work may not be in the best interest of the City. However, Staff believes it is unlikely that this scenario will occur. If bidders are allowed to bid on specific functions rather than the entire PSOW, the Employee Proposal Team (EPT) will be required to break their bid into comparative component parts.

Next Steps

Once the PSOW is approved by the Council, the City will begin preparing for the solicitation. A Final SOW will be developed and will be included in the RFP. The RFP is expected to be issued in October 2011.

The City will receive proposals and forward them to the Managed Competition Independent Review Board (MCIRB) who will evaluate and make a recommendation to the Mayor (anticipated for March 2012). The Mayor can accept or reject the MCIRB recommendation. If accepted, the Mayor will appropriately notify all labor organizations and begin the meet and confer process. The Mayor will then forward the recommendation to the Council, which may reject or accept the recommendation.

CONCLUSION

Based upon our review of the Preliminary Statement of Work for the Landfill Operations, including reviewing service level data and performance measures, the IBA recommends moving this to Council once any remaining issues have been addressed to the Rules Committee's satisfaction.

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