



DEPARTMENT OF
PUBLIC WORKS

OFFICE OF THE DIRECTOR

CITY OF SACRAMENTO
CALIFORNIA

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May 28, 1991

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

Honorable Members in Session:

SUBJECT: MATERIALS RECOVERY FACILITY MODEL CONTRACT

SUMMARY

This report transmits the model Materials Recovery Facility contract to the Joint Committee and expands upon some policies embodied in the contract.

BACKGROUND

On May 14, 1991, the Budget and Finance/Transportation and Community Development Committee jointly heard and approved a report which contained a series of policies that were to be embodied in the subject contract. The Joint Committee's approval of these policies was conditioned by a request that staff provide the Council with copies of the contract prior to its official submittal to the three vendors and that staff expand or further explain several of the policies. The concepts to be expanded included:

1. Public (City) ownership of the facility.
2. Facility financing.
3. Contract time frame.
4. Contract performance incentives.
5. A MRF educational center.
6. Updated vendor financial data.
7. Risk allocations.
8. Waste processing by type.

The attached Appendix A addresses each of the issues identified for expansion by the Joint Committee.

May 28, 1991
Budget and Finance Committee/Transportation
and Community Development Committee
Materials Recovery Facility Contract

FINANCIAL

The model contractor will permit the City to select the most cost-effective option for a City MRF.

MBE/WBE

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

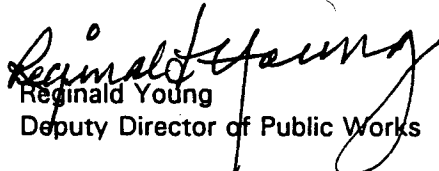
POLICY CONSIDERATIONS

The City Council is requested to reaffirm its policy of authorizing the City Manager to negotiate contracts.

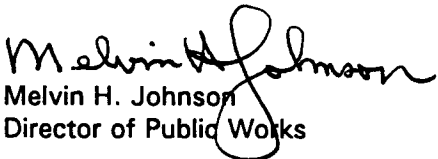
RECOMMENDATION

This report is provided for Committee information.

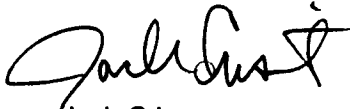
Respectfully submitted,


Reginald Young
Deputy Director of Public Works

APPROVED:


Melvin H. Johnson
Director of Public Works

FOR INFORMATION ONLY:


Jack Crist
Deputy City Manager

Contact Person:
Reginald Young, Deputy Director of Public Works
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All Districts

Attachments: Materials Recovery Facility Construction, Sale and Operation Agreement

**Joint Committee Concerns
For Presentation at the
May 28, 1991, Joint Committee Meeting**

Public Ownership

Public ownership of the MRF is desirable for many reasons

- **AB939 Responsibilities**

The City has ultimate responsibility for meeting the diversion mandates of AB939 in the most economical way and bears the full risk of penalties for not achieving the mandates. Even if the facility is privately owned, AB939 noncompliance penalties will be assessed to the City and its rate payers, not the private company. The only way for the City to control its AB939 noncompliance risk is for the City to have control of the facility; hence, public ownership.

- **Direct Control of Project Costs**

Although it may appear that private ownership would remove much of the risk from the City, ultimately all risks are assumed by City rate payers in the form of higher disposal rates. 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 the City would ultimately bear these costs since they would be passed along as increases to the MRF service fees. It is prudent, therefore, that the City maintain ownership and actual control of the MRF.

- **Technical Control**

Unless the City owns the facility, it has little or no control over facility operations and the waste stream. If the MRF is privately owned, the City could have difficulty implementing a change in technology or material recovery necessary to meet AB939 mandates. At best, the City would have to negotiate change orders with a single service provider.

- **Operational Control**

If the facility is privately owned, the City has little 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. Under private ownership, the City could be in constant conflict with a poorly performing private company while being "locked" into a long term contract.

- **Low Cost Financing**

Only City ownership of the MRF assures access to tax exempt financing since private companies have limited availability to tax exempt bonds and must compete for them. With private ownership, any higher financing costs would be passed along to rate payers. This topic is discussed further in the Financing section of this report.

- **Control of Facility Users**

By owning the facility, adopting flow control, setting fees to users, and controlling the gate house, the City can determine who may use this facility. Thus, if the City determines that cooperation with the County is beneficial, the facility could be made available to process County refuse. Further, the City can eliminate the potential for unfair pricing to different waste haulers.

Financing

Tax exempt financing for the MRF project can ONLY be assured through public ownership of the facility. Although some tax exempt financing is available to private companies for projects such as MRF's, the availability of this financing is limited and not guaranteed. Discussions with California Pollution Control Finance Authority representatives have indicated that tax exempt financing for private companies is anticipated to become highly competitive and available on a very limited basis. Thus, to assure that the facility is funded most economically, it should be City owned and financed publicly.

Contract Time Frame

The intention of the contract is to retain the original contractor for the full twenty-year period provided the City is receiving cost-effective, quality service provided in a cooperative manner. However, a termination for convenience option has been included in the Draft Agreement which allows the City to terminate the contract every 5 years regardless of performance or compliance. This option is desirable for the City since, in some cases (especially to achieve higher diversion and rates), the City may wish to operate the MRF on its own or hire another private company to operate it. It also allows the City to terminate a marginally performing contractor without having to prove breach of contract. However, the contractor is well protected against an arbitrary decision by the City. If the City terminates the contract for convenience, it would be

required to make a substantial payment to the operator.

Performance Incentives

Under City ownership there would be several performance incentives to the private operator:

- Revenues from sales of recyclables would be shared between the City and private company. Revenue sharing encourages the operator to maximize the amount of the waste stream recycled, the product quality, and the recyclables purchase price.
- The proposed contract is structured such that the private company will receive a fee from the City to dispose of residue. To the extent that the operator exceeds materials recovery performance guarantees, cost savings resulting from avoided residue disposal will be shared by the operator and the City.
- Under the proposed 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. If these guarantees are not met, the private company will be assessed financial penalties. Thus, meeting performance guarantees has major financial incentives for the private company.

Education Center

One of the design requirements for the MRF is that it have an education center. Design requirements are specified in the contract.

Updated Vendor Financial Record

The contract requires the private companies to submit updated financial statements with their revised proposals. These statements will be reviewed by the Selection Committee prior to making a recommendation. Further, the selected contractor will be required to maintain its financial strength throughout the contract period or to provide an alternative means of assuring its performance in a manner acceptable to the City. Failure to do so would allow the City to terminate the agreement for cause.

City/County Cooperation

Implementation of the project as defined in the draft agreement provides for opportunities for City/County cooperation if desired. The MRF is being sized to process the projected waste generated within the City up to the year 2005. The County could use the unutilized MRF capacity while the City waste stream reaches its expected generation rate. In order for the MRF to have sufficient capacity to process a portion of County generated waste on a long term basis,

additional processing capacity will have to be obtained by either siting additional MRFs or increasing the throughput capacity of the City MRF. If the City and County wish to cooperate in materials processing, waste flow service areas could be drawn to most efficiently route waste to any number of processing facilities regardless of jurisdiction. Thus, the City MRF could serve the portion of the City and the County nearest the project site. Additional MRF's could be built in other parts of the City or County to serve other regions. The draft agreement allows the City to determine which wastes will be accepted at this MRF and change its policy at a later date if desired.

Risk Allocation

Private companies often assert that the City assumes substantially more risk by owning the facility. In fact, under the proposed contract structure, the risks are allocated to the party best able to control them. The increased control afforded the City under public ownership improves its ability to manage the risks which would fall on its shoulders regardless of ownership including AB939 compliance and cost of service. Under the draft contract, project development and technological risks are allocated to the contractor. Thus, the structure proposed minimizes the City's risk by contractually allocating significant risks to the contractor while providing the City with the needed control and flexibility to manage the risks it cannot pass on the private sector regardless of ownership structure.

Waste Types to be Processed

All acceptable (non-hazardous) solid wastes generated within the City limits would pass through the facility. The acceptable waste stream would include materials collected by the City (residential, some commercial, yard waste, and curbside recyclables) and private collectors (mostly commercial and industrial). In their responses to the draft agreement, the competing private companies will determine which waste streams should be processed for the recovery of recyclable materials. Processing household refuse is not a contract requirement. If a private company believes that sufficient levels of recyclables have been removed by curbside and other recycling programs to make it unfeasible to further process, household refuse may be transferred directly through the facility to the landfill.

(To be provided on May 28, 1991)

**MATERIALS RECOVERY FACILITY
CONSTRUCTION, SALE AND OPERATION AGREEMENT**

Between

THE CITY OF SACRAMENTO, CALIFORNIA

and

Dated

_____, 1991



DEPARTMENT OF
PUBLIC WORKS

OFFICE OF THE DIRECTOR

May 28, 1991

City Council
Sacramento, California

Honorable Members in Session:

SUBJECT: MATERIALS RECOVERY FACILITY MODEL CONTRACT

SUMMARY

This report transmits the model Materials Recovery Facility (MRF) contract to the City Council and expands upon some policies embodied in the contract. This report was heard the same day by the Budget and Finance/Transportation and Community Development Committee at the request of the MRF negotiation team.

BACKGROUND

See the attached Joint Committee report.

FINANCIAL

See the attached Joint Committee report.

MBE/WBE

See the attached Joint Committee report.

POLICY CONSIDERATIONS

See the attached Joint Committee report.

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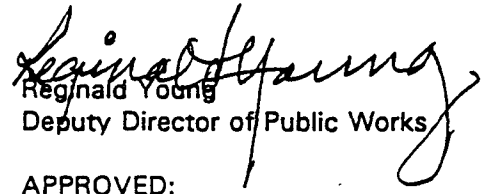
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May 28, 1991
City Council
Materials Recovery Facility Contract

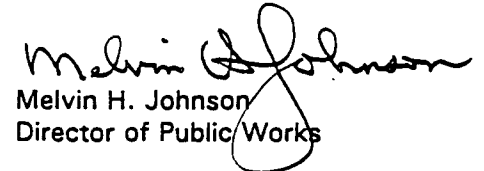
RECOMMENDATION

This report is provided for Council information.

Respectfully submitted,


Reginald Young
Deputy Director of Public Works

APPROVED:


Melvin H. Johnson
Director of Public Works

FOR INFORMATION ONLY:


FOR Walter J. Slipe
City Manager

Contact Person:
Reginald Young, Deputy Director of Public Works
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May 28, 1991
All Districts

Attachments: Materials Recovery Facility Construction, Sale and Operation Agreement