



King County
Metropolitan King County Council
Capital Budget Committee

Agenda Item No.: 4

Date: September 3, 2008

Proposed No.: 2008-0357

Prepared By: Mark Melroy

STAFF REPORT

SUBJECT: An ordinance that would authorize the Solid Waste Division to use a competitive negotiation contracting method to construct a new Bow Lake Recycling and Transfer Station in Tukwila, Washington. The proposed competitive negotiation contracting method is described under the Revised Code of Washington (RCW) 36.58.090.

SUMMARY:

King County's Solid Waste Division is pursuing replacement of the Bow Lake Recycling and Solid Waste Transfer station.

The Division is engaging a two-phase approach to construct the replacement transfer facility. The first phase involves site development and preparation activities including grading, utility work and removal of unsuitable materials. The Division is proceeding with this project phase using a traditional design, bid, build contracting method. The second phase involves construction of the 70,000 square-foot transfer and waste processing building and ancillary facilities. For a number of reasons the Division is requesting to use an alternative contracting method involving competitive negotiated procurement and allowed under RCW 36.58.090 for the construction part of this project phase. All project design is currently being performed under separate contracts.

Per RCW 36.58.090 the "legislative authority of a county may contract with one or more vendors for the ... construction ...of...the solid waste handling systems, plants, sites or other facilities...". The Prosecuting Attorney's Office has reviewed the legislative requirements and has found the Bow Lake Transfer station project qualifies to use the competitive procurement method described therein. Proposed ordinance 2008-0357 would declare the Council's authorization for the Division to use the alternative contracting method. If the ordinance is not approved, the Division will pursue construction of the facility using a traditional design-bid-build procurement method.

BACKGROUND:

The Solid Waste Division is pursuing replacement of its urban transfer stations including the Bow Lake facility in accordance with the *2001 Comprehensive Solid Waste Management Plan (Ordinance 14236)*, and the *2006 Facilities Master Plan update (Motion 12522)*.

The Bow Lake station is King County's only transfer station and waste processing facility that is open 24 hours a day. Approximately 35 percent of the County's waste tonnage is collected at the Bow Lake facility, which also means that 35 percent of the tipping revenue is generated at this site.

The Division is pursuing a strategy to replace the Bow Lake facilities while maintaining operations at the site in order to preserve this important revenue stream.

This strategy involves considerable coordination and is one reason for splitting the project into multiple phases. As mentioned previously, the project's first phase will include site preparation activities such as rough grading, removal of unsuitable or contaminated soils, utility extensions and drainage work. This work is proceeding towards construction using a traditional public works procurement method known as design-bid-build. Site preparation construction activities will occur while facility design is still being completed in an effort to shorten the entire project schedule.

The second phase of the project includes building construction. As per the Executive's transmittal letter, the new transfer building "will be constructed adjacent to the current site on property being purchased from the Washington State Department of Transportation. Recycling areas and other site structures will be constructed on the current site property". Design for phase 2 is ongoing and is being performed by the County's consultant RW Beck. Constructing the buildings while maintaining solid waste and recycling operations on the site will require an additional level of project planning and coordination. The Division plans to include "minimal contractor interference and interruption with ongoing operations of the existing station" as a required element of the contract.

The Division is pursuing the use of the competitive negotiation contracting method in an attempt to reduce risks associated with this approach. In his transmittal the Executive has indicated anticipated benefits of a negotiated procurement including:

1. Allowing the division to select a contracting team that offers the best combination of qualifications, performance capabilities, experience, *and* price, rather than awarding the contract based solely on the low price.
2. Allowing the division to begin dialogue with potential contractor teams during the proposal process regarding their understanding of the design intent of the project, the contractor's construction methods, and project coordination and scheduling issues; this allows the division to better assess whether the division and the contractor have a mutually agreed-upon understanding of the project.

The County's consultant, RW Beck, performed an evaluation of contracting methods available to King County for construction of the Bow Lake Transfer Facility. RWBeck evaluated **design/bid/build**, *negotiated procurement* and **general contractor/construction management** contracting methods. RWBeck indicates in their memorandum (see Attachment A to proposed ordinance 2008-0357) that "in areas that the County has indicated are especially important to it, negotiated procurement ranked as the sole bet option or was tied with GC/CM. In particular, the negotiated procurement method provides an opportunity for the County to consider the qualifications of multiple contractor teams including key subcontractors"

Process

RCW 36.58.090 allows a legislative authority, or its representative, to "proceed with the consideration of qualifications or proposals from vendors". An evaluation, negotiation and selection process follows this RFP/Q process. The Division has indicated their preparedness to meet all responsibilities and requirements of the RCW as the Council's designated representative. The Division has indicated their intention to seek Council approval when appropriate, including prior to final contractor selection.

ANALYSIS:

The Division has completed a thorough evaluation of contracting alternatives for the Bow Lake transfer station construction project. A negotiated procurement approach appears to meet several goals including an attempt to mitigate risks associated with constructing facilities on a site with ongoing operations.

This particular alternative contract delivery method has the added benefit of involving a contractor team, *including subcontractors*, in the selection process. This may help to alleviate potential conflicts between prime contractor and subs during the project, which has been raised as an issue in other alternative contracting methods used by King County.

The process outlined by RCW 36.58.090 includes many requirements of the legislative authority (King County Council) and their designated representative (Solid Waste Division). The Division is already satisfying many of these requirements and has indicated their intent to return to the Council for approval of the selection process prior to contract award. The Committee may wish to make this intent explicit in the legislation.

Legal Review

The Prosecuting Attorney's Office has reviewed the solid waste division's proposal to use the negotiated procurement process described under RCW 36.58.090 to construct the Bow Lake Transfer station. Senior Deputy Prosecuting Attorney Alan Abrams helped draft the proposed legislation and is expected to attend today's committee meeting.

In discussion with committee staff the Council's legal counsel noted that RCW 36.58.090 requires that the evaluative criteria to be used to select a vendor or vendors

be "established by the legislative authority". Criteria are not included in the proposed ordinance as transmitted. However, representatives of the solid waste division and the prosecuting attorney's office have indicated their willingness and ability to develop proposed evaluative criteria in time for the September 17th committee meeting. At that meeting the committee could consider amending the proposed ordinance to include evaluative criteria.

NEXT STEPS:

Council and executive staff will work to prepare the legislation for action by the Committee at the September 17th meeting.

INVITED:

Alan Abrams, Senior Deputy Prosecuting Attorney
Kevin Kiernan, Director, Solid Waste Division

ATTACHMENTS:

1. Proposed Ordinance 2008-0357 including Attachment A
2. Fiscal Note
3. Executive Transmittal Letter dated June 26, 2008
4. R.C.W. 36.58.090



KING COUNTY

Signature Report

September 2, 2008

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Ordinance

Proposed No. 2008-0357.1

Sponsors Phillips

1 AN ORDINANCE authorizing King County, through the
2 solid waste division of the department of natural resources
3 and parks, to adopt the competitive negotiation procedures
4 set forth within RCW 36.58.090 to construct the site
5 facilities portion of the new Bow Lake Recycling and
6 Transfer Station.

7

8 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

9 **SECTION 1. Findings:**

10 A. The King County council adopted the Final 2001 Comprehensive Solid Waste
11 Management Plan ("the plan") by Ordinance 14236 on April 16, 2001, which set forth
12 goals and policies intended to guide the county in providing solid waste transfer and
13 recycling programs and services in that portion of King County for which the county has
14 solid waste planning authority. One of the recommendations within the plan was for the
15 county to take necessary steps to upgrade and expand the county's existing transfer
16 station system to continue to meet regional demands for efficiency, capacity and service.

17 B. Consistent with the plan, the King County council adopted the 2006 Facilities
18 Master Plan Update for the Bow Lake Transfer and Recycling Station ("FMP update") by
19 Motion 12522 on April 9, 2007. The FMP update provided a blueprint for replacing the
20 existing Bow Lake Transfer Station ("existing station") with a new station at the same
21 location to provide enhanced solid waste handling and processing capacity and capability
22 for the residents of King County. The new station, to be called the Bow Lake Recycling
23 and Transfer Station ("new station"), will shift the focus of the station's operation from
24 simply being a waste transfer facility only to a facility that will process, recycle and
25 transfer waste and recyclable materials.

26 C. Development of the new station and deconstruction of the existing station
27 encompasses complex construction, scheduling and contractor/subcontractor coordination
28 and staging activities. The existing station will remain open to commercial transfer
29 operations during the course of construction of the new station. Minimal contractor
30 interference and interruption with operations of the existing station is a required element
31 for this project.

32 D. The solid waste division and its consultants evaluated traditional and
33 alternative construction delivery methods and have concluded that development of
34 facilities work for the new station (for example, construction of a transfer and waste
35 processing building, a maintenance building, scale facilities, trailer parking yard, asphalt
36 and concrete paving site utilities and deconstruction of existing buildings) be procured
37 using the competitive negotiation procedures set forth in RCW 36.58.090. The
38 evaluation determined that selecting a contracting team offering the best combination of
39 qualifications, performance, experience and price, rather than awarding a contract simply

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40 based on the low bid or cost in selecting sources of supplies and services, will minimize
41 construction risks along with impacts and delays in constructing the new station. This
42 procurement procedure will foster scheduling and coordination efficiencies by allowing
43 opportunities for open proposer/contractor input and discussion with the county regarding
44 design intent and constructability of the project before award of a contract. These
45 procedures will allow the county to better achieve its goals of selecting a qualified team
46 who can construct the site facilities for the new station on time and within budget. A
47 summary of King County's evaluation to utilize the competitive negotiation procedures
48 set forth in RWC 36.58.090 for construction of the site facilities of the new station is
49 included as Attachment A to this ordinance.

50 E. RCW 36.58.090 authorizes the county's use of the competitive negotiation
51 process to construct publically owned and operated transfer stations where they are "an
52 integral part of a solid waste processing facility located on the same site." Once
53 constructed, the new station will be an integrated processing and transfer facility. It will
54 provide for the transfer of solid waste to an off-site disposal facility such as the Cedar
55 Hills landfill, the collection/processing of various recyclables and for processing
56 (compaction) of solid waste for disposal.

57 F. The county advertised widely and held an informational meeting with the
58 contractor/subcontractor community in March 2008, to explain the project and to solicit
59 comments on its plan to use the competitive negotiation project delivery method to
60 construct the Site Facilities phase of the project. No comments were received regarding
61 the county's proposed use of RCW 36.58.090 for this project.

Ordinance

62 SECTION 2. The King County council hereby determines that the construction
63 of the site facilities for the new Bow Lake Recycling and Transfer Station shall be
64 procured utilizing the contracting procedures in RCW 36.58.090. The King County
65 executive, through the solid waste division of the department of natural resources and
66 parks, is hereby authorized to contract for construction of the site facilities for the new
67 Bow Lake Recycling and Transfer Station utilizing the competitive negotiation process
68 outlined in RCW 36.58.090.
69

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

ATTEST:

APPROVED this ____ day of _____, _____.

Attachments A. Bow Lake Recycling and Transfer Station - Use of Competitive Negotiation
 Procedures within RCW 36.58.090 for Site Facilities Construction Contract--Dated
 April 16, 2008



To: Tom Creegan, King County Solid Waste Division
From: Pat Tangora and Karl Hufnagel *Karl Hufnagel*
Subject: **Bow Lake Recycling and Transfer Station - Use of Competitive Negotiation Procedures within RCW 36.58.090 for Site Facilities Construction Contract**
Date: April 16, 2008

Introduction

King County (County) plans to design and construct the Bow Lake Recycling and Transfer Station on the County's existing Bow Lake site. In the past, the County has developed this type of facility using traditional public works contracting (design/bid/build). However, Revised Code of Washington (RCW) 36.58.090 would allow the County to select a construction contractor via a competitive negotiated procurement process. Potential benefits of this process are: 1) it would allow contractor qualifications to be considered in the selection process; 2) it helps reduce the risk associated with contractor misunderstanding of design intent; 3) it provides opportunities for proposer / contractor input regarding constructability and scheduling; and 4) it allows the County to better manage the risks associated with the transition between the Site Preparation and Site Facilities contractors.

Background

Among other things, RCW 36.58.090, *Contracts with vendors for solid waste handling systems, plants, sites, or facilities*, authorizes counties to contract with vendors for a wide range of services, including construction. Specifically, RCW 36.58.090 states:

...the legislative authority of a county may contract with one or more vendors for one or more of the design, construction, or operation of, or other service related to, the solid waste handling systems, plants, sites, or other facilities in accordance with the procedures set forth in this section. (RCW 36.58.090 (1))

The legislative authority or its representative may attempt to negotiate a contract with the vendor or vendors selected for one or more of the design, construction, or operation of, or other service related to, the proposed project or services on terms that the legislative authority determines to be fair and reasonable and in the best interest of the county. (RCW 36.58.090 (5))

However, with respect to solid waste transfer stations, RCW 36.58.090 contains some key restrictions, specifically:

The alternative selection process provided by this section may not be used in the selection of a person or entity to construct a

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publicly owned facility for the storage or transfer of solid waste or solid waste handling equipment unless the facility is either (a) privately operated pursuant to a contract greater than five years, or (b) an integral part of a solid waste processing facility located on the same site. (RCW 36.58.090 (10), emphasis added).

Thus, one key question is whether or not the new Bow Lake Recycling and Transfer Station would qualify as a "transfer station that is an integral part of a solid waste processing facility."

Can Bow Lake be Considered an Integral Part of a Solid Waste Processing Facility?

While RCW 36.58.090 does not contain a definition of "solid waste processing" or "solid waste processing facility," two relevant definitions are included in the Washington Administrative Code (WAC):

"Processing" means an operation to convert a material into a useful product or to prepare it for reuse, recycling, or disposal. (WAC 173-350-01, Solid waste handling standards, Definitions)

"Processing" means an operation to convert a solid waste into a useful product or to prepare for disposal. (WAC 173-304-100, Minimal functional standards for solid waste handling, Definitions)

Early solid waste transfer stations were primarily developed to increase hauling efficiency and reduce transportation costs. These facilities primarily served as a central "hub" where garbage collection trucks could dump their loads either directly or indirectly into larger containers which would then be transported to an intermediate or final destination. The term "transfer station" is now largely a misnomer for modern "state of the art" facilities, which serve a much wider range of functions. For example, modern transfer stations typically include equipment for compacting waste into containers in order to increase payload and reduce the amount of effort required to compact the waste at the landfill disposal site.

The Bow Lake Recycling and Transfer Station will be typical of these modern "state of the art" facilities. Figure 1 shows the site general arrangement plan and the transfer building lower level and tipping floor, including the principal areas where processing of waste and recyclables will occur. Table 1 summarizes materials processed at the facility.

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Table 1 Bow Lake Recycling and Transfer Station - Material Processing

Facility Area	Materials Processed	Process	Type of "Solid Waste Processing" as defined in WAC 173-350-01 or WAC 173-304-100
Fee and Free Recycling Areas	Metal Appliances Fluorescent tubes Household batteries E-Waste (electronic waste) Wood and construction lumber Cardboard Paper Newspaper Aluminum Glass Plastic	Collect and consolidate by material type	Operation to prepare a material for reuse, recycling or disposal
Yard Waste Tipping Area	Woody waste Yard waste	Chipping and grinding of woody waste into a compostable material Consolidation of processed woody waste and non-ground yard waste in trailers for transport to a composting facility	One part of an operation to convert a material into a useful product
Building Tipping Floor and Lower Level	Cardboard Paper Wood Metal Film plastic	Separation from the general Municipal Solid Waste (MSW) waste stream and consolidate by material type Bale all recyclable materials except wood and metal including material collected at the free recycle area	Operations to prepare a material for reuse or recycling
	MSW	Compact MSW in two stationary, preload compactors prior to loading into containers to maximize payloads and minimize hauling traffic and costs, Also reduced operating costs at the landfill by reducing the amount of compaction required after waste placement.	Operation to prepare solid waste for disposal

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Implementation and Schedule Integration

King County Solid Waste Division (SWD) has elected to contract for the work in two phases: the first phase is focused on Site Work; the second phase is focused on construction of facilities (Facilities Work). Site Work will be bid in the late spring of 2008. A competitive negotiated procurement process under RCW 36.58.090 is planned to be used for the Facilities Work. The currently planned schedule includes the following milestones:

- Site Work (Design-Bid-Build)
 - Advertise for Bid June 2008
 - Contract Execution July 2008
 - Initiate Construction August 2008
 - Complete Construction September 2009
- Facility Work (Negotiated Procurement)
 - Advertise RFQ/RFP March 2009
 - Execute Contract August 2009
 - Start On-Site Construction October 2009
 - Complete Construction June 2012
- RCW 36.58.090 allows for a procurement process that includes a combined RFQ/RFP¹ process. The SWD will also include a Request for Best and Final Offers as part of the clarifications process following the initial review of proposals. The award of a contract will be to the highest scored construction team based upon the evaluation criteria established by the County during the procurement process. The price component of the evaluation will be publically opened by the County at the time best and final offers are received.

Comparison of Contracting Options

Three contracting methods, conventional design-bid-build (DBB), general contractor/construction manager (GC/CM) under RCW 39.10, and negotiated procurement under RCW 36.58.090 were evaluated against eleven criteria. The results of this evaluation are summarized in Attachment A. In areas that the County has indicated are especially important to it, negotiated procurement ranked as the sole best option or was tied with GC/CM. In particular, the negotiated procurement method provides an opportunity for the County to consider the qualifications of multiple contractor teams including key subcontractors, provides

¹ A separate Request for Qualifications stage could be used by the County under RCW 36.58.090. This would provide the County with an early gauge of real market interest in the project. If insufficient interest was generated, at that point the County could easily redirect its efforts back toward a "hard bid" process with minimal effort and expenditure of resources.

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an opportunity for these contracting teams to provide input on constructability and scheduling issues before the contract is signed, allows the County to clarify the design intent before the contract is signed, and allows the County to better manage the transition between the Site Facilities work and the Site Preparation contract. The full list of advantages of negotiated procurement is summarized in Table 3.

Conclusions and Recommendation

Based on our review, it appears that the Bow Lake Recycling and Transfer Station would be an "integral transfer / processing facility" as required by RCW 36.58.090. It also appears feasible to implement the RCW 36.58.090 procurement process for the Facility Work without delaying the planned design and construction schedule.

Negotiated procurement offers distinct advantages over DBB and GC/CM procurement in a number of key areas that the County has indicated are important. Table 3 summarizes these advantages for the Facilities Work which is further evaluated in Attachment A. We recommend that the County consider pursuing negotiated procurement under RCW 36.58.090.

Table 3 Advantages of Negotiated Procurement for Facilities Work

- Provides opportunity to review Facilities Contractor qualifications.
- Provides opportunity for input on constructability and scheduling issues from the Facilities Work proposers / Contractor.
- Allows the County to clarify the design intent to prospective Facilities Contractors.
- Allows the County to better manage the risks associated with the transition between the Site Preparation and Site Facilities Contractor.
- Maintains current planned schedule, and helps to limit additional price escalation associated with delay.
- Avoids markup on Site Work by a General Contractor, which would likely be the case if all work was completed under a single contract. This may need explanation if asked by Council. Uncertain about this?
- Presents no overall schedule risk since ample time would exist to revert to conventional bidding on the Facilities Work.

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Attachment A Comparison of Contracting Options

Criterion	Design-Bid-Build	GC/CM under RCW 39.10	Negotiated Procurement under RCW 36.58.090	Best Option
Consideration of qualifications	<ul style="list-style-type: none"> Eligibility criteria may be included to determine bidder responsibility 	<ul style="list-style-type: none"> GC/CM selected in part on qualifications but can only prosecute up to 30% of actual construction. Subcontract packages are competitively bid by the GC/CM. Eligibility criteria may be included to determine subcontract bidder responsibility. Approximately 8 to 10 subcontractors are considered "critical" to project success and may include eligibility requirements. 	<ul style="list-style-type: none"> Qualifications of construction team including GC and major subcontractors can be considered as part of selection process and therefore sooner than with GC/CM. 	Negotiated procurement
Input on design, schedule, constructability issues prior to construction	<ul style="list-style-type: none"> Limited to bid package and addenda issued during bidding. 	<ul style="list-style-type: none"> By GC/CM under preconstruction services contract. 	<ul style="list-style-type: none"> By GC and major subcontractors during proposal / BAFO procurement process. 	Negotiated procurement due to involvement of major subcontractors
Clarification of design intent prior to construction	<ul style="list-style-type: none"> Limited to bid package and addenda issued during bidding. 	<ul style="list-style-type: none"> Via input from GC/CM under preconstruction services contract. 	<ul style="list-style-type: none"> By GC and major subcontractors during proposal / BAFO procurement process. 	Negotiated procurement due to involvement of major subcontractors
Management of transition between Site Preparation and Site Facilities contractors	<ul style="list-style-type: none"> County responsible effort 	<ul style="list-style-type: none"> County responsible 	<ul style="list-style-type: none"> County responsible 	Not a determining factor
Suitability for projects where existing facilities must remain in operation	<ul style="list-style-type: none"> Higher potential 	<ul style="list-style-type: none"> Good 	<ul style="list-style-type: none"> Good 	GC/CM and negotiated procurement
Effects on planned schedule / schedule risk	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> None 	Not a determining factor
Competitive pricing	<ul style="list-style-type: none"> Yes for all aspects of construction. 	<ul style="list-style-type: none"> Yes for subcontract packages, GC/CM markup, and specified general conditions 	<ul style="list-style-type: none"> Best value selection via SOQs, proposals, and BAFOs does not assure lowest possible price 	Traditional DBB
Potential for	<ul style="list-style-type: none"> Highest because of 	<ul style="list-style-type: none"> Lower than DBB 	<ul style="list-style-type: none"> Lower than DBB 	GC/CM and negotiated

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Change Orders	"low bid" selection and lack of input / feedback during design re design intent, constructability etc.	because of GC/CM involvement during preconstruction phase	because of general contractor and subcontractor involvement during proposal / BAFO phase	procurement
Limits County's bidding risk	o No	o Yes - MACC sets upper limit while subcontractor bidding process helps assure competition	o N/A	GC/CM
Approvals and certifications required	o None, although Council approval may be sought for contract award	o Yes - Project specific approval from state. Under RCW 39.10 project must meet at least one of 5 GC/CM criteria. ² o Per SWD, Council approval will also be sought.	o Yes - Council approval required to initiate procurement and to execute contract.	Traditional DBB
Potential for redundant efforts	o Minimal	o Yes - between GC/CM and County CM	o Minimal	Traditional DBB and negotiated procurement

² These include: 1) project involves complex scheduling, phasing, or coordination; 2) project involves construction at an occupied facility that must continue to operate during construction; 3) involvement of the GC/CM during the design is important to project success; 4) project encompasses complex or technical work environment; or 5) project required specialized work on an historically significant building.

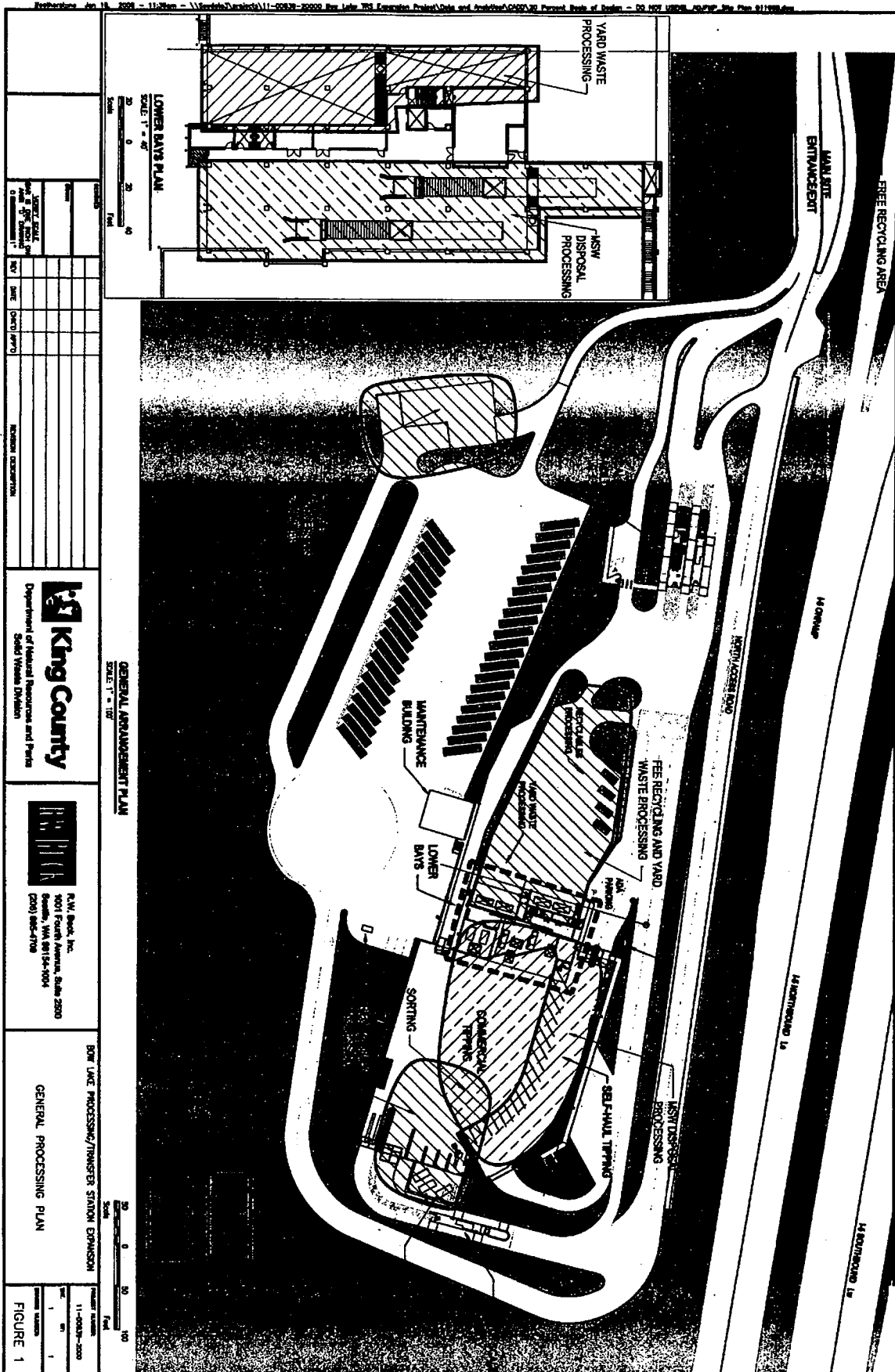


Figure 1

PRELIMINARY DRAWING - NOT FOR CONSTRUCTION

FISCAL NOTE

Ordinance/Motion No. 2008-XXXX
 Title: BOW LAKE RECYCLING & TRANSFER STATION ALTERNATIVE PROCUREMENT
 Affected Agency and/or Agencies: DNRP/SWD
 Note Prepared By: Warren Himmelmann
 Note Reviewed By:

Impact of the above legislation on the fiscal affairs of King County is estimated to be:

Revenue to:

Fund Title	Fund code	Revenue source	2008	2009	2010	2011
SW Construction	000003901	30800	0			
TOTAL			0	0	0	0

Expenditures from:

Fund Title	Fund code	Department	2008	2009	2010	2011
SW Construction	000003901	0701	-			
TOTAL			0	0	0	0

Expenditures by Categories

	2008	2009	2010	2011
Salaries & Benefits	-			
Supplies & Services	-			
Capital Outlay	0			
Other	0			
TOTAL	0	0	0	0

Assumptions:

June 26, 2008

The Honorable Julia Patterson
Chair, King County Council
Room 1200
COURTHOUSE

Dear Councilmember Patterson:

This letter transmits an ordinance seeking authorization to use the competitive negotiation contracting method under Revised Code of Washington (RCW) Section 36.58.090 for the facilities construction phase of the new Bow Lake Recycling and Transfer Station (New Station) in Tukwila, Washington. RCW 36.58.090 authorizes the use of a competitive negotiation procurement process to construct publicly owned and operated transfer stations where they are an "integral part of a solid waste processing facility located on the same site."

The Solid Waste Division of the Department of Natural Resources and Parks is replacing the existing Bow Lake Transfer Station (Existing Station) with a new station, consistent with the *Final 2001 Comprehensive Solid Waste Management Plan* and the *2006 Facilities Master Plan Update* adopted by Motion 2007-0218. The new transfer building will be constructed adjacent to the current site on property being purchased from the Washington State Department of Transportation. Recycling areas and other site structures will be constructed on the current site property. The division is in the design phase of the project.

For site preparation and facility construction work, the division is proposing to use a two-contract approach. This approach will allow site preparation work to begin while facility design is completed, which will serve to shorten the overall project schedule.

The first contract (Site Preparation Phase) involves the removal of contaminated and unsuitable soils, rough site grading, utility extensions to and from the site, construction of retaining walls, and stormwater treatment and detention vaults, some paving, and landscaping. The division will seek competitive bids to perform this work using traditional public works contracting (design-bid-build) and award a contract to the lowest responsive and responsible bidder. Advertisement for this portion of the project is currently scheduled for June 2008.

For the second contract (Site Facilities Construction Phase), the division is requesting to use the competitive negotiation procedures set forth within RCW 36.58.090. This contract will involve the construction of a 70,000-square-foot transfer and waste processing building, scale facilities, a trailer parking yard, concrete and asphalt paving, and site utilities, as well as deconstruction of the existing buildings. The request for qualifications and proposals for this contract is anticipated to be advertised in March 2009. As with the newly constructed Shoreline Recycling and Transfer Station, the new station will be seeking Leadership in Energy and Environmental Design[®] certification.

The existing station will remain open to commercial transfer operations during the course of both contract phases, including during construction of the new station on the adjacent property. The development of the new station and the deconstruction of the existing station will involve complex construction, scheduling, and contractor/subcontractor coordination, primarily to coordinate the new construction with ongoing operations at the existing station. Minimal contractor interference and interruption with the ongoing operations of the existing station will be a required element of the contract.

As the division replaces and reconstructs its urban transfer stations, as approved by the King County Council in the *Solid Waste Transfer and Waste Management Plan*, the overarching goals are quality, innovation, and sustainability. Selection of a well-qualified contractor is a key element in achieving these goals. The use of the competitive negotiation contracting method has distinct advantages over the traditional design-bid-build method for a complex project like the Site Facilities Construction Phase, including:

- 1) It allows the division to select a contracting team that offers the best combination of qualifications, performance capabilities, experience, and price, rather than awarding the contract based solely on the low bid price.
- 2) It will attract a larger pool of bidders, including those contractors/contractor teams that choose not to bid on contracts that use the traditional low-cost bid approach; this significantly improves the choice of contractors for complex, tightly scheduled projects.
- 3) It allows the division to begin dialogue with potential contractor teams during the proposal process (prior to contract award) regarding their understanding of the design intent of the project, the contractor's construction methods, and project coordination and scheduling issues; this allows the division to better assess whether the division and the contractor have a mutually agreed-upon understanding of the project.
- 4) Through discussions during the proposal process (discussed in #3), it lowers the risk of costly and time-consuming change orders and construction claims that can result from a lack of understanding of the project goals or scope, and helps ensure projects are completed on time and within budget.

The Honorable Julia Patterson

June 26, 2008

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Attachment A of the attached ordinance, which was prepared by the division's consultant R.W. Beck, provides a more detailed explanation of why the competitive negotiation contracting method was recommended for use in the Site Facilities Construction Phase. The attachment also includes a discussion of other alternative project delivery methods such as General Contractor-Construction Management.

If this ordinance is not approved, the Site Facilities Construction Phase contract will be issued using a design-bid-build method, and a contractor will be selected on the basis of the lowest cost, responsive bid. As a result, the advantages in using the competitive negotiation contracting process set forth above will not be realized. If you have any questions about the ordinance, attachments, or the competitive negotiation contracting method under RCW 36.58.090, please feel free to contact Kevin Kiernan, Division Director in the Solid Waste Division of the Department of Natural Resources and Parks, at 206-296-4385.

Thank you for your consideration of this ordinance this ordinance which would authorize a competitive negotiation contracting approach for the construction phase of the new Bow Lake Recycling and Transfer Station. I believe this method will give King County the best opportunity to complete the project in a timely, cost-effective, and high-quality manner.

Sincerely,

Ron Sims
King County Executive

Enclosures

cc: King County Councilmembers
 ATTN: Ross Baker, Chief of Staff
 Saroja Reddy, Policy Staff Director
 Anne Noris, Clerk of the Council
 Frank Abe, Communications Director
Bob Cowan, Director, Office of Management and Budget
Theresa Jennings, Director, Department of Natural Resources and Parks (DNRP)
Kevin Kiernan, Division Director, Solid Waste Division, DNRP

RCW 36.58.090

Contracts with vendors for solid waste handling systems, plants, sites, or facilities — Requirements — Vendor selection procedures.

(1) Notwithstanding the provisions of any county charter or any law to the contrary, and in addition to any other authority provided by law, the legislative authority of a county may contract with one or more vendors for one or more of the design, construction, or operation of, or other service related to, the solid waste handling systems, plants, sites, or other facilities in accordance with the procedures set forth in this section. When a contract for design services is entered into separately from other services permitted under this section, procurement shall be in accord with chapter 39.80 RCW. For the purpose of this chapter, the term "legislative authority" shall mean the board of county commissioners or, in the case of a home rule charter county, the official, officials, or public body designated by the charter to perform the functions authorized therein.

(2) If the legislative authority of the county decides to proceed with the consideration of qualifications or proposals for services from vendors, the county shall publish notice of its requirements and request submission of qualifications statements or proposals. The notice shall be published in the official newspaper of the county at least once a week for two weeks not less than sixty days before the final date for the submission of qualifications statements or proposals. The notice shall state in summary form (a) the general scope and nature of the design, construction, operation, or other service, (b) the name and address of a representative of the county who can provide further details, (c) the final date for the submission of qualifications statements or proposals, (d) an estimated schedule for the consideration of qualifications, the selection of vendors, and the negotiation of a contract or contracts for services, (e) the location at which a copy of any request for qualifications or request for proposals will be made available, and (f) the criteria established by the legislative authority to select a vendor or vendors, which may include but shall not be limited to the vendor's prior experience, including design, construction, or operation of other similar facilities; respondent's management capability, schedule availability and financial resources; cost of the services, nature of facility design proposed by the vendor; system reliability; performance standards required for the facilities; compatibility with existing service facilities operated by the public body or other providers of service to the public; project performance guarantees; penalty and other enforcement provisions; environmental protection measures to be used; consistency with the applicable comprehensive solid waste management plan; and allocation of project risks.

(3) If the legislative authority of the county decides to proceed with the consideration of qualifications or proposals, it may designate a representative to evaluate the vendors who submitted qualifications statements or proposals and conduct discussions regarding qualifications or proposals with one or more vendors. The legislative authority or representative may request submission of qualifications statements and may later request more detailed proposals from one or more vendors who have submitted qualifications statements, or the representative may request detailed proposals without having first received and evaluated qualifications statements. The representative shall evaluate the qualifications or proposals, as applicable. If two or more vendors submit qualifications or proposals that meet the criteria established by the legislative authority of the county, discussions and interviews shall be held with at least two vendors. Any revisions to a request for qualifications or request for proposals shall be made available to all vendors then under consideration by the city or town and shall be made available to any other person who has requested receipt of that information.

(4) Based on criteria established by the legislative authority of the county, the representative shall recommend to the legislative authority a vendor or vendors that are initially determined to be the best qualified to provide one or more of the design, construction, or operation of, or other service related to, the proposed project or services. The legislative authority may select one or more qualified vendors for one or more of the design, construction, or operation of, or other service related to, the proposed project or services.

(5) The legislative authority or its representative may attempt to negotiate a contract with the vendor or vendors selected for one or more of the design, construction, or operation of, or other service related to, the proposed project or services on terms that the legislative authority determines to be fair and reasonable and in the best interest of the county. If the legislative authority or its representative is unable to negotiate such a contract with any one or more of the vendors first selected on terms that it determines to be fair and

reasonable and in the best interest of the county, negotiations with any one or more of the vendors shall be terminated or suspended and another qualified vendor or vendors may be selected in accordance with the procedures set forth in this section. If the legislative authority decides to continue the process of selection, negotiations shall continue with a qualified vendor or vendors in accordance with this section at the sole discretion of the legislative authority until an agreement is reached with one or more qualified vendors, or the process is terminated by the legislative authority. The process may be repeated until an agreement is reached.

(6) Prior to entering into a contract with a vendor, the legislative authority of the county shall make written findings, after holding a public hearing on the proposal, that it is in the public interest to enter into the contract, that the contract is financially sound, and that it is advantageous for the county to use this method for awarding contracts compared to other methods.

(7) Each contract shall include a project performance bond or bonds or other security by the vendor that in the judgment of the legislative authority of the county is sufficient to secure adequate performance by the vendor.

(8) The provisions of chapters 39.12, 39.19, and *39.25 RCW shall apply to a contract entered into under this section to the same extent as if the systems and plants were owned by a public body.

(9) The vendor selection process permitted by this section shall be supplemental to and shall not be construed as a repeal of or limitation on any other authority granted by law.

(10) The alternative selection process provided by this section may not be used in the selection of a person or entity to construct a publicly owned facility for the storage or transfer of solid waste or solid waste handling equipment unless the facility is either (a) privately operated pursuant to a contract greater than five years, or (b) an integral part of a solid waste processing facility located on the same site. Instead, the applicable provisions of RCW 36.32.250 and chapters 39.04 and 39.30 RCW shall be followed.

[1992 c 131 § 4; 1989 c 399 § 10; 1986 c 282 § 19.]

Notes:

***Reviser's note:** Chapter 39.25 RCW was repealed by 1994 c 138 § 2.

Construction of 1986 c 282 § 19 -- 1990 c 279: "Section 19, chapter 282, Laws of 1986, codified as RCW 36.58.090, established an alternate procedure by which a county was authorized to procure systems and plants for solid waste handling and to contract with private vendors for the design, construction, or operation thereof. Any county with a population of over one hundred thousand that, prior to the effective date of chapter 399, Laws of 1989 [July 23, 1989], complied with the requirements of either (1) section 10 (3), (4), and (5), chapter 399, Laws of 1989, or (2) section 19(3), chapter 282, Laws of 1986, shall be deemed to have complied with the requirements of section 19(3), chapter 282, Laws of 1986." [1990 c 279 § 1.]

Severability -- Legislative findings -- Construction -- Liberal construction -- Supplemental powers -- 1986 c 282: See notes following RCW 35.21.156.