



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

September 30, 2008

Ordinance 16247

Proposed No. 2008-0357.3

Sponsors Phillips

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

8
9 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

10 SECTION 1. Findings:

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

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

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

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

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

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

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

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

70 SECTION 3. The summary of King County's evaluation to utilize the competitive
71 negotiation procedures set forth in RCW 36.58.090 for construction of the site facilities
72 of the new station is included as Attachment A to this ordinance.

73 SECTION 4. Final evaluation criteria to be used for review of competitive
74 proposals to construct a new Bow Lake Recycling and Transfer station may include but
75 shall not be limited to the draft criteria included in Attachment B to this ordinance.

76 SECTION 5. This section establishes procedures required for the use of final
77 evaluation criteria for construction proposals as set forth in RCW 36.58.090.

78 A. The King County council shall review final evaluation criteria at least twenty
79 business days before the issuance of a request for proposal for construction of the new
80 Bow Lake Recycling and Transfer Station.

81 B. The proposed final criteria for review by the King County council shall be
82 filed with the clerk of the council for distribution to the chair of the capital budget
83 committee, or its successor committee, and to each councilmember and to the lead staff
84 for the capital budget committee, or its successor committee.

85 C. A councilmember who objects to the proposed final criteria shall notify the
86 chair of the capital budget committee, or its successor committee, within fourteen
87 business days of the filing of the criteria. The chair shall consult with the councilmember
88 and consider the objection and shall, within sixteen business days of the filing of the
89 criteria, notify the executive in writing of evaluation criteria that may proceed and shall
90 also notify the executive in writing of evaluation criteria that may not proceed. The chair
91 of the capital budget committee, or its successor committee, shall file with the clerk of
92 the council a copy of the written notice and send a copy of the notice to any
93 councilmember who raised an objection. The evaluation criteria take effect upon receipt
94 by the executive of the written notice. However, if the written notice is not provided by
95 the chair of the capital budget committee, or its successor committee, within twenty

96

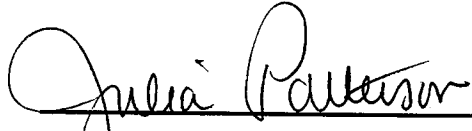
97 business days of the filing of the evaluation criteria, the evaluation criteria take effect on
98 the twenty-first day following the filing of the evaluation criteria.

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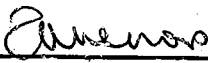
Ordinance 16247 was introduced on 7/7/2008 and passed as amended by the Metropolitan King County Council on 9/29/2008, by the following vote:

Yes: 9 - Ms. Patterson, Mr. Dunn, Mr. Constantine, Ms. Lambert, Mr. von Reichbauer, Mr. Ferguson, Mr. Gossett, Mr. Phillips and Ms. Hague
No: 0
Excused: 0

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Julia Patterson, Chair

ATTEST:


Anne Noris, Clerk of the Council

APPROVED this 3 day of OCTOBER 2008


Ron Sims, County Executive

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, B. Bow Lake Transfer Station Negotiated Procurement of a Facilities Contractor Draft Evaluation Criteria, dated September 29, 2008

RECEIVED
2008 OCT -3 PM 1:47
KING COUNTY COUNCIL



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, pre-load 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"> o Eligibility criteria may be included to determine bidder responsibility 	<ul style="list-style-type: none"> o GC/CM selected in part on qualifications but can only prosecute up to 30% of actual construction. o 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"> o 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"> o Limited to bid package and addenda issued during bidding. 	<ul style="list-style-type: none"> o By GC/CM under preconstruction services contract. 	<ul style="list-style-type: none"> o 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"> o Limited to bid package and addenda issued during bidding. 	<ul style="list-style-type: none"> o Via input from GC/CM under preconstruction services contract. 	<ul style="list-style-type: none"> o 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"> o County responsible effort 	<ul style="list-style-type: none"> o County responsible 	<ul style="list-style-type: none"> o County responsible 	Not a determining factor
Suitability for projects where existing facilities must remain in operation	<ul style="list-style-type: none"> o Higher potential 	<ul style="list-style-type: none"> o Good 	<ul style="list-style-type: none"> o Good 	GC/CM and negotiated procurement
Effects on planned schedule / schedule risk	<ul style="list-style-type: none"> o None 	<ul style="list-style-type: none"> o None 	<ul style="list-style-type: none"> o None 	Not a determining factor
Competitive pricing	<ul style="list-style-type: none"> o Yes for all aspects of construction. 	<ul style="list-style-type: none"> o Yes for subcontract packages, GC/CM markup, and specified general conditions 	<ul style="list-style-type: none"> o Best value selection via SOQs, proposals, and BAFOs does not assure lowest possible price 	Traditional DBB
Potential for	<ul style="list-style-type: none"> o Highest because of 	<ul style="list-style-type: none"> o Lower than DBB 	<ul style="list-style-type: none"> o 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.

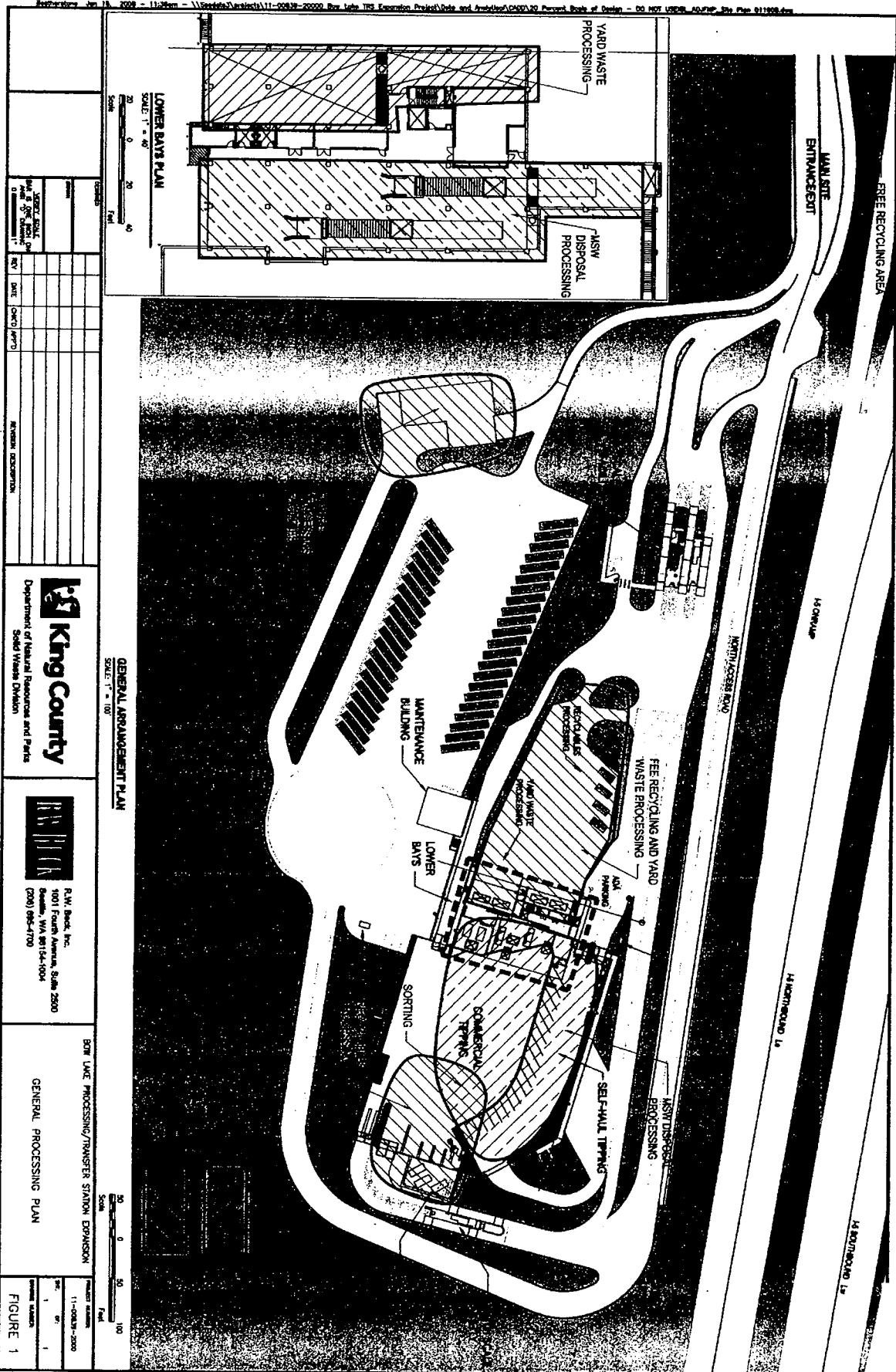


Figure 1

PRELIMINARY DRAWING - NOT FOR CONSTRUCTION

<p>GENERAL ARRANGEMENT PLAN SCALE: 1" = 100'</p>	
<p>50 0 50 100 Scale Feet</p>	
<p>King County Department of Natural Resources and Parks Solid Waste Division</p>	
<p>PLW 1001 Fourth Avenue, Suite 2500 Seattle, WA 98154-4904 (206) 964-4700</p>	
<p>BOH BOH LACE PROCESSING/TRANSFER STATION EXPANSION GENERAL PROCESSING PLAN</p>	
<p>Project Number: 11-00037-2000 Date: 07/01/01 Sheet: 1 of 1 Drawing Status: Final FIGURE 1</p>	

Attachment B

Bow Lake Transfer Station
Negotiated Procurement of a Facilities Contractor
Draft Evaluation Criteria

The following is draft evaluation criteria (qualifications and proposal) for the negotiated procurement of the Bow Lake Transfer Station Facilities Contractor. RCW 36.58.090(2)(f) states:

(f) the criteria established by the legislative authority to select a vendor or vendors, which **may** include but shall not be limited to...

The following list includes, but is not limited to, those items listed in RCW 36.58.090(f) which would be applicable to the Bow Lake Project.

1. Vendor's Prior Experience with Design and Construction of Similar Facilities

This could be demonstrated by reviewing the Prime Contractor, key individuals, major subcontractors, and vendors experience and qualifications in the following areas:

- Erection of large (i.e. greater than 50,000 square feet), long-span engineered metal buildings.
- Construction / implementing of health and safety plans in a landfill environment (i.e. work in refuse, excavation of contaminated soils, migratory landfill gas (explosion hazard)).
- Implementation of LEED construction programs, environmental management, and health and safety programs.
- Coordination of major construction work at a site where existing facilities have to remain in operation during construction.

2. Respondent's Management Capability

This could be demonstrated by reviewing the Prime Contractor, key individuals, major subcontractors, and vendors experience and qualifications in the following areas:

- Management of large projects (greater than \$30 million construction) involving major general civil/structural work including earthwork, site pre-loading, paving, temporary erosion and sediment control, excavation, foundations, buildings, complex mechanical and electrical systems, and building finish systems.
- Projects requiring dynamic scheduling and work coordination.
- Ability to work in a team environment with owner (public sector), construction manager, and other parties such as environmental monitors and independent commissioning agents.
- Key individuals (site superintendent, project manager, safety manager, environmental monitor, QA/QC manager, project controls) with minimum 10 years experience in their assigned role.

- QA/QC and safety programs
- Communication Plan
- 3. Schedule Availability and Financial Resources**
 - Availability
 - Construction schedule including flexibility to accommodate changes in Site Work contract, other site conditions and constraints
 - Bonding Capacity
 - Other Financial Parameters
- 4. Price of the Services**
- 5. System Reliability**
 - Risks to reliability posed by proposed approach to coordinating construction around ongoing operation of existing Bow Lake Transfer Station
- 6. Project Performance Guarantees**
 - Vendor provided systems and equipment
 - LEED construction measures
- 7. Penalty and Other Enforcement Provisions** (this may be included only to the extent any variation is allowed between Proposers)
- 8. Environmental Protection Measures to be Used**
 - Site management and environmental monitoring / management approach
- 9. Allocation of Project Risks** (this may be included only to the extent any variation is allowed between Proposers)

RCW 36.58.090(f) lists some criteria which do not seem like they would reasonably be used to compare proposers (i.e. experience with operation of similar facilities, compatibility with existing service facilities operated by the public body or other providers of service to the public; and consistency with the applicable comprehensive solid waste management plan.)
