0150-10818-0000

TRANSMITTAL

TO	DATE	COUNCIL FILE NO.
The Council	11/03/16	
FROM The Mayor		COUNCIL DISTRICT

Seven Franchise Agreements for Commercial and Multi-family Solid Waste Collection and Handling with Arakelian Enterprises, Inc. dba Athens Services; Consolidated Disposal Services, LLC dba Republic Services; Universal Waste Systems, Inc.; USA Waste of California, Inc. dba Waste Management; CalMet Services, Inc.; NASA Services, Inc.; and Ware Disposal, Inc.

Approved and transmitted for your consideration.
See the City Administrative Officer report attached.

(Ana Guerrero)

MAYOR

MAS:WKP:06170038t

CAO 649-d

Report From
OFFICE OF THE CITY ADMINISTRATIVE OFFICER
Analysis of Proposed Contract
($25,000 or Greater and Longer than Three Months)

To: The Mayor	Date: 11-02-16	C.D. No. ALL	CAO File No.: 0150-10818-0000
Contracting Department/Bureau: Public Works/Sanitation		Contact: Dan Meyers, (213) 485-3686	
Reference: Transmittal from the Board of Public Works dated September 26, 2016; referred for report on September 27, 2016.			
Purpose of Contract: To provide solid waste collection and handling for commercial and multi-family properties.			
Type of Contract: (X) New contract ( ) Amendment	Contract Term Dates: 10 years with two five-year renewal options for a total potential term of 20 years.		
Contract/Amendment Amount: $701.6 million in franchise revenues to the City over a 20-year term Proposed amount $701.6 million + Prior award(s) $0 = Total $701.6 million			
Source of funds: N/A			
Name of Contractor: See Report. Address: See Report.			

	Yes	No	N/A*	8. Contractor has complied with:	Yes	No	N/A*
1. Council has approved the purpose	X			a. Equal Employmt. Oppty./Affirm. Action	X		
2. Appropriated funds are available			X	b. Good Faith Effort Outreach**	X		
3. Charter Section 1022 findings completed			X	c. Equal Benefits Ordinance	X		
4. Proposals have been requested	X			d. Contractor Responsibility Ordinance	X		
5. Risk Management review completed	X			e. Slavery Disclosure Ordinance	X		
6. Standard Provisions for City Contracts included	X			f. Bidder Certification CEC Form 50	X		
7. Workforce that resides in the City: See Report	*N/A = not applicable ** Contracts over $100,000						

The Mayor requested that this Office review the proposed franchise agreements. We have performed our review and this Office is not providing a recommendation on the disposition of these agreements. According to the City Attorney, consistent with Los Angeles Administrative Code Section 10.5, the City Council can approve or reject any or all of the proposed agreements, but cannot modify the provisions within the proposed agreements.

Should the Council decide to approve all seven agreements, the following actions are recommended:

1. Authorize the Board of Public Works, on behalf of the Bureau of Sanitation, to execute a personal services contract for the City's Exclusive Franchise System for Commercial and Multi-family Solid Waste Collection and Handling with the following seven private waste haulers:

    1. Arakelian Enterprises, Inc. dba Athens Services;
    2. Consolidated Disposal Services, LLC dba Republic Services;
    3. Universal Waste Systems, Inc.;
    4. USA Waste of California, Inc. dba Waste Management;
    5. CalMet Services, Inc.;
    6. NASA Services, Inc.; and
    7. Ware Disposal, Inc.;

2. Exempt Consolidated Disposal Services, LLC dba Republic Services, which is headquartered in Arizona, from the City's restriction on contracting with businesses based in Arizona (C.F. 10-0002-S36);

Wilson K. Poon				
WKP	Analyst	06170038	Assistant CAO	City Administrative Officer

CAO 661 Rev. 5/2007

3. Instruct the City Attorney with assistance from the Bureau of Sanitation to draft an Ordinance to create a special fund for the receipt of community benefits revenues and related community benefit expenditures; and,

4. Instruct the Bureau of Sanitation to deposit all franchise payments and liquidated damages into the General Fund.

Should the Council decide to reject any or all of the proposed agreements, it is recommended that the Council implement the above-mentioned recommendations 1 through 4 for the approved agreements and return the rejected agreements to the Board of Public Works for further processing.

COMMENTS

In accordance with Executive Directive No. 3, the Board of Public Works (Board), on behalf of the Bureau of Sanitation (Bureau) requests authority to execute personal services contract with the following seven waste haulers:

Company	Address	% Workforce that Resides in City	Franchise Zone(s)
Arakelian Enterprises, Inc. dba Athens Services (Athens)	1408 Valley Blvd. City of Industry, CA 91746	21.4% (247 out of 1,155 employees)	West Los Angeles North Central Harbor
Consolidated Disposal Services, LLC dba Republic Services (Republic)	9200 Glenoaks Blvd. Sun Valley, CA 91352	7.4% (145 out of 1,950 employees)	South Los Angeles Northeast Valley
Universal Waste Systems, Inc. (UWS)	9016 Norwalk Blvd. Santa Fe Springs, CA 90670	16.6% (24 out of 145 employees)	Northeast
USA Waste of California, Inc. dba Waste Management (WM)	1001 Fannin, Suite 4000 Houston, TX 77002	0.5% (232 out of 42,616 employees)	West Valley Southeast Valley
CalMet Services, Inc. (CalMet)	7202 Petterson Lane Paramount, CA 90723	8.1% (12 out of 149 employees)	East Downtown
NASA Services, Inc. (NASA)	1100 South Maple Ave. Montebello, CA 90640	18.9% (17 out of 90 employees)	Downtown
Ware Disposal, Inc. (Ware)	1451 Manhattan Ave. Fullerton, CA 92831	1.8% (2 out of 114 employees)	Southeast

The term of each agreement is 10-years with two five-year renewal options for a total potential term of 20-years and the City has no financial obligations under these agreements.

Background

The Bureau currently provides solid waste collection for single family homes, multi-family properties with four units or less, and some larger buildings with five or more units. The remaining multi-family properties and commercial properties are serviced by private waste haulers under a permit system. Currently, there are approximately 144 private haulers operating under this permit system with the top 15 haulers controlling 99 percent of the market.

On November 14, 2012, the Mayor and Council (C.F. 10-1797) approved the creation of an Exclusive Franchise System (one hauler per franchise area) for solid waste collection from commercial and multi-family properties. The Franchise System provides the City with the opportunity to exert more control over the activities of these private haulers and to receive payment in consideration for the exclusive franchise right and privilege to provide solid waste handling services within the City. The Council also instructed the Bureau to prepare an implementation plan that included a timeline, staffing requirements, and a transition plan for the new Franchise System. The Bureau conducted extensive community outreach and solicited input and feedback from key stakeholders to develop the Franchise Implementation Plan, which was approved by Council (C.F. 10-1797-S15) on April 24, 2013. Some of the key elements of the new Franchise System are as follows:

- All customers are required to have recycling and solid waste services;
- The City will have 11 Franchise zones with three zones designated as single zones which may not be bundled together with others in the franchise award;
- Consistent with South Coast Air Quality Management District Rule 1193, franchise haulers are required to meet clean fuel requirements;
- Consistent with State law, franchise haulers will be required to implement an organics recycling program;
- No more than 49 percent of the services will be awarded to a single hauler;
- Cost of living increases will be capped for all contracts;
- Franchise haulers are required to develop contingency plans to ensure uninterrupted services;
- Extensive, ongoing public education will be conducted;
- Special needs of hospitals and other medical facilities will be addressed; and,
- An alternative process for studios will be provided.

In April 2014, the Mayor and Council (C.F. 10-1797-S16) certified the Final Environmental Impact Report and adopted the Ordinance creating the Exclusive Franchise System. Subsequently, in February 2015, the Mayor and Council (C.F. 14-1422) approved the Franchise Staffing Plan, which includes 112 full-time and as-needed positions to be phased in over a three year period. These positions will develop the infrastructure, policies, systems, and procedures to support the Franchise System as well as develop and participate in the contractor selection process, manage the franchise contracts, facilitate the transition from the current open market system to the Exclusive Franchise System, and enforce the policies of the Franchise System.

Contractor Selection Process

On June 11, 2014, the Board authorized the Bureau to distribute a Request for Proposals (RFP) and to negotiate personal service contracts with solid waste haulers for the Franchise System. By October 29, 2014, the Bureau received 15 proposals. Five evaluation teams were assembled to independently review and score each proposal on the following five RFP scoring categories:

RFP Scoring Category	Points
Qualifications	10
Customer Service/Transition Plan	25
Service Plan	20
Diversion Plan/Innovation Ideas	25
Cost and Franchise Payment	20
Total	**100**

Each evaluation team included four or more members comprised of subject matter experts from the Bureau and consultant teams. All 15 proposals were deemed responsive to the RFP and the Bureau negotiated contracts with the highest scoring proposals. On September 26, 2016, the Board approved the Bureau's recommendations for contract award.

The City has adopted a policy that restricts City departments, to the extent permissible and consistent with the City's interests, from contracting with businesses based in or with headquarters in Arizona (C.F. 10-0002-S36). One of the firms, Republic, which is being recommended for contract award for two of the large franchise zones (South Los Angeles and Northeast Valley) is headquartered in Arizona. The Council will be required to make a policy decision on whether to enforce this policy or grant an exemption to Republic. The seven franchise agreements were negotiated and developed to meet the City's overall diversion targets taking into consideration each hauler's commitment to building new infrastructure and facility improvements as well as each hauler's proposed plans to meet specific diversion targets. As such, if the exemption is not granted, the Bureau would be required to re-award the zones, which would require them to re-examine the overall capacity for recycling, organics, and locations of hauling yards for all the franchise agreements. The Board would also be required to reapprove the agreements. This would delay the contract award for all the franchise zones. In addition, eliminating Republic from consideration would reduce the pool of candidates in the competitive bid process. Therefore, if the Council approves the agreements, we are recommending that the Council exempt Republic as it is in the City's best interest to increase the number of haulers servicing the City and prevent any one hauler from controlling a significant share of the market.

Terms of the Agreements

The services provided under the Franchise System were designed to mirror the Bureau's existing residential curbside collection program such as the use of the Black Bin for residual waste, Blue Bin for recyclables, and the Green Bin for yard waste. The Bureau will continue to provide bulky item collection for all residential properties within the City, which includes single family, multi-family, condominiums, townhouses, and high rise residential towers. Provided below are some key provisions included in the franchise agreements:

- State of California and County of Los Angeles customers have the option to receive services through the Franchise System, but are not required to participate;
- Studios may contract with any franchise hauler regardless of franchise zone;
- Hospitals are given priority customer status due to their special needs and requirements;
- All customers will receive a base package of services that include one 96-gallon Black Bin and one 96-gallon Blue Bin to be serviced once a week. Green bin services are optional at this point (but will be required at a later time to meet diversion goals) and are at an additional cost;
- All missed collections will be collected by 10:00 AM the following day;
- All collection routes and schedules need to be approved by the City. All routes must minimize vehicle miles traveled, ensure public safety, and meet the customer's needs;
- Haulers will develop, implement, and maintain an Injury and Illness Prevention Plan (IIPP) and provide its workers with protection from safety hazards arising from operations. Haulers will also provide safety training to its employees and comply with all California State Occupational Safety and Health Administration (CalOSHA) regulations;
- Haulers will develop contingency plans and provide uninterrupted services to the extent possible during an emergency event such as a natural disaster or labor unrest;
- Vehicles must be clean fuel vehicles equipped with on-board technology with Global Position System (GPS);
- Haulers must provide customers with containers that meet City specifications and provide new or replacement containers within two days after notification from City or customer. Haulers are also required to maintain all containers, which includes removing graffiti, providing one annual steam cleaning, and repairing or replacing damaged containers at no expense to the customer;

- Haulers must provide a call center to handle customer inquiries and initiate service requests 24 hours per day and seven days a week. The haulers must also provide a walk-in customer service center in each respective franchise zone. Each of these facilities must be able to accommodate multilingual customers;
- Haulers are responsible for billing customers and prohibited from passing on the franchise payments and Assembly Bill (AB) 939 fees to the customer;
- Haulers will conduct outreach to educate customers on rate schedules, customer rights and responsibilities, and information about recycling programs;
- Haulers will offer customers organics recycling programs;
- Haulers will provide funding or in-kind services to reuse organizations;
- Haulers will meet City approved diversion goals as set forth in Appendix A of the agreements;
- The City will certify all facilities utilized by the haulers;
- Haulers are required to provide tonnage and waste characterization reports to the City; and
- Haulers will be required to improve existing facilities or build new facilities to meet the City's Zero Waste Goals.

Customer Rates

As mentioned previously, the minimum package of services for all customers includes one 96-gallon Black Bin and one 96-gallon Blue Bin to be serviced once per week. The rate for this minimum level of service in all the agreements shall not exceed $90.90 per month. However, the average current customer service level is the three cubic yard bin serviced once per week, which has a maximum rate of $216.72 per month. Additional services such as additional capacity and bins, food waste and Green Bin services, and increased collection frequency are available at an additional capped cost to customers. A complete list of services and maximum charges are included in Appendix C. It should be noted that the agreements also include the following adjustments to the maximum rate:

- Annual adjustments, effective January 1, 2018, using a weighted price index. This adjustment shall not be less than zero percent or greater than five percent.
- Adjustments for changes in applicable federal, state, or local laws and regulations governing the contractor's delivery of services or imposition of new or increased government requirements. This does not include changes to federal or state or local minimum wage laws, changes in federal or state income tax laws, changes in fuel costs, changes in market price indices for sales of recyclable materials, or changes in any labor costs. This adjustment will be requested by the contractor on an annual basis and there is no cap on the adjustment percentage.
- Two three-percent increases on January 1, 2019 and January 1, 2020 to cover the costs of implementing an organics recycling program. In October 2014, Governor Brown signed AB 1826 requiring businesses that generate eight cubic yards of organic waste per week to recycle their organic waste on and after April 1, 2016. Furthermore, on January 1, 2019, AB 1826 requires businesses that generate four cubic yards or more of commercial solid waste per week to arrange for organic waste recycling services. Contractors are required to meet specific diversion goals and those goals cannot be achieved without implementing an effective organics program.
- Sixty months after contract execution and every 60 months thereafter, the contractor may request that the Bureau Director review the need for an adjustment, not to exceed three percent.

At this time, it is difficult to estimate the impact to existing customer rates as the rates included in Appendix C are maximum rates the haulers may set and haulers may elect to charge lower rates. In addition, some customers are currently not receiving Blue Bin services and will be required to receive this service under the franchise agreements and some customers may request for additional capacity, additional service frequency, or organics services.

AB 939 Compliance Fee Revenues

Under the terms of the franchise agreements, the haulers will continue to remit to the City the AB 939 fees, which are 10 percent of gross receipts from Black Bin services. The receipts are deposited into the Citywide Recycling Trust Fund (CRTF) to support the costs to develop, implement, and administer recycling programs for industrial, commercial, and multi-family properties within the City. The existing staff and resources supporting the Franchise System are funded by the CRTF. However, the CRTF is projected to have a structural deficit by 2018-19.

The CRTF was created in 2002 and during the first seven years, revenues exceeded expenditures as the Bureau was developing and implementing its recycling programs. This created a healthy reserve within the fund but once these programs were fully implemented, expenditures began to exceed revenues. The CRTF is still carrying a modest reserve, which will be required to address a projected six percent reduction in AB 939 fee revenues from increased diversion of Black Bin materials and annual salary increases for labor costs over the next five years. In addition, the City's Solid Waste Integrated Resources Plan (SWIRP) requires the City to conduct large scale media and outreach to promote recycling programs and to construct a commercial organics processing facility (currently estimated cost is $35.6 million) at the Central Los Angeles Recycling and Transfer Station (CLARTS) to meets the City's Zero Waste goal by 2025. The implementation of the new Franchise System will reduce CRTF's most significant expenditure, which are the annual costs for providing recycling services to multi-family properties as these services will be provided by the franchise haulers. However, these savings are offset by the costs to administer the Franchise System.

Franchise Payments

Franchise payments were developed in contract negotiations and are determined as a percentage of gross receipts associated with the contractors providing services under the agreements. Specifically, the franchise payments to be remitted to the City are 10.5 percent of gross receipts from base services for the eight large franchise zones and 4.32 percent of gross receipts from base services for the three small franchise zones. For all additional services above the base, the franchise payment is 10 percent of gross receipts. It is estimated that the franchise agreements will generate approximately $701.6 million in franchise payments over the 20-year term of the agreements. These projections were calculated by taking the existing customer service levels (as reported by the haulers) multiplied by the maximum charges for equivalent service levels as outlined in the franchise agreements. The projections also assume annual Consumer Price Index (CPI) adjustments and reduced revenues from the increased diversion of Black Bin materials. Only $15.6 million in revenues are projected for the first year of the agreements to reflect the transition of customer accounts from the old permit system to the new Franchise System. For the remaining term of the agreements, average annual revenues are projected at $36.1 million per year. It should be emphasized that these are estimates based on available information such as existing customer service levels and maximum rates that haulers can charge and customers may elect for additional services or reduced levels of services and haulers may set lower rates. An Attachment has been provided to show the Bureau's annual projected franchise payments.

In addition to the $36.1 million in annual franchise payments, there are also additional revenues from liquidated damages and funding for community benefits, such as, supporting environmental community events. At this time, it is difficult to estimate the amount of revenue from liquidated damages and the agreements contain provisions to allow haulers an opportunity to correct potential violations before fines are assessed. In addition, the City recognizes that certain franchise zones face greater challenges in meeting diversion requirements and the agreements allow haulers to submit mitigating information prior to the assessment of liquidated damages. The City's hope is that there are no liquidated damages. For community benefits, the agreements require haulers to remit to the City on July 1st of every year, $1,000 per 100 accounts serviced. This would generate $649,170 in annual revenues based on 64,917 service accounts as reported in the Board report dated September 26, 2016. However, these funds would be restricted for community benefits, which are not clearly defined within the agreements.

In the Board's report dated September 26, 2016, the Bureau is recommending that a special fund be created for the deposit of all franchise payments, which also includes all liquidated damages and funding for community benefits. This new special fund would be administered by the Bureau to support the costs of administering the Franchise System. The special fund would restrict the uses of the franchise payments to the purposes defined in the Ordinance, which are unspecified in the Bureau's report.

Similar to the majority of other franchise fee revenue sources, we are recommending that the franchise payments be deposited into the General Fund instead of a special fund. Franchise fees represent consideration for the use of the City's right-of-way, much of which is supported by the General Fund. Depositing these revenues into the General Fund would provide the Mayor and Council with greater flexibility to program these unrestricted funds through the City's annual budget process. As an example, franchise revenues could be allocated to repair and maintain critical City infrastructure, such as streets and roadways, that are heavily impacted by waste hauling operations. If additional funding is required to support the costs to administer the Franchise System, the Mayor and Council could also allocate funding to the Bureau for this purpose through the City's annual budget process.

Initiative Ordinance for Non-Exclusive Franchise System

On October 12, 2016, the City Clerk approved the petition draft for an Initiative Ordinance for a Non-Exclusive Franchise System for Solid Waste Collection for circulation and collection of signatures of registered voters. The Initiative Ordinance is proposing to amend the Los Angeles Municipal Code (LAMC) to change the current Exclusive Franchise System to a Non-Exclusive Franchise System. The proposed ordinance would repeal certain City restrictions on removal and transportation of solid waste and would repeal the City's requirement that owners of commercial and multi-family buildings subscribe to and show proof of solid waste collection services. The proposed ordinance would repeal certain City rules requiring commercial establishments to retain collection services for recyclables. The proposed ordinance would also repeal certain City restrictions regarding the operation of solid waste disposal facilities. Lastly, the proposed ordinance would eliminate several current requirements in standard franchise agreements, including the requirements that a franchisee pay a living wage, supply trash containers for recyclables and organics, deliver recyclables and organics to certified City disposal facilities, and enter into labor peace agreements limiting work stoppages.

In accordance with Charter Section 450, the City Council may consider and adopt any proposed ordinance that was submitted by petition and filed with the City Clerk. According to Charter Section 451(b), the petition must collect 61,487 signatures of registered voters within the City, which reflects 15 percent of the total votes cast for all candidates for the Office of the Mayor at the last election at which the Mayor was elected. These signatures must be collected within 120 days prior to the filing of the completed petition. Once the required signatures are obtained and the City Clerk has certified the petition, the proposed ordinance is presented to the Council for consideration and the Council has 20 days to take an action on the item. The Council can adopt the ordinance, call a special election, or submit the proposed ordinance to a vote at the next regular City election.

FISCAL IMPACT STATEMENT

The franchise agreements are projected to generate approximately $701.6 million in franchise revenues during the 20-year term of the agreements. If the Council approves the agreements, this report recommends that these revenues and liquidated damages be deposited into the General Fund and funding be appropriated through the City's annual budget process, which is subject to Mayor and Council approval. This report also recommends that a special fund be created for the expenditure and receipt of community benefit revenues. The recommendations in this report are consistent with the City's Financial Policies as it relates to the use of new unrestricted revenues to support existing programs prior to funding new programs and the use of franchise revenues to diversify the City's revenue base to shelter the City from short-time fluctuations in any one revenue source.

MAS:WKP:06170038

Attachment

ATTACHMENT

Projected Franchise Revenues
From 2017-18 Through 2036-37

Year	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	TOTAL
Fiscal Year	17-18	18-19	19-20	20-21	21-22	22-23	23-24	24-25	25-26	26-27[5]	27-28	28-29	29-30	30-31	31-32	32-33	33-34	34-35	35-36	36-37	
Base (in millions)	$ 15.65	$ 35.78	$ 35.78	$ 36.09	$ 36.41	$ 35.70	$ 34.98	$ 34.26	$ 33.52	$ 32.75	$ 33.40	$ 34.07	$ 34.75	$ 35.44	$ 36.15	$ 36.87	$ 37.61	$ 38.36	$ 39.13	$ 39.91	
Minus Black Bin Decrease[1]	n.a	n.a	$ (1.38)	$ (1.38)	$ (1.38)	$ (1.38)	$ (1.37)	$ (1.37)	$ (1.37)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	
CPI Adjustment[2]	n.a	n.a	$ (0.03)	$ (0.03)	$ (0.03)	$ (0.03)	$ (0.03)	$ (0.03)	$ (0.03)	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	
New Revenue	n.a	n.a	**$ 34.37**	**$ 34.68**	**$ 35.00**	**$ 34.29**	**$ 33.59**	**$ 32.86**	**$ 32.11**	**$ 32.75**	**$ 33.40**	**$ 34.07**	**$ 34.75**	**$ 35.44**	**$ 36.15**	**$ 36.87**	**$ 37.61**	**$ 38.36**	**$ 39.13**	**$ 39.91**	
CPI Increase[3]	n.a	n.a	$ 0.69	$ 0.69	$ 0.70	$ 0.69	$ 0.67	$ 0.66	$ 0.64	$ 0.65	$ 0.67	$ 0.68	$ 0.69	$ 0.71	$ 0.72	$ 0.74	$ 0.75	$ 0.77	$ 0.78	$ 0.80	
Yr 3 & 4 Increase[4]	n.a	n.a	$ 1.03	$ 1.04	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	$ -	
Total	**$ 15.65**	**$ 35.78**	**$ 36.09**	**$ 36.41**	**$ 35.70**	**$ 34.98**	**$ 34.26**	**$ 33.52**	**$ 32.75**	**$ 33.40**	**$ 34.07**	**$ 34.75**	**$ 35.44**	**$ 36.15**	**$ 36.87**	**$ 37.61**	**$ 38.36**	**$ 39.13**	**$ 39.91**	**$ 40.71**	**$ 701.58**

[1] $1,375,357 steady revenue decrease due to an increase in diversion and decrease in solid waste (Black Bin) between FY 19-20 through FY 25-26.

[2] Applying a projected 2% annual CPI adjustment to revenue decrease.

[3] Applying a projected 2% annual CPI increase per FY.

[4] Applying a 3% increase for FY 19-20 and FY 20-21 as per contract.

[5] Starting FY 26-27 onward, no anticipated decreases in revenue due to increases in diversion.

[6] Projections do not include growth in materials generated.