



# City of Sunnyvale

## Agenda Item-No Attachments (PDF)

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### **REPORT TO COUNCIL**

#### **SUBJECT**

Issuance of Request for Proposal for Solid Waste and Recycling Collection Services to Bay County Waste Services

#### **REPORT IN BRIEF**

Solid waste and recycling collection services are provided to residents and businesses by a Franchisee, currently Bay Counties Waste Services (BCWS, dba Specialty, Inc), through the grant of an exclusive franchise by the City Council. The terms of the current BCWS solid waste collection franchise and agreement will expire on June 30, 2021. Council previously directed staff to develop a "single-source" request for proposal (RFP) package for solid waste and recycling collection services for release to BCWS. Staff requests Council review of the draft RFP package (attached) and recommends Council approval to release the package to BCWS.

The RFP package includes Council-approved communication guidelines governing the single-source RFP process, the BCWS Performance Review presented to Council in December 2018, an RFP specifying the City's service requests, a new draft agreement for provision of service, and a set of cost forms to be completed for submittal with BCWS' proposal. The RTC discusses the content of the RFP package, including changes to services to necessary to comply with key pending regulatory requirements.

#### **BACKGROUND**

##### **Solid Waste and Recycling Collection Contracting**

Solid waste and recycling collection services are provided to residents and businesses by a Franchisee, currently Bay Counties Waste Services (BCWS), through the grant of an exclusive franchise by the City Council, as allowed by Article XVI of the Sunnyvale City Charter and Sunnyvale Municipal Code Chapter 8.16. BCWS, dba Specialty, Inc. was awarded the collection franchise in 1990. A franchise for solid waste and recycling services cannot exceed thirty years pursuant to Sunnyvale City Charter Section 1604. The term of the current solid waste collection franchise with BCWS began on July 1, 1991 and will expire on June 30, 2021, a period of thirty years.

On July 31, 2018, Council reviewed a Council-directed study of solid waste contracting options (RTC 18-0415) and voted to:

1. Adopt communications guidelines (Attachment 1) to govern interactions between potential service providers (including the incumbent) and Council;
2. Direct staff to assess the performance of the current franchisee (BCWS), to report the results, and to request Council direction on whether to conduct a single source or a competitive process for award of a new franchise and agreement.

## **Review of BCWS Performance**

HF&H Consultants, LLC (HF&H) conducted a performance review of BCWS (see Attachment 2). Staff and consultant presented the results of the performance review at the December 18, 2018 Council meeting (RTC No.18-0910). Key areas of review included:

- Management Practices
- Collection Operations
- Customer Service

Staff found that the performance review represented a fair and reasonable assessment of BCWS' performance and recommended that Council review and accept the performance review findings, and direct that staff initiate selection of a post-2021 franchisee using a negotiated, single-source process. Council approved the staff recommendation and directed staff to return to Council for review and approval of the RFP document prior to it being issued.

## **Developing the RFP Package**

On April 23, 2019, Council approved a contract with HF&H to assist the City in conducting the RFP and negotiation process (RTC 19-0449), and work began in May. From July through mid-December, staff and HF&H worked as a team to develop the draft RFP package.

The single-source procurement process provided the opportunity for City and HF&H staff to be in communication with BCWS during development of the draft RFP package. City and HF&H staff met with BCWS management and officers in July and October to discuss the City's goals for the process, and key issues including SB 1383 requirements, multi-family bulky material collection, vehicle fueling, transition to an electric vehicle fleet, collection in the downtown area, and compensation. City and HF&H staff also discussed the findings and recommendations of the performance review with the BCWS management team. BCWS provided information and initial informal proposals for several topics, which helped to define the content of the RFP. In addition, City and BCWS customer service staff met in September to discuss future technology options and RFP-related issues were discussed at the regular monthly City-BCWS meetings.

## **EXISTING POLICY**

Prior Council direction as discussed in Background.

## **ENVIRONMENTAL REVIEW**

Issuance of a Request for Proposals does not require environmental review under the California Environmental Quality Act (CEQA) because it is an administrative or fiscal activity that do not involve a commitment to any specific project that may result in a physical change to the environment. Appropriate CEQA review will be completed before awarding the franchise.

## **DISCUSSION**

### **Overview of the RFP Package**

The Request for Proposal (RFP) package includes a "mini-RFP", a draft agreement and proposal forms (Attachments 3, 4 and 5, respectively). The RFP is simpler than would be typical for a competitive process, with a requested scope of services, submittal requirements, and process and schedule details. With a single-source process, there is no need to request information regarding experience or qualifications.

The draft agreement (Attachment 4) contains the City's desired service provisions and business terms and has been reviewed by the City Attorney's Office, as well as by Best Best & Kreiger, a law firm assisting the City with the process. The draft agreement is the most significant rewrite of the collection agreement since the early 2000's. While the agreement was amended in 2004 and 2011, those amendments were relatively narrow in focus.

Among important considerations in developing the RFP package:

1. Retaining Current Strong Protections: The current agreement has a number of strong protections for the City and ratepayers, such as City sole right to approve an assignment of the agreement, BCWS conduct of pilot projects to test new programs at no cost to the City, and relatively strong liquidated damage provisions for violations of the agreement. We have sought to identify and retain these provisions in the new draft agreement.
2. Term: Solid waste collection agreements are typically seven to ten years in length, matching the capital depreciation schedules for vehicles. The agreement assumes a seven-year term; the cost proposal requests pricing for both a seven and a ten-year term to determine if the latter provides added value.
3. Updated Services and Practices: A number of current services and collection practices are not reflected in the current agreement, while outmoded practices need to be removed or updated. The new draft agreement addresses the existing single-family FoodCycle program, the addition of a new FoodCycle program to collect food scraps from multi-family residents, expansion of existing organics programs for businesses and a new multi-family bulky material collection program, among others.
4. Updated Customer Service Provisions: The current agreement does not fully reflect current customer service practices. The close working relationship between City and BCWS customer service staff requires a strong shared understanding of policies and procedures and the data management capabilities of each other's hardware and software, as well as coordination of information flow in both directions.
5. SB 1383: The new draft agreement addresses the requirements of SB 1383, related to reducing land disposal of organic materials, as necessary to ensure the City will be in compliance beginning in January 2022. See further discussion of SB 1383 below.
6. Other Regulatory Mandates: The new draft agreement addresses the program requirements of other recent diversion-related State legislation, most notably AB 341 and AB 1826, precursors to SB 1383 that require provisions for recycling and organics service, respectively, to multi-family and commercial customers.
7. Fleet and Fuel Conversion: Consistent with the Climate Action Playbook recently adopted by Council, the draft agreement provides for a transition to an electric fleet, once such technology has been proven for use in collection vehicles. In the meantime, BCWS will use renewable natural gas (RNG) as a "bridge" fuel. The use of RNG will also help the City comply with minimum recovered organic product procurement target requirements of Senate Bill 1383.

8. Compensation: The current agreement has an atypical process for City review and approval of BCWS compensation. The contract uses a “cost-plus” approach in which (with some exceptions) BCWS earns profit in direct relation to its costs. This approach works through diligent oversight by City staff and has served the City very well over the term of the current franchise, providing flexibility to direct changes in scope with an ease that is not generally found in municipal solid waste contracting. Other compensation arrangements generally lock in an initial level of compensation for a relatively fixed menu of services, provide periodic index adjustments using CPI and/or other indices, and allow for adjustments due to a change in scope. City and HF&H staff discussed the current approach with BCWS and City staff and after deliberation, decided the current model works well. As a result, the new draft agreement largely retains the existing compensation process. The key changes are: 1) increased use of performance metrics to evaluate BCWS’s ongoing efficiency; 2) eliminating the process for the City and BCWS to share in identified cost savings; and 3) streamlining of the annual review process. Regarding sharing of cost savings, City and BCWS agreed that the mechanism can be difficult to administer and has the potential to reward activities that should be adopted as good management practice without an incentive to do so. As with past extension discussions, BCWS offered options to reduce costs, including eliminating profit on interest (which is reflected in the draft agreement) and noted potential changes in fueling and in its property lease that may lower costs. Staff anticipates that further discussion with BCWS of the draft agreement language in Article 8 and Exhibit E may lead to additional improvements without changing the basic approach.
9. Use of Incentives: The draft agreement incorporates SB 1383-related incentives that reward BCWS based on City-wide improvement over time, with metrics such as an increased percentage of customers using organics services and decreases in contamination.
10. Additional Performance Review Recommendations: The draft agreement also addresses a number of specific issues identified in the performance review such as timely response to City requests by BCWS management, provision of customer service (e.g., improved staff training and minimum standards for customer telephone access), enhanced collection quality (e.g., improved driver route training, added responsibilities for route supervisors and improved bin maintenance), proactive adoption of new technology, and more comprehensive and frequent reporting.

The cost forms (Attachment 5) are based on the compensation application that BCWS submits annually. The forms capture service pricing, underlying assumptions and key collection efficiency measures, such as homes per route, hours per route and lifts per hour. Where applicable, the forms request pricing for discrete services to provide an understanding of the incremental costs (and rate impacts) associated with both required and optional services. Discrete pricing will allow Council to understand the impact of new and modified services and of SB 1383 implementation.

In discussion with Council at the December 18, 2018 meeting, staff noted that if BCWS were to fail to provide an acceptable proposal and/or subsequent negotiations did not reach a conclusion that Council felt met the City’s needs, the City could then move to a competitive process. It was noted that this decision would need to be made by mid-2019 to allow enough time to carry out a competitive process and to transition to a new contractor by July 1, 2021, should the selected service provider not be BCWS. While staff has every expectation that the single-source process will prove successful, given the current timing it would be prudent for the City to have the option to enter into a one-year agreement with BCWS for FY 2021-22 (with a new franchise), should Council choose to pursue a competitive process. Staff will return to Council at a later date regarding the status of this option.

## Next Steps

Key activities include:

- Staff will address any Council-directed changes to the RFP package, prior to release to BCWS.
- Staff will release the package to BCWS, and hold a pre-proposal meeting with the company to ensure there is clarity regarding the City's request.
- BCWS will submit the written proposal, draft agreement with any comments, and pricing information on April 3, 2020.
- City and HF&H staff will review and evaluate the written proposal, suggested revisions to the draft agreement and the proposed costs.
- City and HF&H staff will brief Council in a study session regarding BCWS' proposed approach to specific issues, the nature of any BCWS exceptions to the draft agreement and provide a general understanding of proposed costs and related customer rate impacts.
- Staff anticipates conducting three negotiation sessions with BCWS as necessary to address outstanding issues and will initiate any necessary CEQA review.
- Staff will return to Council to recommend award by ordinance of the new agreement and a new franchise if negotiations are successful and authorize the City Manager to execute the new agreement, or pursuit of a competitive process if negotiations are unsuccessful.

## The Role of SB 1383

SB 1383 Short-Lived Climate Pollutants (Lara, 2016), has the goals of reducing statewide disposal of organic waste from 2014 levels by 50 percent by 2020 and 75 percent by 2025, and establishes a 2025 target of recovering for human consumption at least 20 percent of the amount of edible food that is now disposed. Decomposition of disposed organic materials creates methane, a potent climate change gas. The primary means for achieving these goals are to:

- Reduce creation of food waste through smart purchasing practices,
- Rescue unwanted food for the hungry,
- Collect and process organic materials from single family, multi-family and commercial generators, and
- Close the loop by using processed material as fuel and compost.

SB 1383 places responsibility for meeting program requirements and for compliance directly on local jurisdictions.

CalRecycle's implementing regulations are quite complex, and the City has been active in commenting on several drafts released for public review. Final regulations are anticipated to be released in early 2020. Staff intends to brief Council soon after that, focusing on how SB 1383 will impact Sunnyvale residents, businesses, and City programs, and to identify issues and options for Council review and approval. Staff will return to Council at a later date with revisions to the Sunnyvale Municipal Code necessary to implement SB 1383.

Initial SB 1383 requirements take effect in January 2022, during the first year of the new agreement with BCWS. While the timing of the new agreement is very beneficial for SB 1383 implementation, it requires that the draft agreement incorporate key contractor requirements for SB 1383 based on the most recent draft regulations. A matrix for initial allocation of responsibilities between BCWS and the City (Exhibit K of the draft agreement) is included in the draft agreement. The matrix reflects the most recent, October 2019 version of the regulations. BCWS had the opportunity to review and comment on a draft version of the matrix.

Staff's objective is to address these issues in a way that provides BCWS the specificity necessary for developing their proposal and pricing, while providing options for Council consideration. In particular, Council will have the opportunity, both prior to and following execution of the new agreement to provide direction to staff regarding compliance requirements for residents and businesses. CalRecycle has made significant changes with each version of the regulations. Thus, the request to BCWS, as well as the final agreement, may require revision to reflect the final regulations.

### **FISCAL IMPACT**

There is no fiscal impact related to this action. Council will review proposed BCWS' pricing and possible rate impacts prior to award of a new agreement.

### **PUBLIC CONTACT**

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

### **ALTERNATIVES**

1. Approve the issuance of a RFP package ("Mini-RFP", Draft Agreement and Proposal Forms (Attachments 3, 4, and 5, respectively) to BCWS, dba Specialty, Inc., for Solid Waste and Recycling Collection Services, with minor clarifying revisions as needed.
2. Approve the issuance of a RFP package ("Mini-RFP", Draft Agreement and Proposal Forms (Attachments 3, 4, and 5, respectively) to BCWS, dba Specialty, Inc., for Solid Waste and Recycling Collection Services with modifications as directed by Council.
3. Provide staff direction regarding more significant changes in approach or substance to the draft RFP, with direction to return to Council for review of the revisions prior to issuance of the RFP to BCWS.

### **STAFF RECOMMENDATION**

Alternative 1: Approve the issuance of a Request for Proposal package ("Mini-RFP, Draft Agreement and Proposal Forms (Attachment 3,4,5, respectively) to Bay Counties Waste Services, dba Specialty, Inc., for Solid Waste and Recycling Collection Services.

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Reviewed by: Teri Silva, Assistant City Manager  
Approved by: Kent Steffens, City Manager

**ATTACHMENTS**

1. Communications Guidelines
2. 2018 BCWS Performance Review
3. Draft RFP
4. Draft Agreement
5. Draft Cost Forms