



MEMORANDUM

May 2, 2012

TO: Board of Mayor and Aldermen

FROM: Eric S. Stuckey, City Administrator
Russell Truell, Assistant City Administrator / CFO
Becky Caldwell, Solid Waste Director
Brian Wilcox, Purchasing Manager

SUBJECT: Results of solicitation for bids for municipal solid waste disposal services, either including or excluding transport services, for an initial term of service of two (2) years, effective July 1, 2012 and through June 30, 2014, with four (4) options to extend the term of service, each time at the City's sole discretion and for up to three (3) additional years, for a maximum possible term of service of fourteen (14) years total, not beyond June 30, 2026, for the Disposal Division of the Solid Waste Department (Purchasing Office Procurement Solicitation No. 2012-011 through 2012-012)

Purpose

The purpose of this solicitation for bids was to compare competitive unit pricing available from the private sector for municipal solid waste disposal services, either including or excluding transport services, with pricing that has been offered to the City by Bi-County Solid Waste Landfill, a Tennessee local governmental agency.

Background

The City published on March 29, 2012 a Notice to Bidders in the *Williamson Herald* for municipal solid waste disposal services, either including or excluding transport services. In addition, bid documents were sent on or about the same date directly to five (5) potential bidders known or thought to be interested in this solicitation. Bids from three (3) vendors were publicly opened at the bid opening held on April 12, 2012. A tabulation of the bids received for this solicitation is attached.

Financial Impact

The rates per ton bid by the private sector service providers are listed on both the tabulation attached as well as in the table below. For comparison purposes, the rates per ton offered by Bi-County Solid Waste Landfill are listed in the table below. Also for comparison purposes, the City is currently paying BFI Waste Systems of Tennessee \$25.50 per ton for disposal services only (excluding transport services).

Options

In accordance with the bid documents, the City reserves the right to reject any and all bids.



To assist with evaluating the various options available to the City at this time, staff has prepared the table below which summarizes the key components of the various bids as well as the current offer from Bi-County Solid Waste Landfill:

| Owner/Operator: | BFI Waste Systems of TN, LLC (a.k.a., Republic Services, Allied Waste) | Bituminous Resources, Inc., d/b/a Hopkins County Regional Landfill, a subsidiary of Waste Connections, Inc. | Waste Management Inc. of Tennessee | Bi-County Solid Waste Management |
|---|---|---|---|---|
| Landfill name (city, state) / round-trip distance in miles from City of Franklin solid waste transfer station: | Middle Point Landfill (Murfreesboro, TN) / 90 miles | Hopkins County Regional Landfill (White Plains, KY) / 248 miles | West Camden Landfill (Camden, TN) / 167 miles Cedar Ridge Landfill (Lewisburg, TN) / 76 miles | Bi-County Landfill (Woodlawn, TN) / 166 miles |
| Initial term of service | Two (2) years, effective July 1, 2012 and through June 30, 2014 | Two (2) years, effective July 1, 2012 and through June 30, 2014 | Two (2) years, effective July 1, 2012 and through June 30, 2014 | Two (2) years, effective July 1, 2012 and through June 30, 2014 |
| Options to extend term of service | Four (4) times, each time for up to three (3) additional years, for a maximum possible term of service of fourteen (14) years total, not beyond June 30, 2026 | Four (4) times, each time for up to three (3) additional years, for a maximum possible term of service of fourteen (14) years total, not beyond June 30, 2026 | Four (4) times, each time for up to three (3) additional years, for a maximum possible term of service of fourteen (14) years total, not beyond June 30, 2026 | Four (4) times, each time for up to three (3) additional years, for a maximum possible term of service of fourteen (14) years total, not beyond June 30, 2026 |
| At the discretion of which party to decide whether to exercise any of the options to extend the term of service | City's sole discretion | City's sole discretion | "Extensions at the 5, 8 and 11 year anniversaries must be mutual consent." (West Camden Landfill) "Extensions at the 8 and 11 year anniversaries must be mutual consent." (Cedar Ridge Landfill) | City's sole discretion |
| At the discretion of which party to decide whether to exercise an option to terminate term of service with or without cause | City's sole discretion | City's sole discretion | "City may terminate service only in the event it does not have sufficient taxpayer funds to continue then current method of operation." | City's sole discretion |
| Rate per ton for transportation and disposal during the initial term of service | \$27.00 | \$39.66 | \$32.00 (West Camden Landfill) | \$32.00 |
| Rate per ton for disposal only during the initial term of service | \$19.50 | \$16.00 | \$24.50 (Cedar Ridge Landfill) | \$20.00 |
| Estimated City of Franklin cost per ton to transport solid waste from CoF solid waste transfer station to designated landfill using CoF labor and equipment | \$10.07 | \$27.39 | \$7.79 (Cedar Ridge Landfill) | \$16.51 |
| Sum of rate per ton for disposal only during the initial term of service plus estimated CoF cost per ton to transport solid waste using CoF labor and equipment | \$29.57 | \$43.39 | \$32.29 (Cedar Ridge Landfill) | \$36.51 |



| Owner/Operator: | BFI Waste Systems of TN, LLC (a.k.a., Republic Services, Allied Waste) | Bituminous Resources, Inc., d/b/a Hopkins County Regional Landfill, a subsidiary of Waste Connections, Inc. | Waste Management Inc. of Tennessee | Bi-County Solid Waste Management |
|---|--|--|---|--|
| Method for adjusting the rate per ton after the initial term of service | Exactly once for each extension, using U.S. CPI-U, U.S. City Average, All Items Less Food and Energy, not seasonally adjusted, for the South Urban Statistical Area. | Exactly once for each extension, using U.S. CPI-U, U.S. City Average, All Items Less Food and Energy, not seasonally adjusted, for the South Urban Statistical Area. | “WM will waive the CPI increase if any at the 2 year anniversary and receive the CPI increase at the 5 year anniversary. Thereafter, CPI adjustments must be annual. In no event will WM accept a CPI decrease if there was one year over year.” | Exactly once for each extension, using U.S. CPI-U, U.S. City Average, All Items Less Food and Energy, not seasonally adjusted, for the South Urban Statistical Area. |
| Quoted unit pricing for services rendered shall be all inclusive for all services to be rendered and all costs of doing so. City hereby specifically rejects any other fee or other surcharge. Examples of such rejected other fees or other surcharges include, but are not limited to, ... fuel charges Any changes to the vendor’s cost of doing business and/or service delivery, including but not limited to any example listed above, shall be absorbed by the vendor and shall not be subject to pass-through to City. | BFI agrees to this provision. | Hopkins County Regional Landfill agrees to this provision. | <p>WM requires a fuel surcharge be in place and requests the following language in final contract: “In the event that the price of fuel deviates from a threshold price per gallon[, then] a mileage base fuel surcharge shall be applied on a per haul basis. The surcharge will increase by one cent (\$.01) per mile for every 5-cent increase in the price of diesel fuel above the threshold price of \$4.00 per gallon. Calculations shall be made the first day of each month based upon the United States Department of Energy PADD 2 (Midwest) price for the previous Monday (or Tuesday if Monday is a Federal holiday).” (West Camden Landfill)</p> <p>WM agrees to this provision. (Cedar Ridge Landfill)</p> | Bi-County agrees to this provision. |



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| <p>Sanitary landfill shall be currently and properly permitted to operate as such, and to accept municipal solid waste at that sanitary landfill, by all governmental agencies having regulatory authority to issue such a permit, and shall continuously maintain said permit(s) throughout the term of service, including any extensions thereto.</p> | <p>BFI agrees to this provision.</p> | <p>Hopkins County Regional Landfill agrees to this provision.</p> | <p>WM agrees to this provision. (West Camden Landfill)</p> <p>“Cedar Ridge’s obligations set forth in this Bid are specifically subject to Cedar Ridge’s receipt of a final and non-appealable permit to expand the Landfill. With Cedar Ridge’s expansion permit having been issued by TDEC in 2011, and settlement discussions nearing their conclusion on the appeal, our expectation is to have a definitive description of Cedar’s ability to accept material prior to the award of this contract.” (Cedar Ridge Landfill)</p> | <p>Bi-County agrees to this provision.</p> |
| <p>City’s duty to load transfer trailers is ...</p> | <p>... to within the weight limits of the law.</p> | <p>... “to legal capacity.”</p> | <p>... to within the weight limits of the law.</p> | <p>... to within the weight limits of the law.</p> |
| <p>What becomes of excluded, hazardous (e.g., radioactive) & special waste in the event it should be discovered, either after being loaded into vendor’s transfer trailer (if vendor is providing disposal services including transport services) or after being admitted into the landfill (if vendor is providing disposal services excluding transport services), to be in City’s municipal solid waste stream?</p> | <p>“BFI will not agree to handle or dispose of hazardous and/or special waste under this Agreement. If special waste becomes part of the waste stream, then we can agree to handle it subject to a special waste agreement.” BFI requests that the following provision be added to the final contract: “Title to and liability for Excluded Waste or Hazardous Waste shall at no time pass to Contractor.”</p> | <p>Hopkins County Regional Landfill “will not accept any hazardous waste ... or waste, in any amount, which is regulated under Federal or State law. For purposes of this contract, ... ‘hazardous waste’ shall also include motor oil, gasoline, paint and paint cans. No hazardous waste will be accepted under this contract.”</p> | <p>The proper disposal of such waste shall be the responsibility of the service provider instead of the City.</p> | <p>City shall be responsible for the proper disposal of Excluded Waste in the event any such waste is provided to Bi-County for disposal.</p> |
| <p>Service provider to provide certificate(s) of insurance, with the City of Franklin listed as named additional insured, ..., for the following minimum types and limits of insurance coverage: General Liability (\$2 million); Auto Liability (\$2 million); Workers’ Compensation (\$500,000 or statutory limits, whichever is greater); Property Damage (\$500,000); and Error & Omissions (\$2 million)</p> | <p>Service provider takes no exception.</p> | <p>“This is not a typical insurance requirement for this type of service contract. We do not supply this add on and don’t understand how it would effect a transport and disposal service contract.”</p> | <p>Service provider takes no exception.</p> | <p>Bi-County has offered to provide a copy of a Certificate of Liability Insurance naming the City as additional insured but has not been asked to match the types and limits of insurance coverage requested of the private sector service providers.</p> |



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| <p>Each insurance policy required ... shall contain the following statement: "The insurance evidenced by this Certificate will not be cancelled or altered except with written consent by and between the Insured and Additional Insured named within the insurance contract."</p> | <p>Service provider takes no exception.</p> | <p>"Our insurer will not agree to that broad based language for a certificate holder. However, we can certainly use the industry standard language that is: 'Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.' Or we could produce ... [an] endorsement cancelation."</p> | <p>Service provider takes no exception.</p> | <p>Bi-County has offered to provide a copy of a Certificate of Liability Insurance with the following cancellation provision: "Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions."</p> |
| <p>Significant violations of the performance standard ...</p> | <p>"... should be tied to the services provided under the Agreement (versus any violation of law that may be unrelated to the services) and should be a violation that is not cured within the applicable cure period."</p> | <p>May include:</p> <ul style="list-style-type: none"> • Any violation of applicable law or regulations (other than any excess weight violations caused by City's own operations). • Adversely impacting the operations of Transfer Station. • Failure to properly secure all solid waste being transported to the landfill. • Submittal of erroneous or incomplete invoices. | <p>May include:</p> <ul style="list-style-type: none"> • Any violation of applicable law or regulations (other than any excess weight violations caused by City's own operations). • Adversely impacting the operations of Transfer Station. • Failure to properly secure all solid waste being transported to the landfill. • Submittal of erroneous or incomplete invoices. | <p>Bi-County has offered the following provision: "During the term hereof, Bi-County shall receive and accept City Solid Waste from the Transfer Station and transport and dispose of such waste at the Sanitary Landfill, all in compliance with applicable laws and regulations."</p> |
| <p>Indemnity</p> | <p>Even though BFI acknowledged receipt of Addendum No. 1 (in which, among other things, City declines to revise section 3 of the City's Indemnification Agreement to match section 12 of City's Standard Procurement Terms and Conditions but instead revises section 12 of City's Standard Procurement Terms and Conditions to match section 3 of the City's Indemnification Agreement), and even though BFI submitted an executed CoF Indemnification Agreement without alteration, nevertheless BFI requests City revise section 3 of the City's Indemnification Agreement to match section 12 of City's Standard Procurement Terms and Conditions as originally issued prior to Addendum No. 1.</p> | <p>Hopkins County Regional Landfill requests the following substitute language to section 12 ("Indemnification") of City's Standard Procurement Terms and Conditions: "Vendor agrees to indemnify and hold City harmless from and against legal liability for all judgments, losses, damages and expenses to the extent such judgments, losses, damages or expenses are caused by Vendor's negligent act, error or omission in the performance of the services of this agreement. In the event judgments, losses, damages or expenses are caused by the joint or concurrent negligence of Vendor and City, they shall be borne by each party in proportion to its own negligence. The terms and conditions of this paragraph shall survive completion of this services agreement."</p> | <p>Service provider takes no exception.</p> | <p>As Bi-County is also a unit of local government, it is not permitted by state law to indemnify other parties.</p> |



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| <p>Force Majeure, generally</p> | <p>BFI requests that the following provision be added to the final contract: "Except for City' obligation to pay amounts due to Contractor, any failure or delay in performance under this Agreement due to contingencies beyond a party's reasonable control, including, but not limited to, ... acts of God, shall not constitute a breach of this Agreement, but shall entitle the affected party to be relieved of performance at the current pricing levels ... during the term of such event and for a reasonable time thereafter."</p> | <p>Hopkins County Regional Landfill has requested no exceptions for Force Majeure.</p> | <p>WM has requested no exceptions for Force Majeure.</p> | <p>Bi-County has requested no exceptions for Force Majeure.</p> |
| <p>Force Majeure, after a natural disaster or terrorist act</p> | <p>BFI requests that the following provision be added to the final contract: "The collection or disposal of any increased volume resulting from a natural disaster or terrorist act ... shall be included as part of the Contractor's service under this Agreement. In [such event], the Contractor and the City shall negotiate the payment to be made to the Contractor. Further, ... then the City shall grant the Contractor variances in routes and schedules, as deemed necessary, of the Contractor."</p> | <p>Hopkins County Regional Landfill has requested no exceptions for after a natural disaster or terrorist act.</p> | <p>WM has requested no exceptions for after a natural disaster or terrorist act.</p> | <p>Bi-County has requested no exceptions for after a natural disaster or terrorist act.</p> |
| <p>Submittal conditional upon negotiated terms and conditions</p> | <p>"This bid is submitted upon the condition that, if selected for award of this work, BFI Waste Systems of Tennessee, LLC and the City of Franklin, TN will negotiate in good faith on the terms and conditions to be included in a mutually acceptable contract."</p> | <p>Hopkins County Regional Landfill bid is not conditional upon terms and conditions to be negotiated.</p> | <p>WM bid is not conditional upon terms and conditions to be negotiated.</p> | <p>Offer from Bi-County is not conditional upon terms and conditions to be negotiated.</p> |



In summary, each of the private sector bids has the following deficiencies:

BFI Waste Systems of TN, LLC (a.k.a., Republic Services, Allied Waste)

- BFI will not agree to handle or dispose of hazardous and/or special waste under this Agreement.
 - Staff notes that the City's specifications state, "City warrants that it does and will, during the term of service, including any extensions thereto, undertake reasonable efforts to exclude regulated hazardous waste and special waste from the municipal solid waste to be processed by the vendor pursuant to this procurement, in compliance with applicable federal, state and local laws and regulations." Therefore, staff recommends this exception be considered a clarification as to the bidder's position on this matter, and that this exception in effect does meet City specifications.
- BFI requests that significant violations of the performance standard should be tied to the services provided under the Agreement (versus any violation of law that may be unrelated to the services) and should be a violation that is not cured within the applicable cure period.
 - Staff notes that the intent of the specifications was not to hold a service provider accountable for violation of law that may be unrelated to the services. Therefore, staff recommends this exception be considered a clarification as to the bidder's position on this matter, and that this exception in effect does meet City specifications.
- BFI requests City revise section 3 of the City's Indemnification Agreement.
 - Staff notes that BFI submitted an executed CoF Indemnification Agreement without alteration. Therefore, staff recommends this exception be considered a clarification as to the bidder's position on this matter, and that this exception in effect does meet City specifications.
- BFI requests that Force Majeure provisions be added to the final contract.
 - Staff notes that, in response to an inquiry from one of the bidders during the period for questions, the City's specifications were revised to allow the service provider extra time to recover and resume meeting City's performance expectations in the event of tonnage in excess of 385 tons per City business day. Therefore, staff recommends this exception be considered material.
- BFI's submittal is conditional upon terms and conditions to be negotiated.
 - Staff notes that municipal bids are not subject to negotiated terms and conditions. Therefore, staff recommends this exception be considered material.

Bituminous Resources, Inc., d/b/a Hopkins County Regional Landfill, a subsidiary of Waste Connections, Inc.

- Hopkins County Regional Landfill states that the City's duty to load transfer trailers is "to legal capacity" rather than to within the weight limits of the law.
 - Staff speculates that this bidder did not mean to imply that the transfer trailers must be loaded to the exact legal capacity. Therefore, staff recommends this exception be considered a clarification as to the bidder's position on this matter, and that this exception in effect does meet City specifications.
- Hopkins County Regional Landfill will not accept any hazardous waste under this contract.
 - Staff notes that the City's specifications state, "City warrants that it does and will, during the term of service, including any extensions thereto, undertake reasonable efforts to exclude regulated hazardous waste and special waste from the municipal solid waste to be processed by the vendor pursuant to this procurement, in compliance with applicable federal, state and local laws and regulations." Therefore, staff recommends this exception be considered a clarification as to the bidder's position on this matter, and that this exception in effect does meet City specifications.
- Hopkins County Regional Landfill declines to provide certificate(s) of insurance for the indicated minimum types and limits of insurance coverage.
 - Staff recommends this exception be considered material.



- Hopkins County Regional Landfill requests a substitute provision in the event of cancelation or alteration of the insurance required by the City.
 - Staff recommends this exception be considered a clarification as to the bidder's position on this matter, and that this exception in effect does meet City specifications.
- Hopkins County Regional Landfill requests City revise section 12 ("Indemnification") of City's Standard Procurement Terms and Conditions.
 - Staff recommends this exception be considered a clarification as to the bidder's position on this matter, and that this exception in effect does meet City specifications.
- Hopkins County Regional Landfill did not include with its bid City's Affidavit of Drug-Free Workplace, executed in full.
 - Staff recommends this exception be considered material.

Waste Management Inc. of Tennessee

- Waste Management requests that certain extensions to the term of service be by mutual consent rather than at the City's sole discretion.
 - Staff recommends this exception be considered material.
- Waste Management requests that City may terminate service only in the event it does not have sufficient taxpayer funds to continue then current method of operation rather than at the City's sole discretion.
 - Staff recommends this exception be considered material.
- Waste Management seeks CPI adjustments annually after the 5 year anniversary, and will not accept a CPI decrease if there was one year over year.
 - Staff recommends this exception be considered material.
- Waste Management requires a fuel surcharge be in place if the City selects the West Camden Landfill bid for transportation and disposal services.
 - Staff recommends this exception be considered material.
- The Waste Management bid for disposal services only at Cedar Ridge Landfill is contingent upon Cedar Ridge's receipt of a final and non-appealable permit to expand the Landfill.
 - Staff recommends this exception be considered material.

Recommendation

Staff recommends that the City reject all bids and instead continue to pursue entering into an inter-local agreement for both transport and disposal services with Bi-County Solid Waste Landfill. Purchasing Manager Brian Wilcox is of the opinion that the prepared specifications as distributed allowed for competition among multiple vendors, and that the staff recommendation appears to be made in a fair and impartial manner based upon the bids received.

City of Franklin, Tennessee
Tabulation of Bids

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|--|---|---|--|--|---|-----------------------|---|
| Purchasing Office Solicitation No.: | 2012-011 thru 2012-012 - municipal solid waste disposal services, either including or excluding transport services | | | | | | |
| Notice to Bidders published in the <i>Williamson Herald</i> on: | 3/29/12 | | | | | | |
| Number of vendors that were notified of / that responded to this solicitation for bids: | 5 / 3 | | | | | | |
| Date and time bids due and publicly opened: | 4/12/12 2:00 PM | | | | | | |
| Present at opening of bids: | Gerry Burke and John Doyen of Republic Services; Carl Towne of Waste Connections; Stacey Cothran and Barry Marshall of Waste Management; Russ Truell of the City of Franklin Finance Department; Becky Caldwell of the City of Franklin Solid Waste Department; and Tiffany Wilkins and Brian Wilcox of the City of Franklin Purchasing | | | | | | |
| Target meeting of BOMA at which recommendation will be considered: | 5/8/12 | | | | | | |
| Bids received from: | Bid No.: | Description: | Does the bid MOES¹? / If not, how many exceptions do not MOES¹? | Total bid pricing, per ton, for initial term (7/1/2012 thru 6/30/2014): | Total estimated value of bid for initial 24-mo. term of service based on specified estimated quantities: | Payment terms: | Bid and unit pricing is valid through: |
| BFI Waste Systems of TN, LLC Middle Point Landfill 750 East Jefferson Pike Murfreesboro, TN 37130 John Doyen, General Manager 615-782-5551 ldoyen@republicservices.com | 1 of 2 | Disposal at Middle Point Landfill (Murfreesboro, TN) including transport | No / 2 (bid conditional upon negotiated terms and conditions; force majeure) | \$27.00 | \$3,510,000 | net 30 days | 08/01/12 |
| | 2 of 2 | Disposal at Middle Point Landfill (Murfreesboro, TN) excluding transport | | \$19.50 | \$2,535,000 | | |
| Bituminous Resources, Inc., d/b/a Hopkins County Regional Landfill, a subsidiary of Waste Connections, Inc. 308 Grays Branch Road P.O. Box 201 White Plains, KY 42464 Rick Walker, Landfill Manager 270-676-1919 rickwa@wasteconnections.com | 1 of 2 | Disposal at Hopkins County Regional Landfill (White Plains, KY) including transport | No / 2 (types and limits of insurance coverage; Affidavit of Drug-Free Workplace not submitted) | \$39.66 | \$5,155,800 | net 30 days | 07/31/12 |
| | 2 of 2 | Disposal at Hopkins County Regional Landfill (White Plains, KY) excluding transport | | \$16.00 | \$2,080,000 | | |
| Waste Management Inc. of Tennessee 2555 Meridian Drive, Suite 200 Franklin, TN 37067 Barry Marshall, Municipal Marketing Rep. 865-388-6952 bmarshall@wm.com | 1 of 2 | Disposal at West Camden Landfill (Camden, TN) including transport | No / 4 (certain options to extend term of service by mutual consent; limitation on City's option to terminate without cause; adjustments to unit pricing for extensions to term of service; fuel surcharge) | \$32.00 | \$4,160,000 | net 30 days | 07/31/12 |
| | 2 of 2 | Disposal at Cedar Ridge Landfill (Lewisburg, TN) excluding transport | | \$24.50 | \$3,185,000 | | |

¹MOES indicates "meet(s) or exceed(s) specifications"