

MIAMI BEACH

COMMITTEE MEMORANDUM

TO: Finance and Economic Resiliency Committee Members

FROM: Alina T. Hudak, City Manager

DATE: September 22, 2023

SUBJECT: RFQ 2023-506-WG FRANCHISE WASTE HAULERS TO PROVIDE MULTI-FAMILY RESIDENTIAL AND COMMERCIAL WASTE COLLECTION AND DISPOSAL

HISTORY:

The City currently has two (2) franchise agreements issued to solid waste contractors for residential and commercial solid waste collection and disposal. The term of the franchise agreements with the City's current franchise waste contractors expired on September 30, 2022, and have been extended on a month-to-month basis until September 30, 2023. The Administration is seeking an extension until such time as the new franchise agreements to be awarded pursuant to the contemplated RFQ become effective.

On October 16, 2019, the Mayor and City Commission adopted Resolution No. 2019-31056, extending a renewal of the City's Non-Exclusive Franchise Waste Contractor Agreements and new Service Agreement for a period of three (3) years, commencing as of October 1, 2019, and expiring on September 30, 2022.

The Public Works Department engaged MidAtlantic Solid Waste Consultants (MSW) to assist staff with evaluating the current agreement structure and to provide recommendations for an open versus closed, exclusive versus non-exclusive Franchise Waste Contractor Agreement.

At the April 29, 2022, Finance and Economic Resiliency Committee (FERC) meeting, the City Administration presented MSW's findings, and, among them, MSW recommended that the City transition to an exclusive franchise system. A motion was made to expand the analysis and to come back to a future meeting with the findings. The Administration continued meeting with FERC on May 27, 2022, July 29, 2022, November 14, 2022, January 27, 2023, February 17, 2023, and lastly on March 31, 2023.

Parallel to the FERC discussions of what would be the future terms of a non-exclusive commercial franchise waste contractor agreement and service agreements, a motion was made for Public Works to place a request to extend, on a month-to-month basis, the contract term of the Non-exclusive Commercial Franchise Waste Contractor Agreement and Service Agreement with Waste Management Inc. of Florida, and Waste Connections of Florida, Inc., for a period not to exceed September 30, 2023. The City Commission approved this request via Resolution No. 2022-32228.

At the March 31, 2023, FERC meeting, Committee members made a motion to proceed with a Request for Qualifications (RFQ) and provided additional guidance to consider when drafting the RFQ, listed below:

- Have the Administration ensure no less than three waste haulers (with additional waste haulers to serve as alternates to replace any primary waste hauler that drops out).
- Consider an annual percentage increase cap and a hardship waiver that would allow the waste hauler to exceed the cap's limit (depending on extenuating circumstances) with the City Commission's approval.
- Determine the term duration of the contracts between customers and haulers (whether a maximum of 2 years or 5 plus years, should there be a major capital investment for equipment).
- Restrict the option for auto-renewal. Instead, allow a 90-day renewal notice from the waste hauler to the resident and a 60-day window for the customer to respond to the waste hauler.
- Include a clause that would allow residents to call the City's Sanitation staff directly, should there be any service issues or concerns, as well as allowing for residents to call the waste hauler directly.
- Effective next fiscal year, provide a quarterly LTC report that would list complaints from customers, identified issues, and turnaround time to remedy the issue(s).
- Include language to allow for property manager credentials to be accepted by the City in the same manner as resident credentials for the purposes of drop off of bulk waste or bulk pickups on behalf of the resident (and if possible, find ways to make it easier for

the purposes of drop off of bulk waste or bulk pickups on behalf of the resident (and if possible, find ways to make it easier for multifamily with more than nine units to have curb bulk pickup).

As the RFQ process takes place, the Administration will require that the month-to-month non-exclusive Franchise Waste Contractor Agreements and accompanying franchise fees, in-kind services, and other program contributions set to expire on September 30, 2023, be extended from October 1, 2023, until such time as the solicitation process of the RFQ is completed and the new contracts are in place.

At the May 17, 2023 City Commission meeting, Public Works brought forth a Resolution accepting the March 31, 2023 FERC recommendation to proceed with a Request For Qualifications (RFQ) for the City's waste hauler services and to extend the current contracts for non-exclusive commercial franchise waste services (Item R7G), potentially promoting competition and ensuring residents and business in the City receive the best service possible. A motion was made to approve the request via Resolution No. 2023-32617. Commission directed that while the RFQ draft is being finalized by the Administration, the item be brought to the FERC meeting for additional review and feedback.

At the July 26, 2023 City Commission meeting, Public Works brought forth a Request for Qualifications 2023-506-WG Franchise Waste Contractors to provide residential and commercial waste collections and disposal. A motion was made to defer the item to the September 27, 2023 City Commission meeting and to continue the discussion at FERC and PSNQL Committees.

At the July 28, 2023 FERC meeting, public comments were taken, and some of the issues raised from the public were: contractual-required public benefit, sunset of contract, age of trucks, termination for convenience, length of contract, 8% price cap, broker impacts, and not allowing auto renewal. A recommendation was made to have the Administration meet with vendors, and to work with the industry to discuss public benefits and fleet vehicle requirements.

A roundtable discussion with the industry (including Waste Management, Waste Connections and Waste Pro USA) was had on August 17, 2023. The focus of the conversation related to the RFQ and six customer contract provisions and or concerns brought forth by the haulers to City Administration. These were:

- 1) Term of customer contracts:
 - The original RFQ had the 2-year contract limitation currently applying for 25 units and above (and not 9-24 units) this item has been corrected.
- 2) No auto renewal evergreen clause and proposed termination by convenience clause:
 - There is a 90-day contract renewal notification notice provision from the waste hauler to the customer, and a 60-day response time (and set to convert to a month-to-month for non-responders). It was discussed whether the RFQ should allow for a grace period.
- 3) Brokers clause:
 - Currently not in the upcoming Committee agendas for discussion
- 4) 8% price cap
 - Related to 9-24 family, excluding 25 units and up, high rises residential and commercial.
- 5) Termination for convenience:
 - There have been discussions at Commission about having a 30-day termination notice instead, how it would affect pricing, and whether there should be a fee for a with or without termination option (the current contract offers a termination for convenience fee).
- 6) Escalation of customer complaints:
 - There were no concerns raised

Aside from the six customer provisions, industry members raised concerns over the commercial collection/fleet vehicle requirements. Initially, the clause stipulated vehicles needed to be brand new, then later modified to reflect three years. This topic will likely continue to be discussed at Committee following the printing of this memorandum. Lastly, the roundtable discussion concluded with a proposed in-kind, public benefit requirement that will potentially come up at the September's FERC and PSNQL Committees, as well as expected feedback to be added to the draft RFQ, which will go to City Commission for approval

ANALYSIS:

Franchisee and Alternate Franchisee Selection:

Based on the initial direction provided by the City Commission, the intent of this RFQ is to promote competition to ensure residents and businesses in the City, receive the best service possible with reasonable pricing and contract terms. Toward this goal, the City intends to award three (3) or more franchise waste contractor licenses and two or more (2) alternates to substitute a franchise waste hauler that is acquired by another franchise waste hauler or whose contract is terminated.

The franchisees and alternate franchisees shall be selected from the applicant pool based upon a determination of such franchisees' qualifications as set forth in Section 90-229(a) of the City Code. Notwithstanding the foregoing, the City Commission may award fewer franchise waste contractor licenses if the City Commission determines, in its sole discretion (and having considered the recommendation of the City Manager) that there are insufficient qualified applicants to award three (3) franchise waste contractor

recommendation of the City Manager), that there are insufficient qualified applicants to award three (3) franchise waste contractor licenses and/or alternates.

Replacement Agreement:

In order to consider a replacement agreement, RFQ seeks responses from qualified firms interested in becoming franchise waste haulers and providing multi-family residential and commercial waste collection and disposal.

The requirements of the City's Solid Waste Ordinance, as codified in Section 90, Articles I–V, of the City Code (and as same may be amended from time to time), shall apply to any franchise agreement resulting from this RFQ. To give effect to some of the concerns the City Commission seeks to address pursuant to this RFQ, the Administration recommends amending Section 90-227 (Handling of Complaints) and Section 90-230 (Term of franchise agreements; initial term; renewal term) of the City Code. Specifically, Section 90-227 will be amended to require waste contractors to maintain records documenting customer communications regarding service issues or complaints and provide quarterly reports to the sanitation division relating to customer complaints and their handling. In addition, Section 90-230 will be amended (1) to provide for a renewal term of franchise agreements with waste haulers of up to five years (instead of three), (2) to require that haulers structure agreements with their customers and brokers be coterminous with their franchise agreements and (3) to provide for a 120-day open solicitation period prior to the commencement of the new franchise agreements awarded following this RFQ and at the expiration of each 5-year franchise agreement term or renewal term to allow haulers to solicit and sign accounts with customers and brokers during such period.

Staff are recommending the following language as it relates to the customer contract provisions of the RFP for section D.

- 1) Term of contracts: A maximum of 2-year contracts for Multi-Family 9-24 Units. All other Multi-Family and Commercial accounts can have contracts of up to 5 years or equal to the length of the city's current nonexclusive franchise agreement.
- 2) No Auto-Renewal/Evergreen Clauses except as provided in item 3 below.
- 3) Prior Notice to Customer/Broker of Expiration Date with Option to Renew. Hauler must send 90-day notice and customer must respond within 60 days. In the event that the Customer/Broker does not respond within the 60-day period, the contract will automatically renew for an additional 1-year period, under the prior terms and conditions.
- 4) Caps on annual increases are applicable to Multi Family 9-24 units. The cap is 8% annually.
- 5) Termination for convenience provision to allow 30-day notice for cancellation of customer contracts. This shall include a reasonable premium for haulers to charge for this provision.
- 6) Escalation of Customer Complaints provision allows customers to contact the City directly if their issue is not resolved within 24 hours by the hauler.

Staff is recommending the following language for section E of the contract.

Collection Vehicles

Waste contractors must procure collection vehicles that have been in service for not more than three (3) years and that are clean, sanitary, neat in appearance and in good repair, prior to the commencement of the term (or any renewal term) of the franchise agreement. This requirement is a condition precedent to the commencement of services to customers. Failure to comply with this requirement will constitute a default and the City shall have all remedies available pursuant to the franchise agreement, including without limitation the right to terminate the franchise. The City shall have the right to inspect all collection vehicles at any time with or without notice and to require that a collection vehicle be repaired or replaced as necessary to ensure the highest level of service to the City's residents and businesses. In this regard, each franchisee shall at all times have available to it, reserve vehicles that are clean, sanitary, neat in appearance and in good repair and which can be put into service within two (2) hours of any breakdown or unsatisfactory inspection.

Staff is recommending the following language for section F of the contract.

OPEN SOLICITATION PERIOD

There will be an open solicitation period during the last one hundred twenty (120) days of the term of franchise agreements (including agreements in place at the time this RFQ is issued). During such solicitation period, franchise waste contractors shall be free to solicit and sign contracts with customers and brokers in respect of waste collection agreements with terms that will commence upon the expiration of the expiring franchise agreements. With regard to customer contracts in effect at the time this RFQ is issued that will not expire by or before the effective date for new franchise agreements, waste haulers shall provide written notice to such customers by certified mail, return receipt requested, not less than one hundred eighty (180) days prior to the expiration of their franchise agreements advising that they may terminate their agreements without payment of liquidated damages or early termination fees of any kind if they desire to contract with a different waste hauler during the solicitation period for a term that commences when the new franchise agreements become effective.

Additionally, staff is currently reviewing the concept of splitting the contract sunset periods into a phased in approach. The phases will include contracts that expire in 2024 and contracts that expire in 2025 or later, so that the open solicitation process doesn't occur at

will include contracts that expire in 2024 and contracts that expire in 2025 or later, so that the open solicitation process doesn't occur at the same time for all contracts. Staff has asked both of the current commercial haulers to provide a list of dates of all of their expiring contracts for their multi-family and commercial accounts. If staff is unable to obtain this information, a more rudimentary recommendation (ie by odd or even address number or split the city geographically) as to the process for phasing the new franchise contract enrollments can be made.

A draft of the RFQ is attached.

Following the receipt of proposals, an Evaluation Committee will review proposals in accordance with the criteria established in the RFQ. The selection of firm(s) with whom the City may enter into negotiations shall be based on the criteria established in the RFQ.

CONCLUSION:

The following update is presented to the members of the Finance and Economic Resiliency Committee for discussion and further direction.

Applicable Area

Citywide

Is this a "Residents Right to Know" item, pursuant to City Code Section 2-14?

Yes

Does this item utilize G.O. Bond Funds?

No

ATTACHMENTS:

Description	Type
<input type="checkbox"/> RFQ Waste Hauler	Other