

Report to Committee: Organized Collection Process

Background

In 2002, the City negotiated and executed a 5-year contract extension with Minneapolis Refuse, Inc. (MRI) for the collection of approximately one half of the residential garbage, recycling, yard wastes and problem materials (metals) generated in the City. This was a negotiated agreement, extending previously negotiated agreements that have been in place between MRI and the City since 1971. The MRI contract has never been competitively offered. MRI provides the collection service in the contracted half of the City, while the City provides disposal, billing, public education, and customer service functions City-wide and also collection functions in the non-contracted portion of the City.

In April, 2006, the City issued a Request for Proposals (RFP) for collection services in the contracted portion of the City. The RFP process was challenged in Hennepin County District Court by MRI.

Organized Collection Planning Process

On December 1, 2006, in response to an order from Hennepin County District Court that the City follow the solid waste organized collection process outlined in Minnesota Statutes Section 115A.94, the City Council adopted a Resolution of Intent to organize residential solid waste collection and invited the participation of interested persons licensed to operate solid waste collection services in planning and establishing the organized collection system for one half of the City's residential dwelling units. A facilitator, Kevin Johnson, an attorney now with Stoel Rives LLP, Minneapolis, was hired to serve as a facilitator and conducted three planning meetings and received comments regarding possible contracting methods for organized solid waste collection in the contracted half of the city. Meetings with interested licensed haulers and other interested parties occurred on February 20, 22 and March 8, 2007, at varying places and times to accommodate diverse schedules of potentially interested parties.

In May, 2007, the City ended the initial planning period specified by the Organized Collection Statute in Section 115A.95 Subd. 4 (c), and began the 90-day discussion period required by the Organized Collection Statute (115A.94 Subd. 4 (d)), with licensed haulers who had expressed interest in potential organized solid waste collection arrangements. Also in May, the Council adopted Organized Collection Goals, which were used to evaluate the proposed collection methods during the discussion period, and upon conclusion of the 90-day discussion period. These goals are:

1. Maintain or exceed the current high level of customer satisfaction for solid waste and recycling services.
2. Provide solid waste and recycling collection services in the most cost-effective manner possible, while meeting Clean City objectives.
3. Recognize the need for a comprehensive waste collection program that meets the

unique physical and demographic challenges of a core urban city.

4. Protect the health and safety of City residents and visitors by minimizing disruption of collection services due to natural events, labor disputes or Incidents of National Significance, or change of haulers.
5. Comply with City policies on Small and Minority Owned Businesses, Living Wage and Domestic Partner Benefits, and anti-discrimination requirements.

90-Day Discussion Process

Pursuant to the Organized Collection Statute (115A.94 Subd. 4 (d)), after completion of the planning process the City conducted a 90-day discussion period regarding possible solid waste organized collection arrangements with licensed haulers who expressed interest in participating with the City in this process during the initial planning and comment period. All parties, including all licensed haulers in Minneapolis, four labor unions, and other haulers in the metro area were sent a copy of the planning process summary and notified that they must express interest prior to closure of the planning period if they wished to be included in the 90-day discussion period.

To open the discussion, staff presented the following possible organized collection arrangements for the contracted half of the city:

- A. Negotiate with all interested haulers to determine if an agreement can be reached with a majority of the haulers who have expressed interest as to an organized collection arrangement.
- B. Issue a Request for Proposals for contracted solid waste services for the entire contracted half of the City to be served under one contract, using the evaluation criteria adopted by the City Council on May 11, 2007. Evaluate all proposals submitted, including any submitted by Minneapolis Refuse, Inc. (MRI) or by any collector licensed in the City that has expressed an interest. The Evaluation Criteria adopted by the Council is found in Exhibit C.
- C. Negotiate a new contract with MRI, the current contractor.
- D. Issue a Request for Proposals for contracted solid waste services for the contracted half of the City to be divided into multiple segments and served through individual contracts, with the RFP being evaluated based on the evaluation criteria identified. Evaluate all proposals submitted, including any submitted by MRI or by any collector licensed in the City that has expressed an interest.
- E. Include Labor Peace provisions in all contract requirements.

Meeting participants were also given the opportunity to suggest other possible organized collection arrangements. No meeting participant suggested a significant variation from the potential arrangements outlined above.

After five meetings in the “Discussion” portion of the process (each meeting was approximately two hours and the meeting dates were: June 12, June 26, July 17, July 31, and August 22), no consensus was achieved among the various interested parties who participated in the discussions of possible organized collection arrangements.

Positions of Interested Parties

The positions of the various interested parties expressed during the Discussion process are summarized below:

Minneapolis Refuse, Inc.

A total of 22 licensed haulers participated in the discussion process. Sixteen of the haulers are members of Minneapolis Refuse Inc. (“MRI”). MRI insisted that all of its constituent members be counted individually for the purpose of determining a “majority of licensed collectors” for the purposes of Minnesota Statutes, Section 115A.94, Subd. 4 (d). MRI stated its position that in its view the Organized Collection statute provides the opportunity for the City to reach agreement with a majority of the licensed collectors operating in the city. It is MRI’s position that, since 16 of the 22 licensed collectors are members of MRI, MRI represents a majority of the licensed collectors participating in the process. MRI supports Option C of the staff’s possible organized collection arrangements, which is to negotiate a new contract solely with MRI as currently constituted, the current contractor. Therefore, MRI believes that the City should now proceed to negotiate a new contract solely with MRI, and that if the City does not, it has not complied with the Organized Collection Statute. In that position, MRI considers itself a single hauler, therefore it should be the sole hauler negotiated with by the City. MRI indicated that other, non-MRI, collectors licensed and operating in the City would only have the opportunity to collect any single family and other residences currently collected under the existing contract City contract if they purchase shares in MRI..

Other Licensed Haulers

Aspen Waste Systems, a licensed hauler that is not a member of MRI, supports Option D. This option is to issue an RFP for solid waste collection services for the contracted half of the City. The City would be divided into multiple segments and served through individual contracts, with proposals for each segment being evaluated based on the evaluation criteria identified. Aspen advocates that the City issue an RFP similar to that issued in April 2006. If there had been consensus among the participating haulers, Aspen would also have supported that the number of service areas within the contracted half of the City be set at a number other than that in the previous RFP, and that recycling services within each service area be provided under a separate contract from collection of solid waste.

Another hauler that is not part of MRI, Boone Trucking, Inc., would like the opportunity to join MRI and participate in residential collection. Boone currently collects solid waste from industrial, commercial and multi-unit residential properties in Minneapolis, but is precluded from participating in or proposing to participate in the general residential collection system operated by the City since it is not a member of MRI and the City has not allowed non-MRI members to either participate in or propose to participate in this system.

While Boone does not oppose MRI continuing to have the contract, he would like the opportunity to be part of MRI as well.

One other hauler, Veolia Environmental Services, attended each of the discussion meetings and indicated a preference for issuance of an RFP for a single or multiple contracts, either Option B or D.

Labor Unions

Two labor unions, Teamsters Local 120 and Teamsters Local 320, as well as the Central Labor Union Council, do not support Option D, issuance of an RFP for multiple contracts. All of the labor unions support Option E, which is inclusion of Labor Peace provisions in any solid waste contract for the contracted half of the City.

Staff Recommendation

The statute states that if the City is unable to agree on an organized collection arrangement with a majority of the licensed collectors who have expressed interest, or upon expiration of the 90 days, the City may propose implementation of an alternate method of organizing collection. Such an alternate method could include a negotiated or bid contract, or other means, using one or more collectors or an organization of collectors.

Staff does not agree with MRI, whose constituent members are a majority of the licensed haulers who participated in the Discussion process (if each member is counted separately), that it is consistent with the City's goals and the interests of its citizens to negotiate solely with MRI rather than using a competitive process open to licensed collectors in the City that are not part of MRI. Thus, it is the recommendation of City staff that the City adopt Option D. Staff recommends that the City issue a Request for Proposals for contracted solid waste services for the contracted half of the City. These services should be divided into multiple segments and served through individual contracts. Staff believes that this option best meets the City's goals and meets the requirements of the Organized Collection Statute.

Staff believes that Option D provides a competitive contracting process (which benefits the City and its residential solid waste customers), while at the same time minimizing potential displacement of haulers (which is a criterion of the Organized Collection Statute). Under Option D, the City could choose to award some, all, or none of the multiple collection segments to MRI, assuming MRI responds to the RFP and proposes to serve some or all segments. It would allow other licensed haulers in the City a fair chance to compete to provide City services. It will also encourage all haulers to offer their best price, best service, and best equipment as a starting point for negotiations with the City on its next collection contract.

In order to proceed in this manner, the Council will need to determine that the City is unable to agree on an organized collection arrangement with a majority of the licensed collectors who have expressed interest, and that the City should proceed with the alternate method of issuing a multiple segment Request for Proposals.

Teamsters Local 120 and the Central Labor Union Council have been adamant that a “Labor Peace” provision be an integral part of any agreement for collection services entered into by the City. The City has adopted, as City-wide policy, determination of the appropriateness of inclusion of a Labor Peace provision to any Request for Proposals (RFP) or City contract by the Permanent Review Committee of the City. This Committee’s purpose is to review all RFP’s before distribution, to insure that all RFP’s meet all City requirements, policies and criteria, and that all provisions necessary to insure a successful selection process are included in each RFP. It is the staff recommendation that this City Policy be followed in the case of a Collection RFP, and that the Permanent Review Committee make the determination of the potential need for a Labor Peace provision.

Minn. Stat.115A.94 requires that if the City is unable to agree on an organized collection arrangement with the majority of haulers, it must adopt specific findings that:

- (1) describe in detail the procedures it used to plan and to attempt implementation of organized collection through an arrangement with collectors who expressed interest; and
- (2) evaluate the proposed organized collection method in light of at least the following standards: achieving the stated organized collection goals of the city or town; minimizing displacement of collectors; ensuring participation of all interested parties in the decision-making process; and maximizing efficiency in solid waste collection.

Therefore, staff recommends that the following Findings be adopted by the City:

Proposed Findings

Pursuant to Minnesota Statutes, Section 115A.94, Subd. 4, the City of Minneapolis, finds as follows:

I. Description in detail of the procedures used to plan and to attempt implementation of organized collection through an arrangement with collectors who expressed interest:

1. On December 1, 2006, the Minneapolis City Council adopted a Resolution of Intent after conducting a public hearing regarding organized collection of residential solid waste within the City. Notice of the hearing was published at least two weeks prior to the hearing and notice of the hearing was mailed to persons known by the City to be operating solid waste collection services in the City.
2. The City also solicited the participation of interested parties, including licensed haulers, haulers operating outside the City and residential customers through letters to the 81 neighborhood associations within the City.
3. The City then initiated the 90-day period for development of plans for organized collection, which is required under Minn. Stat. §115A.94, subd. 4(c). The City invited the assistance of all licensed haulers operating as of the date of the Resolution of Intent, and the City hired a facilitator to conduct planning discussion meetings.

4. Meetings with interested licensed haulers and other interested parties occurred on February 20, 22 and March 8, 2007. The meetings were designed to obtain input on possible organized collection plans. The City also solicited comments from its neighborhood associations and offered to attend neighborhood association meetings. The City solicited written comments regarding the planning process from interested parties. A summary of the planning process, dated April 10, 2007, is attached as Exhibit A.

5. Prior to conclusion of the planning process, the City notified all licensed haulers operating with the City, as well as other haulers operating outside the City, and other interested parties of a final opportunity to be placed on the interested party list for the discussion process.

6. On May 11, 2007, the City Council acted to declare a conclusion to the planning process and commencement of the 90-day discussion period required under Minn. Stat. § 115A.94, subd. 4(d).

7. A total of 22 licensed collectors were placed on the interested party list along with four labor unions and representatives of some of the collectors and labor unions. Sixteen of the licensed collectors on the list are constituent parts of MRI. A copy of the final interested party list is attached as Exhibit B.

8. During the 90-day discussion process, the City continued to use a facilitator for meetings with licensed collectors and other interested parties. The City presented possible organized collection arrangements for discussion with the licensed collectors who had expressed interest. The possible organized collection arrangements discussed regarded the half of the City residences that are currently contracted for service with Minneapolis Refuse Inc. (MRI). The possible arrangements were:

A. Negotiate with all licensed collectors operating in the City who have expressed an interest to determine if an agreement can be reached between the City and the licensed collectors who have expressed an interest in participating in an organized collection arrangement.

B. Issue a Request for Proposals for contracted solid waste services for the entire contracted half of the City to be served by one contract, using the evaluation criteria passed by the Council on May 11, 2007. These criteria are found in Exhibit C. Evaluate all proposals submitted, including any submitted by Minneapolis Refuse, Inc. (MRI) or by any collector licensed in the City that has expressed an interest.

C. Negotiate a new contract with MRI, the current contractor.

D. Issue a Request for Proposals for contracted solid waste services for the contracted half of the City to be divided into multiple segments and served through individual contracts, with the RFP being evaluated based on the evaluation criteria identified. Evaluate all proposals submitted, including any submitted by MRI or by any collector licensed in the City that has expressed an interest.

E. Include Labor Peace provisions in all contract requirements.

9. At the meetings, participants were given the opportunity to suggest other possible organized collection arrangements; however, no significantly different arrangements were presented by the participants.

10. A total of 22 collectors participated in the process. Sixteen of the collectors were part of MRI. As a result, the licensed collectors who were part of MRI constituted a majority of the interested licensed collectors in the City. If those 16 collectors are counted as one then there were 5 interested collectors licensed in the City. All 16 collectors that were constituent parts of MRI took the position that the City should negotiate solely with MRI, as a single entity, for a new contract within the contracted half of the City.

11. Other collectors took the position that the City should issue some form of a Request for Proposals for the contracted half of the City. Thus, there was no consensus among all the collectors as to a potential organized collection arrangement that would work for all haulers.

12. The City has determined that negotiating a contract solely with MRI, without conducting a competitive Request for Proposals (RFP) process, is contrary to the strong interest of the City to conduct a competitive process before entering into contracts for services to be provided to the City. The City has a particularly strong interest in entering into a competitive process for the residential solid waste collection contract. This is one of the City's larger contracts with very significant impacts on the City's quality of life and upon the desirability of the City as a place to live. This desirability has several aspects. One of these is the cost of being a Minneapolis resident. Part of keeping that cost down is minimizing the cost to the City of solid waste collection so that solid waste fees paid by residents can be minimized. Another aspect is the quality of solid waste collection services. Residents want to live in a City that is clean and picked up with minimal interference with residential life. A competitive process enables the City to compare pricing and service options in order to meet the City's organized collection goals. The City cannot properly negotiate on these items with a single entity if it has never given other entities a chance to make competing offers on price, modern (or even revolutionary) equipment and higher and better levels of service.

13. The City has not been able to agree upon an organized collection arrangement with a majority of the licensed collectors in the City (if MRI is counted as 16 rather than 1). It is in the City's best interests to implement an organized collection arrangement that a majority of collectors (if MRI is counted as 16) have not agreed to. It is in the best interests of the City to conduct a competitive RFP contracting process for the contracted half of the City, to be divided into multiple segments and served through individual contracts with the proposals being evaluated based on the evaluation criteria identified by the City. One of the evaluation criteria will be minimization of displacement of haulers.

14. By conducting a competitive contracting process through a Request for Proposals, the City is not making a decision for or against contracting with MRI. MRI will be free to submit a proposal or proposals.

15. Any proposals submitted by MRI or any other collector licensed in the City that has expressed an interest will be considered.

16. The proposal process will be structured such that a proposer can propose on all or a subset of the collection segments. Thus, it is possible that one collector could be chosen to serve all of the multiple segments, or the segments could be divided among two or more haulers, depending upon evaluation of the proposals.

II. Evaluate the proposed organized collection method in light of at least the following standards:

a. achieving the stated organized collection goals of the City.

The proposed organized collection method described above achieves the stated goals of the City. The use of a competitive RFP process will help the City accomplish its goal of a cost effective and efficient solid waste collection service. The RFP process will also enable the City to evaluate the ability of potential contractors to provide a high level of service. Further, by identifying in the RFP the stated goals of the City and requiring that each proposer describe how they will help meet the City's goals, the City will be able to evaluate and compare the ability of a variety of potential contractors to ensure that the City's goals can be met. If the City were to negotiate solely with MRI, it would have no independent basis of comparison to form a "first position" for negotiations, no independent data to evaluate positions presented by MRI, no new or independent strategies to improve the level of service or cost-effectiveness of solid waste collection services, and would deprive itself of the potential benefits that haulers other than MRI could provide to the City. Contracting with a single provider, MRI, for more than 30 years has led to a stagnant relationship between MRI and the City such that MRI believes that it is entitled to perpetual contract renewals, and has not provided new or competitive concepts for service improvements or increases in cost-effectiveness to City residents. Each succeeding contract between the City and MRI has contained cost increases to the City, without proposals or provisions to improve services or cost-effectiveness of the services provided. Further a continued sole-negotiator relationship with MRI would fail to illuminate the services provided, or the cost-effectiveness of service with the light of fresh proposals and ideas. The City is essentially a monopoly provider of solid waste management services to its residents, and it has a policy obligation to seek continuous improvement in service delivery, and independent evaluation of the service and monetary value of all of its contractual arrangements in provision of these services.

b. minimizing displacement of collectors.

The proposed organized collection method minimizes displacement of collectors because a waste hauler could propose on all or a subset of the collection segments. Thus, it is possible that one collector could be chosen to serve all of the multiple segments, or the segments could be divided among two or more haulers, depending upon evaluation of the proposals. Awarding some or all of the segments to MRI and/or its member haulers would minimize or avoid displacement of MRI haulers. If MRI is the selected proposer for all segments, there would be no displacement of haulers. If MRI were selected for some, but

not all, segments, there could be some displacement of MRI haulers, but not a total displacement. Thus, the multiple segment RFP has much greater potential to minimize displacement of haulers than the single contract RFP, which would be an “all or nothing” scenario. In addition, the multiple segment RFP allows the potential for licensed haulers not currently MRI members to potentially participate in the City’s program of solid waste collection services, minimizing displacement of licensed haulers that are not members of MRI. This optimizes the potential for the largest number of haulers to be available for service provision to the City, cushioning the City from the adverse effects that would occur if a sole hauler, such as MRI, were to default on its contract with the City.

c. ensuring participation of all interested parties in the decision-making process.

The competitive RFP process will provide all haulers that participated in the Organized Collection process the ability to make a proposal, which ensures their participation in the decision-making process. The open process has solicited the interest and participation of more haulers than ever before in the City’s solid wastes collection service procurement process, indicating that more interested parties than MRI exist in the City. Additionally, the process has allowed Labor Unions and the Central Labor Union Council to participate in decision-making .

d. maximizing efficiency in solid waste collection.

The competitive RFP process will enable the City to evaluate not only pricing options from various haulers, but also the ability to efficiently provide solid waste collection services through discussion of the prior service experience in the City and/or in other jurisdictions. The competitive RFP process will allow the City to benchmark its services and costs of service in the “City” side of operations, providing an independent analysis of City cost-effectiveness and service level. The City has attempted to benchmark its costs and services against other similarly sized cities, but differences in demographics, geography and climate conditions in those cities have not allowed a realistic comparison. The City has not had cost of service information from MRI; it has only known the price that the City was contractually bound to pay MRI. The City will also receive proposals that could explore new methods or opportunities for increasing collection efficacy, that could be adapted by the City to improve City efficiency.

EXHIBIT A

115A.94 Planning Process Summary

DRAFT

EXHIBIT B

Interested Party List (Including All Licensed Collectors Who Expressed Interest)

DRAFT

EXHIBIT C

Proposed RFP Evaluation Criteria

(in the mailed document, this is on two pages)

1. Completeness of information and documented compliance with all RFP requirements
2. Degree of confidence that the health and safety of the City will be protected through the complete and timely collection of solid waste.
3. Demonstrated and documented understanding of and commitment to the Customer Service and Clean City missions of Solid Waste and Recycling Services:
Customer service history, contract compliance history in other contracts, history of safe operations under climate and infrastructure (street and alley) conditions similar to Minneapolis, and history of reliability and commitment to day-certain service will be evaluated. Understanding and commitment to the Clean City goal, including examples of Clean City activities in other contract situations will be evaluated.
4. Past performance in Residential Collection Contracts:
Names and contact information from at least three (3) prior residential collection contracts must be provided. Enquiries will be conducted by the City of these references. A random survey of those who have been customers as a part of these contracts will be conducted to determine Customer Satisfaction with Contractor services.
5. Demonstrated capacity to provide year-round collection services in the manner, and within the geographic constraints, of the City of Minneapolis:
Collection vehicles and equipment, collection experience, operator training practices and previous experience with customers in similar geographic settings will be evaluated. Demonstrated knowledge of local geographic and demographic conditions and of a clear understanding of the routing and customer service challenges and expectations will be demonstrated.
6. Demonstrated understanding of, and commitment to, the City's policies on Small and Minority Owned Businesses, Living Wage and Domestic Partner Benefit policies, and anti-discrimination requirements.
7. Lowest net cost to the City:
All costs to the City will be included in the evaluation.
8. Minimizing displacement of collectors.
9. Maximizing efficiency in solid waste collection