



Memorandum

TO: Carl Mosher, Director
Environmental Services Department

FROM: Gerald A. Silva,
City Auditor

SUBJECT: *REVIEW OF ALLIED WASTE
EXPENDITURES FOR THE PERIOD OF
JUNE 1, 2004 THROUGH MAY 25, 2005*

DATE: May 27, 2005

Background

The San Jose/Santa Clara Water Pollution Control Plant (WPCP) removes screening, grit, and grease from the waste water that flows into the WPCP. The WPCP relies on a contractor to provide 1) WPCP with containers to store the screening, grit, and grease on-site and 2) the hauling and disposal of these materials. On May 18, 2004, the City Council approved the execution of a one-year service order with Allied Waste (BFI) for the above services at a cost of \$150,000 and four one-year options to renew without further City Council approval. The City Council also approved a motion by Councilmember Chavez to have the City Manager request the City Auditor's Office to review BFI's expenditures prior to the Administration approving the additional four (4) one-year renewal options. The motion also required the City staff to ensure BFI was properly disposing of materials.

At the request of the City Manager, we conducted a review of BFI's expenditures for the period June 1, 2004 through May 25, 2005.¹ Specifically, we limited our review to verifying that 1) the Environmental Service Department (ESD) and BFI were adhering to the billing and payment specifications stated in the Grit Screening Disposal Contract and 2) the amounts BFI invoiced ESD were in accordance with the specified bid amounts stated in BFI's quote, which BFI submitted on March 15, 2004.

We performed our review in accordance with generally accepted government auditing standards. The City Auditor's Office would like to thank the staff of the ESD, OEA, and the Finance Department for their assistance during our review.

BFI Expenditures For The Period of June 1, 2004 Through May 25, 2005

We verified that BFI invoiced the City \$73,682.70 for the period of June 1, 2004 to May 25, 2005, disposed of 1,610.43 tons of grit, grease, and screenings, and transported 123 bins from the WPCP to the Newby Island Sanitary Landfill.² The City paid BFI \$61,438.15, resulting in an

¹ The service agreement dates between the City and BFI are June 1, 2004 through May 31, 2005. At the time of our review, BFI had not submitted invoices for the month of May 2005.

² Amounts for May 2005 are not included in these amounts.

unpaid balance of \$12,244.54.³ Based upon our review, we noted the following issues regarding the City's administration of and BFI's billing for the hauling and disposal of grit, grease, and screenings at the WPCP:

- BFI did not always submit landfill receipts on a timely basis;
- BFI has inconsistently charged the City for transport costs;
- BFI has not complied with the City's prevailing wage policies; and
- BFI provided non-compliant storage containers.

We also found that the City executed a service agreement with BFI that was not consistent with the Request for Quotation (RFQ) and executed two open purchase orders with overlapping time periods.

BFI Did Not Always Submit Landfill Receipts On A Timely Basis

We found that BFI did not consistently submit the required landfill receipt (also referred to as a disposal or weight ticket) for each of the bin quantities disposed. Even though invoices were submitted in a timely manner throughout the period under audit, we noted that six disposal tickets were missing from the Finance Department's invoice records for August and September 2004. An ESD Analyst provided us with two of the six missing disposal tickets from ESD files and BFI duplicates for the other four missing tickets. According to the billing and payment specifications in the Grit Screenings Disposal Contract, "No payments shall be made to CONTRACTOR unless landfill receipts are received." The Senior Plant Operator stated that he always matches the disposal tickets to the amount invoiced and is unsure why the disposal tickets were missing from the Finance Department's records. As a result, the payment of \$2,607.11 in invoices for August and September 2004 was processed without supporting documentation on file in the Finance Department.

BFI Has Inconsistently Charged The City For Transport Costs

We found that BFI has not charged the City a transport cost for each disposal ticket and has not consistently charged the City the specified quote price for the transports BFI invoiced. While BFI is charging the City the correct disposal price per ton (\$37.85), it is not consistently billing for the corresponding transport cost of \$119 per each bin hauled (or each disposal ticket invoiced) from the WPCP to the Newby Sanitary Island Landfill. BFI has made 138 transports of WPCP materials (per BFI invoice and disposal tickets), but has charged the City for only 123 transports, a difference of 15 bins. This has resulted in BFI undercharging to the City \$1,785. We also found that BFI correctly charged \$119 for the transports it completed in June 2004, but charged the City only \$115 from July 2004 through September 2004, charged both \$115 and \$117.88 for the months of October and November 2004 and \$117.88 from December 2004 through April 2005. As a result, BFI undercharged the City \$243.04 for the transports it made from July 2004 through April 2005. Overall, BFI has undercharged the City a total of \$2,028.04 for transport costs.

³ Represents amounts invoiced for March and April 2005.

BFI Has Not Complied With The City's Prevailing Wage Policies

BFI has not complied with the Disposal Contract, Labor Compliance Addendum, and is currently in breach of the San Jose Prevailing Wage Policies. We found that the City is currently withholding payment of \$5,000 until BFI complies with the prevailing wage contract provisions. On November 2, 2004, the Office of Equality Assurance (OEA) requested that BFI submit the Labor Compliance Workforce Statement, Labor Compliance Fringe Benefit Statement and the certified payrolls (for work already performed) within 10 working days. OEA also informed BFI that certified payrolls must be filed on a monthly basis and are due by the 10th of the following month. BFI did not respond to OEA's request so on December 13, 2004, OEA mailed a "Notice of Noncompliance" informing BFI that they were in breach of the Documentation Provision of Purchasing Service Order Number OP 34344. Since that time, BFI has met with OEA staff and provided labor compliance documentation. OEA is currently awaiting additional fringe benefit information to determine final restitution that is anticipated to be less than \$1,000.

BFI Provided Non-Compliant Storage Containers

We also found that BFI was in breach of Service Order Number OP 34344 Storage Container Specifications which requires BFI to provide containers that allow drainage and to "...maintain a functioning drainage system within their storage bins." Because the BFI storage containers did not allow for water drainage, BFI overcharged the City for the water weight that did not drain adequately from the disposal bins. According to the Senior Plant Operator, BFI did make a good faith effort to technically correct the grease bins (other bins were compliant), but modifications failed, and redesign to deliver proper bins took several months. In January 2005, BFI provided the WPCP with new bins that meet contract specifications. BFI is in the process of crediting the City for an estimate of excess water weight for the months of May 2004 through December 2004.

The City Executed A Service Order With BFI That Was Not Consistent With The Price Increase Stipulations In the RFQ

The ESD used an RFQ to procure the services of BFI which submitted the lowest bid at \$144,275. On May 18, 2004, the City Council approved the execution of a one-year service order with BFI for a total cost of \$150,000.² The City used the specifications in the RFQ to establish a service order with BFI. We found that the service order between the City and BFI does not mirror the specifications in the RFQ. Specifically, the RFQ states that any "Price increases shall be limited to the actual cost increase incurred by the Supplier and must be supported by written evidence..." The RFQ goes on to state "Price increase will not be valid until mutually agreed upon by the Supplier and City of San Jose Purchasing" and that "...The City may consider a price increase not to exceed the CPI for that CPI quarter which is closest to the renewal date." Although, the service order between the City and BFI states "PER RFQ #93610 SPECIFICATIONS" it goes on to state "...OPTION YEAR 4 AND 5 CPI INCREASE." In our opinion the service order should have been written more clearly with RFQ specifications.

² The difference between BFI's quote of \$144,275 and the amount the City Council approved (\$150,000) is to accommodate any anticipated changes in service demand.

The City Executed Two Open Purchase Orders For BFI's Services With Overlapping Time Periods

We also found that the Purchasing Division (Purchasing) Buyer executed two open purchase orders for BFI's hauling and disposal services for overlapping time periods and back dated the execution period. Specifically, on April 22, 2004, Purchasing created an interim open purchase order #OP 34072 with BFI for \$45,000. The period covered under this service agreement was April 15, 2004 through July 14, 2004. Then on June 14, 2004, Purchasing created open purchase order #OP 34344 with BFI for \$150,000. The period covered under this service agreement was June 1, 2004 through May 31, 2005.

The \$195,000 total for these two open purchase orders is more than the City Council-approved \$150,000 for the year. Moreover, the two service agreements overlap one another by 44 days (June 1, 2004 to July 14, 2004). Further, open purchase order #OP 34344 does not reference the interim open purchase order.

Conclusion

We discussed the results of our review with ESD, OEA and Finance Department staff. They agreed with the review results and we incorporated their comments into this memorandum.



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