

NEWS RELEASE



DEPARTMENT OF
ENVIRONMENTAL SERVICES
CITY AND COUNTY OF HONOLULU

FOR IMMEDIATE RELEASE

September 20, 2012

STATE FINDS SAND ISLAND DIGESTER CONTRACT VALID

(Thurs., Sept. 20, 2012)—The Hawaii State Procurement Office (SPO) has validated the City’s In-Vessel Bioconversion Facility (or “Digester Facility”) expansion contract with Synagro, in response to an inquiry from a City Councilmember.

Earlier this year, the SPO was asked to review the expansion contract of the Digester Facility at the Sand Island Wastewater Treatment Plant and determine whether the City had followed proper procurement practices.

The City provided the SPO with approximately 2,000 pages related to that contract and the Invitation for Bid No. F-96960, which was issued Oct. 29, 1999.

In a written response, State Procurement Office Administrator Aaron Fujioka concluded, “The SPO does not view amending the contract allowing Synagro to design and construct the second digester as a means to expedite the procurement process. The solicitation encompassed the thought process of having the same vendor design and construct both digesters such that the same company would be in the best position to insure a seamless integration and compatibility within the same single system, most effective in managing risks, and having cost effective solutions for construction and operation issues, as well as expediting the completion of the second digester.”

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SPO 13-026

September 14, 2012

The Honorable Romy M. Cachola
Councilmember
Honolulu City Council
Honolulu Hawaii 96813-3065

Subject: Financing, Design, Engineering, Construction, Testing and Operation/Maintenance
of an In-vessel Bioconversion Facility, City and County of Honolulu and
Synagro-WWT, Inc.

Dear Councilmember Cachola:

In response to your letter dated May 14, 2012 regarding subject contract, the State Procurement
Office (SPO) has completed its review.

The SPO requested from the City & County of Honolulu's Department of Budget & Fiscal
Services (City), copies of the solicitation, including addenda's, SYNAGRO-WWT Inc's
proposal; and other documents which substantiates the City's decision to not compete the
building of a second digester.

Based on the documents provided by the City (approximately 2,000 pages) for IFB No. F-96960,
the following findings and determinations are made.

FINDINGS:

IFB: F-96960 FOR IN-VESSEL BIOCONVERSION FACILITY PROJECT issued on
October 29, 1999, contained the following APPENDICES:

- Appendix A: Pricing Proposal
- Appendix B: Construction Contract
- Appendix C: Operation and Maintenance

APPENDIX B:

Article I of the Construction Contract, Definitions, page I-2, "*Facility*" means the Sludge, Green Waste and Food Waste In-Vessel Bioconversion Facility, together with related and appurtenant structures and equipment, which is used to process these materials into Recovered Materials. Therefore, by definition, any equipment including an additional digester is considered as part of the Facility.

Article V of the Construction Contract, Section 5.1 DESIGN OF FACILITY, page V-1. "...*The design shall take into consideration the requirement that the Facility may be operated beyond the initial term of the fifteen (15) year operating period, subject to appropriate maintenance and/or replacement of parts... (b.) perform all other architectural and engineering design work required for the Facility in its entirety...*" This language indicates the design of the Facility must anticipate the likelihood of future expansion that must be factored into the initial design, for the life of the facility or beyond the initial 15 year operating period.

Section 5.5 DESIGN AND CAPACITY, page V-4. "*In designing the Facility, the Contractor shall ensure that the Facility shall meet the Guaranteed Capacity requirement. In addition, the Contractor shall design the Facility so that adequate space is available to insure that the Facility will be capable of being expanded in the future to a capacity up to 30,000 dry TPY sludge.*"

Article VI, Section 6.1 CONSTRUCTION OF FACILITY, Page VI-1, "...*The Contractor shall furnish and/or procure all services, labor, equipment, materials and appurtenances necessary to construct the Facility in its entirety, all in accordance with this contract... Organization, planning, management, direction, supervision, and responsibility for all construction operations necessary to complete the Facility in its entirety, and the furnishing, as necessary for the performance of construction work, of all construction facilities...*"
The work "entirety" used in this section and used in Section 5.1 above, indicate the construction of the Facility extends beyond the initial term of the fifteen (15) year operating period. Such that, any new construction within the Facility would be considered applicable to this section, in which the Contractor shall be responsible for.

APPENDIX C:

Section 3.6 CHANGES TO FACILITY, Page no. III-5. “ *In the event that there is a change to the facility, the parties shall assume the following responsibilities: a. The Contractor shall have sole responsibilities for the design and construction of any changes to the Facility which involve or affect process equipment or the guarantees or obligations of the Contractor and which the City and Contractor mutually deem necessary or desirable for any reason during the term of the Contract...*” This section addressed the design and construction of any future expansion of the In-Vessel Bioconversion Facility would be conducted by the selected Contractor.

Other sections in the solicitation that support expansion of the facility are Section I of the Invitation For Bids (IFB), page I-5, states, “... specified as “Excess Tonnage” may be made available during the 15-year operating contract. Based on the above, the IFB disclosed future expansions would be included as part of the scope of work.

It is also indicated in the Written Questions and Responses to IFB Issued: December 21, 1999. Question 24: *Can the plant be modified to produce a more valuable product after initial completion?*

Agency Response: *Yes, Provided that modifications are completed in conformance with the Contracts and any additional land requirements are the responsibility of the Contractor.*

DETERMINATION:

Based on the SPO review of documents provided, IFB No. F-96960 FOR IN-VESSEL BIOCONVERSION FACILITY PROJECT was conducted as a multi-step competitive sealed bidding pursuant to HRS section 103D-302 and HAR Section 3-122-22 in effect in 1999. Sections 5.1, 5.5, 6.1 and 3.6 of the IFB includes language that describes the scope of work as encompassing the entire design, construction, and operation/maintenance of the In-Vessel Bioconversion Facility including any future design and construction changes in which the awarded contractor is responsible. The scope of work ensures that the selected offeror who designed, constructed, operated and maintained the facility would be in the best position to insure compatibility within the single system and able to offer an expedient and cost effective solution for any construction and operation/maintenance issues that may arise.

The documents provided to the SPO shows modifications to the Facility after the initial completion of the facility is allowed provided it is done within the terms of the contract and is the responsibility of the selected Contractor. (APPENDIX B, Article V, Section 5.5) Therefore, from the start of the solicitation, it was made known to all offerors that the Contractor selected would be responsible for future modifications of the Facility.

The following will address questions contained in your May 14, 2012 letter:

1. *Was the City Administration permitted under the Procurement Code to amend the Operating Contract to provide for Synagro to do the Planning, Engineering and Permitting work for the second digester and related facilities at the Sand Island WWTP, without following the Procurement Code provisions on the procurement of professional services?*

As stated in the findings (APPENDIX B) the project's scope of work encompasses the entire design, construction, and operation/maintenance of the In-Vessel Bioconversion Facility including any future design and construction changes in which the awarded contractor is responsible. For this procurement, the procuring agency was not restricted to only utilize the professional service source selection method. For example, HRS section 103D-303 and HAR section 3-122 Subchapter 6, Competitive Sealed Proposals, effective 1997, allows for design build construction contracts conducted as a Request for Proposal (RFP). Another appropriate and allowable source selection method for construction is HRS section 103D-302 and HAR section 3-122 subchapter 5, Competitive Sealed Bidding, effective 1997 in which the City and County of Honolulu conducted a Multi-step sealed bidding to award this project. *Pursuant to HAR section 3-122-22 (a), effective 1997, Multi-step process is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time obtaining the benefits of the competitive sealed proposals procedure through the solicitation of un-priced technical offers and the conduct of discussions to evaluate and determine the acceptability of technical offers.*

2. *Would it violate the Procurement Code if the City Administration were to allow Synagro to construct a second digester and related facilities at the Sand Island WWTP without going through the normal procurement process, consistent with the 10th WHEREAS Clause of Amendment No. 2 and Mayor's Message No. 10 (2012)?*

The second question asked is similar to the first question; therefore, the same response is given.

In response to the Mayor's January 26, 2012 written response #10. "A second Synagro digester would not have to go through the procurement process and, as the known and existing system, approval and permitting would be faster, making it arguably the most expediently emergency solution if the single digester fails", the SPO offers no comment on the information contained in the Mayor's Message No. 10 (2012), as we are not privy to the context or circumstances for his comments.

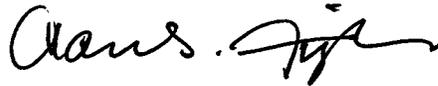
The SPO does not view amending the contract allowing Synagro to design and construct the second digester as a means to expedite the procurement process. The solicitation encompassed the thought process of having the same vendor design and construct both digesters such that the same company would be in the best position to insure a seamless integration and compatibility within the same single system, most effective in managing risks, and having cost effective solutions for construction and operation issues, as well as expediting the completion of the second digester.

3. *Is it proper for a party preparing a scope of work for a City construction project to be eligible to bid on or submit a proposal for the same construction project?*

Pursuant to HRS chapter 103D-405 and HAR section 3-122-13(e) state, *A contractor paid for services to develop or prepare specifications or work statements shall be precluded from submitting an offer or receiving a contract for that particular solicitation.* No documents were provided to the SPO to indicate that a third party had prepared the scope of services in the solicitation.

If your staff has any questions they may contact Ruth Yamaguchi at 586-0554 or you may call me at 587-4700.

Sincerely,



Aaron S. Fujioka