



To: Tom Creegan, King County Solid Waste Division  
From: Pat Tangora and Karl Hufnagel *Karl Hufnagel*  
Subject: **Bow Lake Recycling and Transfer Station - Use of Competitive Negotiation Procedures within RCW 36.58.090 for Site Facilities Construction Contract**  
Date: April 16, 2008

### Introduction

King County (County) plans to design and construct the Bow Lake Recycling and Transfer Station on the County's existing Bow Lake site. In the past, the County has developed this type of facility using traditional public works contracting (design/bid/build). However, Revised Code of Washington (RCW) 36.58.090 would allow the County to select a construction contractor via a competitive negotiated procurement process. Potential benefits of this process are: 1) it would allow contractor qualifications to be considered in the selection process; 2) it helps reduce the risk associated with contractor misunderstanding of design intent; 3) it provides opportunities for proposer / contractor input regarding constructability and scheduling; and 4) it allows the County to better manage the risks associated with the transition between the Site Preparation and Site Facilities contractors.

### Background

Among other things, RCW 36.58.090, *Contracts with vendors for solid waste handling systems, plants, sites, or facilities*, authorizes counties to contract with vendors for a wide range of services, including construction. Specifically, RCW 36.58.090 states:

...the legislative authority of a county may contract with one or more vendors for one or more of the design, construction, or operation of, or other service related to, the solid waste handling systems, plants, sites, or other facilities in accordance with the procedures set forth in this section. (RCW 36.58.090 (1))

The legislative authority or its representative may attempt to negotiate a contract with the vendor or vendors selected for one or more of the design, construction, or operation of, or other service related to, the proposed project or services on terms that the legislative authority determines to be fair and reasonable and in the best interest of the county. (RCW 36.58.090 (5))

However, with respect to solid waste transfer stations, RCW 36.58.090 contains some key restrictions, specifically:

The alternative selection process provided by this section may not be used in the selection of a person or entity to construct a

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*publicly owned facility for the storage or transfer of solid waste or solid waste handling equipment unless the facility is either (a) privately operated pursuant to a contract greater than five years, or (b) an integral part of a solid waste processing facility located on the same site.* (RCW 36.58.090 (10), emphasis added).

Thus, one key question is whether or not the new Bow Lake Recycling and Transfer Station would qualify as a "transfer station that is an integral part of a solid waste processing facility."

**Can Bow Lake be Considered an Integral Part of a Solid Waste Processing Facility?**

While RCW 36.58.090 does not contain a definition of "solid waste processing" or "solid waste processing facility," two relevant definitions are included in the Washington Administrative Code (WAC):

"Processing" means an operation to convert a material into a useful product or to prepare it for reuse, recycling, or disposal. (WAC 173-350-01, Solid waste handling standards, Definitions)

"Processing" means an operation to convert a solid waste into a useful product or to prepare for disposal. (WAC 173-304-100, Minimal functional standards for solid waste handling, Definitions)

Early solid waste transfer stations were primarily developed to increase hauling efficiency and reduce transportation costs. These facilities primarily served as a central "hub" where garbage collection trucks could dump their loads either directly or indirectly into larger containers which would then be transported to an intermediate or final destination. The term "transfer station" is now largely a misnomer for modern "state of the art" facilities, which serve a much wider range of functions. For example, modern transfer stations typically include equipment for compacting waste into containers in order to increase payload and reduce the amount of effort required to compact the waste at the landfill disposal site.

The Bow Lake Recycling and Transfer Station will be typical of these modern "state of the art" facilities. Figure 1 shows the site general arrangement plan and the transfer building lower level and tipping floor, including the principal areas where processing of waste and recyclables will occur. Table 1 summarizes materials processed at the facility.

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Table 1 Bow Lake Recycling and Transfer Station - Material Processing

Facility Area	Materials Processed	Process	Type of "Solid Waste Processing" as defined in WAC 173-350-01 or WAC 173-304-100
Fee and Free Recycling Areas	Metal Appliances Fluorescent tubes Household batteries E-Waste (electronic waste) Wood and construction lumber Cardboard Paper Newspaper Aluminum Glass Plastic	Collect and consolidate by material type	Operation to prepare a material for reuse, recycling or disposal
Yard Waste Tipping Area	Woody waste Yard waste	Chipping and grinding of woody waste into a compostable material  Consolidation of processed woody waste and non-ground yard waste in trailers for transport to a composting facility	One part of an operation to convert a material into a useful product
Building Tipping Floor and Lower Level	Cardboard Paper Wood Metal Firm plastic	Separation from the general Municipal Solid Waste (MSW) waste stream and consolidate by material type  Bale all recyclable materials except wood and metal including material collected at the free recycle area	Operations to prepare a material for reuse or recycling
	MSW	Compact MSW in two stationary, pre-load compactors prior to loading into containers to maximize payloads and minimize hauling traffic and costs,  Also reduced operating costs at the landfill by reducing the amount of compaction required after waste placement.	Operation to prepare solid waste for disposal

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### Implementation and Schedule Integration

King County Solid Waste Division (SWD) has elected to contract for the work in two phases: the first phase is focused on Site Work; the second phase is focused on construction of facilities (Facilities Work). Site Work will be bid in the late spring of 2008. A competitive negotiated procurement process under RCW 36.58.090 is planned to be used for the Facilities Work. The currently planned schedule includes the following milestones:

- Site Work (Design-Bid-Build)
  - Advertise for Bid June 2008
  - Contract Execution July 2008
  - Initiate Construction August 2008
  - Complete Construction September 2009
- Facility Work (Negotiated Procurement)
  - Advertise RFQ/RFP March 2009
  - Execute Contract August 2009
  - Start On-Site Construction October 2009
  - Complete Construction June 2012
- RCW 36.58.090 allows for a procurement process that includes a combined RFQ/RFP<sup>1</sup> process. The SWD will also include a Request for Best and Final Offers as part of the clarifications process following the initial review of proposals. The award of a contract will be to the highest scored construction team based upon the evaluation criteria established by the County during the procurement process. The price component of the evaluation will be publically opened by the County at the time best and final offers are received.

### Comparison of Contracting Options

Three contracting methods, conventional design-bid-build (DBB), general contractor/construction manager (GC/CM) under RCW 39.10, and negotiated procurement under RCW 36.58.090 were evaluated against eleven criteria. The results of this evaluation are summarized in Attachment A. In areas that the County has indicated are especially important to it, negotiated procurement ranked as the sole best option or was tied with GC/CM. In particular, the negotiated procurement method provides an opportunity for the County to consider the qualifications of multiple contractor teams including key subcontractors, provides

<sup>1</sup> A separate Request for Qualifications stage could be used by the County under RCW 36.58.090. This would provide the County with an early gauge of real market interest in the project. If insufficient interest was generated, at that point the County could easily redirect its efforts back toward a "hard bid" process with minimal effort and expenditure of resources.

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an opportunity for these contracting teams to provide input on constructability and scheduling issues before the contract is signed, allows the County to clarify the design intent before the contract is signed, and allows the County to better manage the transition between the Site Facilities work and the Site Preparation contract. The full list of advantages of negotiated procurement is summarized in Table 3.

**Conclusions and Recommendation**

Based on our review, it appears that the Bow Lake Recycling and Transfer Station would be an "integral transfer / processing facility" as required by RCW 36.58.090. It also appears feasible to implement the RCW 36.58.090 procurement process for the Facility Work without delaying the planned design and construction schedule.

Negotiated procurement offers distinct advantages over DBB and GC/CM procurement in a number of key areas that the County has indicated are important. Table 3 summarizes these advantages for the Facilities Work which is further evaluated in Attachment A. We recommend that the County consider pursuing negotiated procurement under RCW 36.58.090.

**Table 3 Advantages of Negotiated Procurement for Facilities Work**

- Provides opportunity to review Facilities Contractor qualifications.
- Provides opportunity for input on constructability and scheduling issues from the Facilities Work proposers / Contractor.
- Allows the County to clarify the design intent to prospective Facilities Contractors.
- Allows the County to better manage the risks associated with the transition between the Site Preparation and Site Facilities Contractor.
- Maintains current planned schedule, and helps to limit additional price escalation associated with delay.
- Avoids markup on Site Work by a General Contractor, which would likely be the case if all work was completed under a single contract. This may need explanation if asked by Council. Uncertain about this?
- Presents no overall schedule risk since ample time would exist to revert to conventional bidding on the Facilities Work.

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Attachment A  
Comparison of Contracting Options

Criterion	Design-Bid-Build	GC/CM under RCW 39.10	Negotiated Procurement under RCW 36.58.090	Best Option
Consideration of qualifications	<ul style="list-style-type: none"> <li>o Eligibility criteria may be included to determine bidder responsibility</li> </ul>	<ul style="list-style-type: none"> <li>o GC/CM selected in part on qualifications but can only prosecute up to 30% of actual construction.</li> <li>o Subcontract packages are competitively bid by the GC/CM. Eligibility criteria may be included to determine subcontract bidder responsibility. Approximately 8 to 10 subcontractors are considered "critical" to project success and may include eligibility requirements.</li> </ul>	<ul style="list-style-type: none"> <li>o Qualifications of construction team including GC and major subcontractors can be considered as part of selection process and therefore sooner than with GC/CM.</li> </ul>	Negotiated procurement
Input on design, schedule, constructability issues prior to construction	<ul style="list-style-type: none"> <li>o Limited to bid package and addenda issued during bidding.</li> </ul>	<ul style="list-style-type: none"> <li>o By GC/CM under preconstruction services contract.</li> </ul>	<ul style="list-style-type: none"> <li>o By GC and major subcontractors during proposal / BAFO procurement process.</li> </ul>	Negotiated procurement due to involvement of major subcontractors
Clarification of design intent prior to construction	<ul style="list-style-type: none"> <li>o Limited to bid package and addenda issued during bidding.</li> </ul>	<ul style="list-style-type: none"> <li>o Via input from GC/CM under preconstruction services contract.</li> </ul>	<ul style="list-style-type: none"> <li>o By GC and major subcontractors during proposal / BAFO procurement process.</li> </ul>	Negotiated procurement due to involvement of major subcontractors
Management of transition between Site Preparation and Site Facilities contractors	<ul style="list-style-type: none"> <li>o County responsible effort</li> </ul>	<ul style="list-style-type: none"> <li>o County responsible</li> </ul>	<ul style="list-style-type: none"> <li>o County responsible</li> </ul>	Not a determining factor
Suitability for projects where existing facilities must remain in operation	<ul style="list-style-type: none"> <li>o Higher potential</li> </ul>	<ul style="list-style-type: none"> <li>o Good</li> </ul>	<ul style="list-style-type: none"> <li>o Good</li> </ul>	GC/CM and negotiated procurement
Effects on planned schedule / schedule risk	<ul style="list-style-type: none"> <li>o None</li> </ul>	<ul style="list-style-type: none"> <li>o None</li> </ul>	<ul style="list-style-type: none"> <li>o None</li> </ul>	Not a determining factor
Competitive pricing	<ul style="list-style-type: none"> <li>o Yes for all aspects of construction.</li> </ul>	<ul style="list-style-type: none"> <li>o Yes for subcontract packages, GC/CM markup, and specified general conditions</li> </ul>	<ul style="list-style-type: none"> <li>o Best value selection via SOQs, proposals, and BAFOs does not assure lowest possible price</li> </ul>	Traditional DBB
Potential for	<ul style="list-style-type: none"> <li>o Highest because of</li> </ul>	<ul style="list-style-type: none"> <li>o Lower than DBB</li> </ul>	<ul style="list-style-type: none"> <li>o Lower than DBB</li> </ul>	GC/CM and negotiated

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<b>Change Orders</b>	"low bid" selection and lack of input / feedback during design re design intent, constructability etc.	because of GC/CM involvement during preconstruction phase	because of general contractor and subcontractor involvement during proposal / BAFO phase	procurement
<b>Limits County's bidding risk</b>	o No	o Yes – MACC sets upper limit while subcontractor bidding process helps assure competition	o N/A	GC/CM
<b>Approvals and certifications required</b>	o None, although Council approval may be sought for contract award	o Yes – Project specific approval from state. Under RCW 39.10 project must meet at least one of 5 GC/CM criteria. <sup>2</sup> o Per SWD, Council approval will also be sought.	o Yes – Council approval required to initiate procurement and to execute contract	Traditional DBB
<b>Potential for redundant efforts</b>	o Minimal	o Yes – between GC/CM and County CM	o Minimal	Traditional DBB and negotiated procurement

<sup>2</sup> These include: 1) project involves complex scheduling, phasing, or coordination; 2) project involves construction at an occupied facility that must continue to operate during construction; 3) involvement of the GC/CM during the design is important to project success; 4) project encompasses complex or technical work environment; or 5) project required specialized work on an historically significant building.

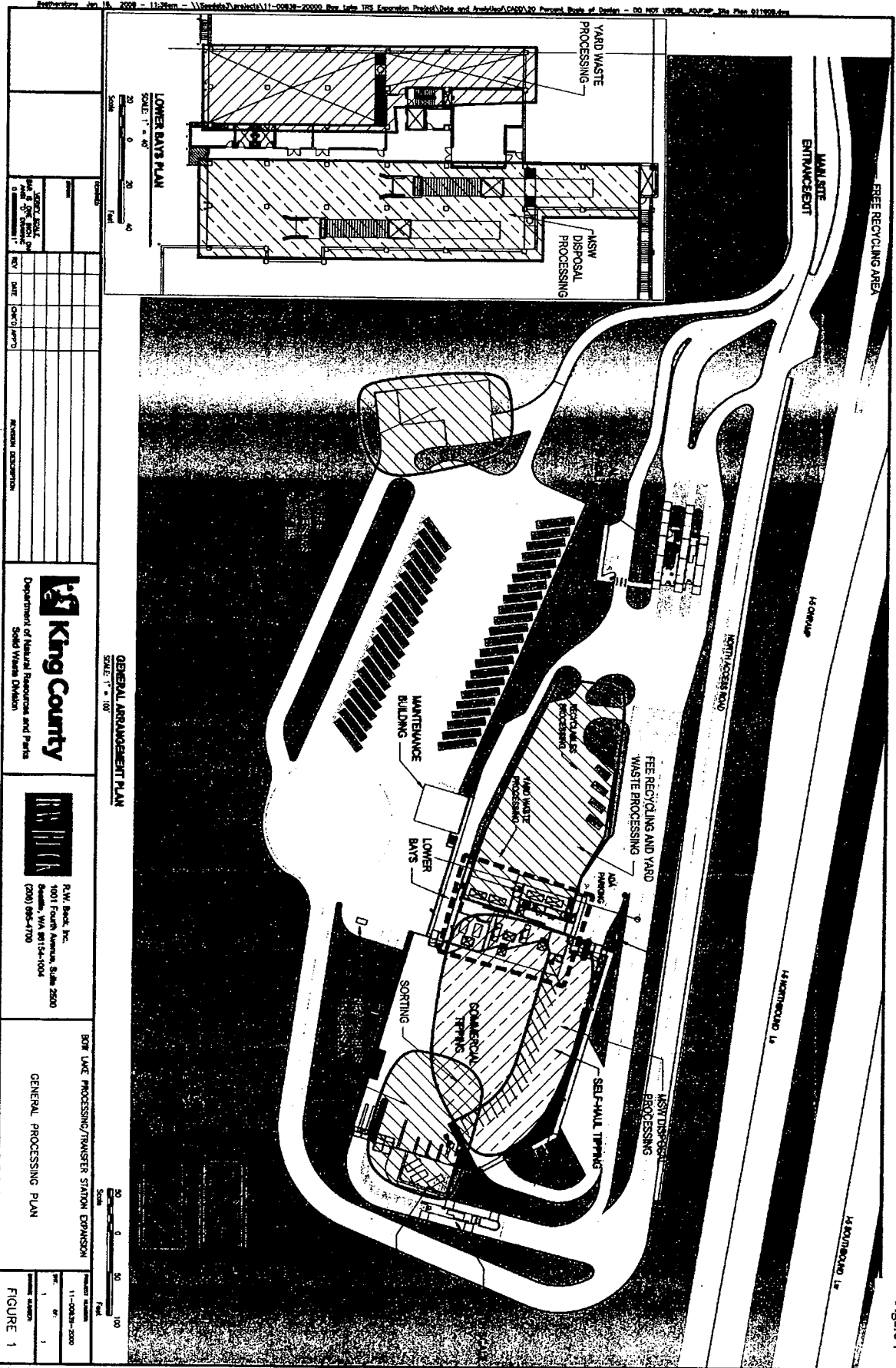


Figure 1

PRELIMINARY DRAWING - NOT FOR CONSTRUCTION