



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: July 12, 2011

TO: Mayor and Councilmembers

FROM: Environmental Services, Finance Department

SUBJECT: Assignment Of 2003-2013 Zone One Solid Waste Franchise Contract From Allied To MarBorg

RECOMMENDATION:

That Council consent to the assignment of the Solid Waste Collection and Disposal Contract between the City of Santa Barbara and Allied Waste Services of North America, LLC, dated January 25, 2002, and amended on October 16, 2003 (City Agreement Numbers 20,432 and 20,432.1), to MarBorg Industries, Inc., resulting in MaBorg Industries becoming the new franchised waste hauler for Zone One for the City of Santa Barbara through the end of the contract period ending June 7, 2013.

DISCUSSION:

Since 2003, the City has had two "zones" for solid waste collection and disposal in the business, multi-unit residential, and single family residential sectors. The City has contracted with two haulers, one in each zone, to collect solid waste, recyclables, green waste and, most recently, business food scraps. In Zone One, the hauler is Allied Waste Services of North America, LLC ("Allied"), which took assignment of the contract from its predecessor, Browning Ferris Industries ("BFI"), in 2007. MarBorg Industries ("MarBorg") is the hauler for Zone Two.

On June 27, 2011, Mayor Schneider and Councilmember Francisco were approached by representatives from MarBorg. MarBorg provided a copy of a letter from Republic Services, Inc., the parent company of Allied, which notified the City that Republic had sold substantially all of its City of Santa Barbara assets to MarBorg and requested that the City consent to the assignment of the Zone One solid waste franchise contract to MarBorg. This assignment is a condition of the sale to MarBorg.

Assignment of the franchise contract with Allied is covered under Section 14.01 of that agreement (Attachment 1). This section authorizes the City to require that MarBorg provide information to the City necessary for it to ensure that MarBorg can fulfill the terms of the contract in a timely, safe and effective manner.

MarBorg provided the City the following information related to its financial ability to assume the existing services required in Zone 1:

1. Audited financial statements for each of the fiscal years ended October 31, 2007, 2008, 2009 and 2010
2. A projection of revenues and expenses for the fiscal year ending October 31, 2011.
3. A letter of assurance indicating, among other things, that:
 - a. No material events or changes have occurred that would adversely affect the financial health of MarBorg in the current fiscal year.
 - b. MarBorg has not taken on any additional debt since the end of their last fiscal year (October 31, 2010).
 - c. MarBorg will not incur new debt to complete the meet the requirements of the existing franchise agreement with Allied Waste.

Based on staff's review of the information provided by MarBorg and other inquiries made by staff, it appears MarBorg has the financial wherewithal to finance the acquisition of the physical assets associated with Zone 1 from Allied and continue the services as required in the existing franchise agreement with Allied without significant disruption to customers.

MarBorg was also required to demonstrate that:

- It has at least ten (10) years of solid waste management experience on a scale equal to or exceeding the scale of operations conducted by Allied under the Contract;
 - MarBorg has an established history as a responsible hauler within the City of Santa Barbara, having satisfactorily provided identical services to the City's solid waste Zone Two customers since 2003. Prior to that, MarBorg served as a hauler in the County's Zone 1 and Zone 3 since at least 1997.
- In the last five (5) years, MarBorg has not suffered any significant citations or other censure from any federal, state or local agency having jurisdiction over its solid waste management operations due to any significant failure to comply with state, federal or local environmental laws and that it has provided the City with a complete list of such citations and censures
 - MarBorg provided a letter from the law firm of Hollister & Brace, which has represented MarBorg for nearly 17 years, that states "categorically and unequivocally" that MarBorg has not suffered any such citations or censure. The City Attorney's office investigation also did not turn up any such citations or censure; litigation appears to be limited to the type and scope expected of an operation of this size and does not include suits by governmental agencies. Staff reviewed all CalRecycle inspection reports

for the MarBorg C&D facility for calendar years 2009, 2010 and half of 2011 and found that neither the Local Enforcement Agency (LEA) nor CalRecycle had issued any inspection-based violations or formal enforcement actions on the site during this time period.

- It has at all times conducted its operations in an environmentally safe and conscientious fashion; and it conducts its solid waste management practices in accordance with sound solid waste management practices in full compliance with all federal, state and local laws regulating the collection and disposal of solid waste including Hazardous Wastes.
 - The letter from Hollister & Brace states that this is true. Staff's contact with CalRecycle, the state agency with primary oversight of solid waste management, did not identify areas of concern. Staff's own experience with MarBorg over the last 8 years is that MarBorg is very committed to environmental safety and diversion and that it conducts operations in accordance with sound management practices.

Finance and solid waste operations staff met with MarBorg to go over our questions, and the City Attorney also had the opportunity to ask questions. Staff have determined that MarBorg appears to have the requisite financial capacity, experience and ability to continue to perform the obligations of Allied under the contract in an environmentally and conscientious fashion and that its solid waste management and operation practices appear to be in full compliance with applicable federal, state and local laws. The assets, equipment, vehicles, and personnel of Allied would be retained by MarBorg and used to continue to perform the solid waste collection and disposal services for the City under the franchise contract.

It is the recommendation of Staff that the City Council approve the assignment of the solid waste collection and disposal franchise contract to MarBorg as the new franchised waste hauler for Zone One in the City of Santa Barbara. This assignment will be effective through the remaining term of the franchise contract, which expires June 7, 2013.

BUDGET/FINANCIAL INFORMATION:

This assignment is not expected to result in a financial impact to the City or to solid waste rate payers, because compensation to the hauler is already set by contract through the end of the contract term.

SUSTAINABILITY IMPACT:

MarBorg has been a satisfactory partner with the City of Santa Barbara in its landfill diversion and litter reduction efforts for many years.

ATTACHMENT: Excerpt of Section 4.01 of the Zone One Franchise Contract with Allied Waste

PREPARED BY: Kristine Schmidt, Employee Relations Manager
Matt Fore, Environmental Services Manager

SUBMITTED BY: Robert Samario, Finance Director

APPROVED BY: City Administrator's Office

Excerpt from Zone One Franchise Contract with Allied Waste

14.01 Restrictions on Assignment. Contractor acknowledges that this Contract involves rendering a vital service to the City's residents and businesses, and that the City has selected Contractor to perform the services specified herein based on (i) Contractor's experience, skill and reputation for conducting its MSW and Recyclable Materials management operations in a safe, effective and responsible fashion, at all times in keeping with applicable environmental laws, regulations and best management practices, and (ii) Contractor's financial resources to maintain the required equipment and to support its indemnity obligations to the City under this Contract. The City has relied on each of these factors, among others, in choosing Contractor to perform the services to be rendered by Contractor under this Contract.

Contractor shall not assign its rights, nor delegate, subcontract or otherwise transfer its obligations under this Contract to any other person without the prior written consent of the City. Any such assignment made without the consent of the City shall be void and the attempted assignment shall constitute a material breach of this Contract.

For purposes of this Section when used in reference to Contractor, "assignment" shall include, but not be limited to (i) a sale, exchange or other transfer of Contractor or of substantially all of Contractor's assets dedicated to service under this Contract to a third party; (ii) a sale, exchange or other transfer of outstanding common stock of Contractor, to a third party which results in a change of control of Contractor; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or reissuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which results in a change of ownership or control of Contractor; (iv) any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this Contract, appointment of a receiver taking possession of Contractor's property, or transfer occurring in the event of a probate proceeding; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership, or change of control of Contractor.

If Contractor requests the City's consideration of and consent to an assignment, the City may deny or approve such request in its complete discretion. No request by Contractor for consent to an assignment need be considered by the City unless and until Contractor has met the following requirements:

A. Contractor shall undertake to pay the City its reasonable expenses for attorney's fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment;

B. Contractor shall furnish the City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years; and

C. Contractor shall furnish the City with satisfactory proof: (i) that the proposed assignee has at least ten (10) years of solid waste management experience on a scale equal to or exceeding the scale of operations conducted by Contractor under the Contract; (ii) that in the last five (5) years, the proposed assignee has not suffered any significant citations or other censure from any federal, state or local agency having jurisdiction over its solid waste management operations due to any significant failure to comply with state, federal or local environmental laws and that the assignee has provided the City with a complete list of such citations and censures; (iii) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) that the proposed assignee conducts its solid waste management practices in accordance with sound solid waste management practices in full compliance with all federal, state and local laws regulating the collection and disposal of solid waste including Hazardous Wastes; and (v) of any other information required by the City to ensure the proposed assignee can fulfill the terms of this Contract in a timely, safe and effective manner.