

Successful Procurement of Emerging Solid Waste Technologies

Federation of New York Solid Waste Associations
Solid Waste and Recycling Conference
the Sagamore - New York
May 3-6, 2009

Presented by
Teno West, Esq., Pannone Lopes Devereaux & West LLC
and
Steven Torres, Esq., City Solicitor for the City of Taunton,
Massachusetts

Case Study – Taunton, MA

- Located in Southeastern Massachusetts
- Over 50,000 population
- 49.86 Square Miles – the largest city in Massachusetts
- Urban Center – rural areas

Need for Project

- City's landfill will reach capacity between 2013 and 2015, resulting in costly transport and disposal of City waste at a location outside of Taunton and loss of current host community benefits
- City therefore needs another option to serve regional, long-term, municipal solid waste management needs

Project Intent

- In July 2008, City issued RFP for private contractor to finance, permit, design, build, and operate Solid Waste Management Facility (“SWMF”) utilizing emerging technologies
- Host Community Benefits
 - Disposal of City waste at no cost
 - Royalty for regional waste
 - Other possible waste/product revenue sharing
- Hub for research

Emerging Solid Waste Technologies Being Considered

- Thermal Gasification
 - Issue: Permitting restrictions on Thermal Gasification with on-site combustion of gas; “Moratorium”
- Aerobic and Anaerobic Digestion
- Hydrolysis
- Chemical and Mechanical Processing

Benefits of Emerging Technologies

- Increases recycling
- Provides clean, renewable energy
- Reduces greenhouse emissions
- Produces marketable products
- Can provide economic benefits to public entities
- Carbon credits
- Renewable energy credits

Permit Responsibility

- Contractor responsible for obtaining all Federal, State and local permits and approvals needed for construction and operation of the SWMF
- City will support the Contractor in obtaining permits and approvals

Siting

- City identified and acquired a preferred site for development of the SWMF
 - Identified through a siting assessment that included identification of potentially suitable sites and comparison of site characteristics to established siting criteria
- Proposers must submit a base proposal for the preferred site
- May also submit an alternative proposal for an alternative site provided the site is acceptable considering the City's siting criteria

Design and Construction Responsibility

- Contractor solely responsible for design
 - City can review design, but not approve
- Contractor solely responsible for construction means and methods
- Acceptance Test
 - Contractor must satisfy Acceptance Test requirements applicable to the proposed technology

Operation and Maintenance

- Contractor shall provide continuous, full-service operation and maintenance services and asset management for the SWMF
- Contractor must meet performance guarantees:
 - Waste throughput
 - Availability
 - Environmental
 - Material Recovery

Ownership and Financing

- Contractor shall own the SWMF
- City shall own the site
- Contractor solely responsible for cost of SWMF design and construction
- City has option to acquire or remove SWMF at end of term

Key Contractor Services

- Process City waste
- Aggregate and process regional waste
- Permit SWMF
- Finance SWMF
- Design, build, operate SWMF
- Market product
- Dispose of any residue
- Provide interim service for City Waste, if SWMF not operational by June 30, 2013

Business Principles

- Requesting disposal of City waste at no cost
- Requesting royalty payment per ton for regional waste, with guarantee of minimum annual payment
- Possible other revenue sharing
- Rent payment for site
- Environmental Fund
- Reimbursement of City development costs

Key Contract Principles

- Host Community Payment
 - Contractor shall pay the City a monthly host community payment for hosting the SWMF
 - Contractor shall additionally provide an annual Minimum Host Community Payment
- Term
 - Contract effective on Contract Date and shall continue until 20th anniversary of Acceptance Date
 - Contract may be renewed for two, five-year terms

Key Contract Principles (cont.)

- Contractor Default
 - City can terminate contract without additional notice and cure opportunity in event of:
 - Abandonment of the SWMF
 - Repeated failure by Contractor to accept City Acceptable Waste
 - Default by Guarantor
 - Bankruptcy or insolvency of Contractor/ Guarantor
 - Failure to maintain any security instrument
 - Any intentional misrepresentation of information and facts relating to Contractor's performance obligations and SWMF performance

Key Contract Principles (cont.)

- Failure to achieve project financing
 - City can terminate contract if Contractor fails to achieve financing within two years from Contractor's proposed project financing date
- City inspection rights
 - Upon reasonable notice, City can inspect SWMF
- Ground lease
 - City and Contractor shall enter into a separate ground lease for the site

Conclusion

- Emerging technologies proving to be major step forward in the environmentally sound and efficient management of Municipal Solid Waste
- Combines material management with alternative energy, bio-fuels, and reduction in open space destruction caused by landfilling usable materials
- Provides tremendous opportunity
- Growing popularity