



Council Meeting: December 18, 2012

SUBJECT: Award of Contract for Routine Disposal and Emergency Cleanup of Hazardous Wastes (F1106-69)

BACKGROUND

Approval is requested for the award of a three-year contract to Advanced Chemical Transport (ACT) of Sunnyvale in an amount not to exceed \$220,000 for the routine disposal of hazardous wastes and emergency cleanup services. Approval is also requested to authorize the City Manager to renew the contract for two additional years if pricing and service remain acceptable to the City.

DISCUSSION

The City generates materials classified as hazardous waste during routine operations. One of the most common sources of these materials is the Corporation Yard truck wash facility where debris, consisting of oil, water and sludge (dirt and vegetation), is accumulated in oil/water separator sumps which must be pumped out on a monthly basis. Additionally, drums of hazardous wastes are collected from other operations at the Corporation Yard, and are also accumulated at Fire Station No. 2, requiring pickups three to four times per year. Accumulated materials include waste oil, oil-saturated absorbents, paints, compressed gas containers, battery acid from auto accidents, etc. The Water Pollution Control Plant (WPCP) also generates hazardous waste in the form of Sodium Hydroxide, which requires annual removal.

In addition to the City's routine disposal requirements, there is always the possibility that emergency cleanup will be required due to a variety of circumstances, such as an industrial accident or a spill of hazardous materials caused by a vehicular accident.

The City currently contracts with ACT for these services under a multi-year contract awarded by Council in 2007 following a Request for Proposals (RFP) process. The current ACT contract is at the end of its term, and a new competitive proposal process was undertaken. RFP No. F1106-69 was prepared by Purchasing, Environment Services and Public Works staff and issued in October 2012. The RFP was posted to the City's website and distributed to potential proposers through the Onvia Demandstar public procurement network.

Proposals were received from the following firms:

- Advanced Chemical Transport of Sunnyvale, California
- Clean Harbors Environmental Services, Inc., of Columbia, South Carolina (Services to be provided out of San Jose, California)
- PSC Environmental Services, LLC, of Houston, Texas (Services to be provided out of Santa Clara, California)
- Phoenix Environmental, Inc., of Corona, California

Proposals were evaluated by staff from the Departments of Environmental Services, Public Safety and Public Works. Evaluation criteria included proposal responsiveness, qualifications and experience of the proposer, and proposed fee schedule. Following review and consideration of each proposal, the evaluation team unanimously recommends award of contract to Advanced Chemical Transport (ACT) of Sunnyvale.

As a chemical transport company, ACT does no processing or long-term storage onsite. Instead, it collects and transports hazardous waste to a variety of treatment storage and disposal facilities (TSDFs) specializing in specific waste streams. Before ACT uses a TSDF, the facility must pass a thorough audit by ACT personnel, including a physical inspection and a review of relevant records, permits and past incidents. Follow up audits are also performed biannually. ACT's worker safety record is excellent, resulting in the lowest worker compensation modification rates in the industry. In addition, ACT receives consistently positive comments from government inspectors on regulatory compliance, and no monetary penalties have been assessed. ACT has also been honored as one of the top 100 companies in the country for its advanced recycling efforts. Finally, ACT's fees are competitive with those submitted by the other proposers, and they have offered to reduce current fees in a number of areas.

FISCAL IMPACT

The bulk of expenditures under this contract for routine hazardous waste disposal is associated with regular operations at the Corporation Yard, followed by Sodium Hydroxide removal at the WPCP, and the quarterly pickups at Fire Station 2. It is anticipated that these costs will not exceed \$180,000 during the three-year contract term. This amount is in line with historical expenditures.

Although the City's need for emergency services is impossible to predict, staff requests an additional \$40,000 in authorized expenditures to cover emergency services, as required, for a total contract amount not to exceed \$220,000. Budgeted funds are available in operating programs in the Departments of Environmental Services, Public Safety and Public Works.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

RECOMMENDATION

It is recommended that Council:

1. Award a three-year contract to Advanced Chemical Transport of Sunnyvale, in substantially the same form as the attached draft and in an amount not to exceed \$220,000, for the routine and emergency disposal of hazardous wastes;
2. Authorize the City Manager to renew the contract for two additional years if pricing and service remain acceptable to the City.

Reviewed by:

Grace K. Leung, Director of Finance
Prepared by: Pete Gonda, Purchasing Officer

Reviewed by:

Kent Steffens, Director of Public Works

Approved by:

Gary M. Luebbers
City Manager

Attachments

- A. Draft Agreement for Services

ATTACHMENT A

**DRAFT
SERVICE AGREEMENT
BETWEEN CITY OF SUNNYVALE AND ADVANCED CHEMICAL TRANSPORT
FOR ROUTINE DISPOSAL AND EMERGENCY CLEANUP OF HAZARDOUS MATERIALS**

THIS AGREEMENT, dated _____, is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and ADVANCED CHEMICAL TRANSPORT, a California corporation ("CONTRACTOR").

WHEREAS, on October 10, 2012, CITY issued Request for Proposals No. F1106-69 for the routine disposal and emergency cleanup of hazardous materials; and

WHEREAS, CONTRACTOR has submitted a proposal in response to the Request for Proposals; and

WHEREAS, CITY has determined that the proposal submitted by the CONTRACTOR is advantageous for the CITY, and that the CONTRACTOR possesses the skill and expertise to perform the required services;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Contract Documents

The complete Contract consists of the following documents: Request for Proposals No. F1106-69 consisting of a Notice Inviting Proposals, Instructions to Proposers, Specifications, Terms and Conditions; AGENCY's completed Proposal; Scope of Services (Exhibit "A"); and negotiated documents. These documents are all incorporated by reference. The documents comprising the complete contract are collectively referred to as the Contract Documents. Any and all obligations of the CITY and the AGENCY are fully set forth and described therein.

All of the above documents are intended to cooperate so that any work called for in one and not mentioned in the other or vice versa is to be executed the same as if mentioned in all documents.

2. Time for Performance

The term of this Agreement shall be three (3) years, beginning the date of Agreement execution. CITY shall have the option, at its sole discretion, to renew the Agreement for two (2) additional years. Should CITY decide to exercise its option to renew the Agreement, CITY shall give CONTRACTOR not less than thirty (30) days written notice prior to the date of termination of the Agreement or any later extension of the Agreement. Extensions of time may be granted by the City Manager upon a showing of good cause.

3. Duties of CITY

CITY shall supply any documents or information available to CITY required by CONTRACTOR for performance of its duties. Any materials provided shall be returned to CITY upon completion of the work.

4. Compensation

CITY agrees to pay CONTRACTOR, as full compensation for the services rendered pursuant to this Agreement, an amount not-to-exceed Two Hundred Twenty Thousand and no/100 Dollars (\$220,000.00), at the rates set forth in Exhibit "B". Payment shall be made within thirty (30) days of receipt of an accurate, itemized invoice by CITY'S Accounts Payable Unit.

5. Conflict of Interest

No officer or employee of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement CONTRACTOR shall not accept employment or an obligation which is inconsistent or incompatible with CONTRACTOR's obligations under this Agreement.

6. Confidential Information

CONTRACTOR shall maintain in confidence and at no time use, except to the extent required to perform its obligations hereunder, any and all proprietary or confidential information of CITY of which CONTRACTOR may become aware in the performance of its services.

7. Licenses and Permits

Throughout the term of this Agreement, including extensions, CONTRACTOR shall be licensed for packaging, labeling, pumping, transporting and disposing of hazardous waste solids and liquids, as defined in the California Code of Regulations (CCR), Title 22, Division 4, and in the Code of Federal Regulations (CFR), Title 40, Part 261, and Title 49, Part 171.

CONTRACTOR shall obtain all permits required for the performance of the services specified in Exhibit A attached. All disposal and permit fees shall be paid by CONTRACTOR other than those which are required by the generator.

8. Compliance with Laws

- (a) CONTRACTOR shall strictly adhere to all state and federal laws with respect to discrimination in employment and shall not discriminate against any individual on the basis of race, color, religion, gender, sexual orientation, marital status, national origin, age or disability.
- (b) CONTRACTOR shall comply with all federal, state and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the Agreement.
- (c) Throughout the term of this Agreement, including extensions, CONTRACTOR shall possess and show proof of the following, where applicable:
 - 1) Hazardous waste hauler registration.
 - 2) CAL-OSHA carcinogen registration.
 - 3) Federal waste hauler permit.
 - 4) California State Contractors License, Class "A" with Hazardous Substances Removal Certification.
 - 5) California Highway Patrol Hazardous Materials Transportation License.

- 6) Environmental Protection Agency Identification Number.
- 7) A current, valid Sunnyvale business license.
- (d) CONTRACTOR shall comply with all applicable local, state and federal regulations when segregating, classifying, packaging, labeling, transporting and disposing of CITY-generated hazardous materials, including, but not limited to:
 - 1) Environmental Protection Agency
 - a) 40 CFR 240 through 40 CFR 272.
 - b) 40 CFR 100 through 40 CFR 149.
 - 2) Occupational Safety and Health Administration
 - a) 29 CFR 1910.
 - 3) Department of Transportation
 - a) 49 CFR 106 through 49 CFR 177.
 - 4) State of California
 - a) 8 CCR, Division 1 – Industrial Relations (CAL/OSHA).
 - b) 14 CCR, Division 7 – California Waste Management Board.
 - c) 22 CCR, Division 4.5 – Environmental Health.
 - d) 23 CCR, Division 3 – State Water Resources Control Board.
 - 5) Rules and Regulations of the Bay Area Air Quality Management District.
 - 6) Rules and Regulations of the City of Sunnyvale.
 - 7) Rules and Regulations of Santa Clara County.

9. Independent Contractor

CONTRACTOR is acting as an independent contractor in performing the work required by this Agreement and is not an agent, servant or employee of CITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and CONTRACTOR. CONTRACTOR is responsible for paying all required state and federal taxes.

10. Indemnity

CONTRACTOR agrees to indemnify, defend and hold harmless CITY, its officers and employees from any and all claims, demands, actions causes of action, losses, damages, liabilities, known or unknown, and all costs and expenses, including reasonable attorney's fees, in connection with any injury or damage to persons or property arising out of or in any way connected with the act, omission or negligence of CONTRACTOR, its officers, employees, agents, contractors, subcontractors or any officer, agent or employee thereof in relation to CONTRACTOR'S performance of services under this Agreement.

11. Insurance

CONTRACTOR shall comply with the insurance requirements set forth in Exhibit "C".

12. Assignment

Neither party shall assign or sublet any portion of this Agreement without the prior written consent of the other party.

13. CITY Representative

{Name of employee}, as City Manager's authorized representative, shall represent CITY in all matters pertaining to the services to be rendered under this Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

14. CONTRACTOR Representative

_____ shall represent CONTRACTOR in all matters pertaining to the services and materials to be rendered under this Agreement. All requirements of CONTRACTOR pertaining to the services to be rendered under this Agreement shall be coordinated through the CONTRACTOR representative.

15. Notices

All notices required by the Agreement, other than invoices for payment which shall be sent directly to Accounts Payable, shall be in writing, and shall be personally delivered or sent by first class mail, postage prepaid or by commercial courier, addressed as follows:

To CITY: Director of Public Works
 CITY OF SUNNYVALE
 P. O. Box 3707
 Sunnyvale, CA 94088-3707

To CONTRACTOR: _____

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, written confirmation of a telephone conversation or an original of a facsimile transmission must be sent by first class mail or commercial carrier, or hand delivered.

Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three days after mailing, unless such date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

16. Termination

If CONTRACTOR defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to CONTRACTOR. If CITY fails to pay CONTRACTOR, CONTRACTOR at its option may terminate this Agreement if the failure is not remedied by CITY within thirty (30) days from the date payment is due.

Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY also shall have the right to terminate this Agreement for any reason upon ten (10) days' written notice to CONTRACTOR. In the event of such termination, CONTRACTOR shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which

would have been performed or furnished) through the date of receipt of notification from CITY to terminate. CONTRACTOR shall present CITY with any work product completed at that point in time.

17. Entire Agreement; Amendment

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

18. Miscellaneous

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. This Agreement shall be governed and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

CITY OF SUNNYVALE ("CITY")

By _____
City Clerk

By _____
City Manager

APPROVED AS TO FORM:

ADVANCED CHEMICAL TRANSPORT
("CONTRACTOR")

By _____
City Attorney

By _____

Name and Title

By _____

Name and Title

EXHIBIT "A"
SCOPE OF SERVICES

A. Emergency Services

In the event of a hazardous materials or waste incident (abandoned waste, spill, leak, etc.), a request for emergency services will be made by a representative of CITY's Department of Public Safety. Upon receipt of such a request, CONTRACTOR shall:

1. Provide all labor, materials, equipment, tools, labels, transportation, and supervision to perform the required services. Typical services include, but are not limited to, waste containment, spill cleanup, site decontamination, hazmat identification of unknown materials, waste packaging, transportation and disposal. CONTRACTOR's personnel, responding to emergency service requests, shall be under the direct supervision of an employee of CONTRACTOR who is trained and certified in emergency response procedures.
2. In the case of a spill or leak, secure the site containing the spillage or leakage and minimize further environmental contamination. Efforts shall be directed to first reduce/eliminate health and safety risks and then to minimize environmental contamination.
3. Be available (on call) 24 hours per day 7 days per week 365 days per year. Prior to the contract start date, provide to CITY 24-hour emergency contact telephone numbers and notification procedures for requesting emergency response services.
4. Report to the site within two hours or less of receipt of a request for emergency services.
5. Contain, cleanup, remove, transport and dispose of spilled substances, containment materials and absorbent materials in accordance with applicable local, state and federal laws and regulations.
6. Determine the composition of "unknown" spilled materials and recommend safe handling and disposal methods, as required.
7. Excavate, test, remove, profile, transport and dispose of contaminated soil from the spill site, as required or as directed by CITY's on-scene representative.
8. Provide guidance and recommendations for cleanup alternatives and procedures, disposal requirements and notification requirements.
9. Prior to the contract start date, provide to CITY's Department of Public Safety Fire Division staff written materials indicating information required by CONTRACTOR prior to responding to CITY's call for emergency services.
10. Have the capability to bill company responsible for incident directly (if CITY guarantees payment in the event of default).

B. Routine Services

Several of CITY's facilities generate hazardous waste during routine operations. Service requests will be made by a representative of CITY's Department of Public Safety or Department of Public Works. Upon receipt of such a request, CONTRACTOR shall:

1. Identify, categorize, profile, package, label, manifest, transport and dispose of regularly generated hazardous wastes. Examples of materials to be processed include, but are not limited to: waste flammable liquids (contains acetone and petroleum distillates), Non-

Resource Conservation and Recovery Act (RCRA) hazardous waste solids, Non-RCRA hazardous waste liquids (latex paint and road oil), empty containers, filters, spent alkaline batteries from consumer products, soil with oil, waste and absorbent materials from vehicular accidents, mercury-containing articles, old CRT/computer monitors and flammable waste aerosol containers.

2. Send to CITY's requesting facility a work team consisting of a lead person and a hazardous waste technician under the supervision of a chemical packaging specialist or equivalent personnel. Response time shall be no more than one week from date of request. This work team shall:
 - a. Establish waste streams, as required.
 - b. Complete a waste profile sheet for each waste stream so established.
 - c. Complete a Uniform Hazardous Waste Manifest and any other required documentation prior to materials transport.
 - d. Provide to CITY's requesting facility a copy of all documentation listed above.
3. Pack and label all wastes in accordance with DOT requirements prior to transport from CITY's facilities. Remove hazardous materials from CITY's facilities to a secure storage facility to await transport to a Treatment Storage and Disposal Facility (TSDF).
4. Send CITY-generated hazardous wastes only to CITY-approved TSDFs.
5. At CITY's Corporation Yard, 221 Commercial Street, provide approximately twelve pump-outs per year of the truck wash oil/water separator sumps and approximately four pickups per year of hazardous wastes in 55-gallon drums. All work shall be scheduled through CITY's Department of Public Works Superintendent of Field Services or designee.
6. Provide approximately four pickups per year of hazardous wastes in 55-gallon drums at CITY's Fire Station No. 2, 795 East Arques Avenue. All services shall be scheduled through a designated Public Safety Officer at the fire station.
7. Provide approximately one pump-out per year of 2,000 gallons of sodium hydroxide, and associated profiling as necessary, at the Water Pollution Control Plant.

C. Disposal Methods

CONTRACTOR shall dispose of all hazardous solids and liquids, requiring either thermal processing, land disposal and/or treatment prior to disposal only at facilities permitted by DTSC or USEPA. Disposal methods shall conform with all applicable local, state and federal regulations. All Non-RCRA oily wastes shall be managed in accordance with 22 CCR, Division 4.5, Chapter 29 (Used Oil Recycling Program). All RCRA hazardous wastes that are recycled shall be recycled only at EPA permitted treatment facilities.

D. Reports

CONTRACTOR shall provide on a quarterly basis a computer printout of all CITY-generated hazardous wastes processing during the previous three months, including CITY's facility requesting pickup, waste description, quantity, waste stream and TSDF.

Exhibit "C"

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Consultant, his agents, representatives, or employees.

Minimum Scope and Limits of Insurance Consultant shall maintain limits no less than:

1. **Commercial General Liability:** \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury and property damage. ISO Occurrence Form CG 0001 or equivalent is required.
2. **Automobile Liability:** \$1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 or equivalent is required. Coverage shall include MCS90 endorsement for contracts requiring the transportation of hazardous materials/wastes.
3. **Workers' Compensation Statutory Limits and Employer's Liability:** \$1,000,000 per accident for bodily injury or disease.
4. **Contractors Pollution Liability Insurance** \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury, property damage and cleanup costs both on and offsite.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared and approved by the City of Sunnyvale. The consultant shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

Other Insurance Provisions

The **general liability** and **contractors pollution liability** policies shall contain, or be endorsed to contain, the following provisions:

1. The City of Sunnyvale, its officials, employees, agents and volunteers are to be covered as additional insureds with respects to liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City of Sunnyvale, its officers, employees, agents or volunteers.
2. For any claims related to this project, the Consultant's insurance shall be primary. Any insurance or self-insurance maintained by the City of Sunnyvale, its officers, officials, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Sunnyvale, its officers, officials, employees, agents or volunteers.
4. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of Sunnyvale.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of not less than A:VII, unless otherwise acceptable to the City of Sunnyvale.

Verification of Coverage

Consultant shall furnish the City of Sunnyvale with original a Certificate of Insurance effecting the coverage required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City of Sunnyvale prior to commencement of work.