

COUNCIL OF THE COUNTY OF MAUI
PUBLIC WORKS AND
FACILITIES COMMITTEE

February 16, 2007

Committee
Report No.

07-10

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Public Works and Facilities Committee, having met on January 31, 2007, makes reference to County Communication No. 06-312, from the Director of Public Works and Environmental Management, transmitting a proposed resolution entitled "INDEMNIFYING SCHNITZER STEEL HAWAII CORP. PURSUANT TO A CONTRACT TO PROVIDE RECYCLING OF SCRAP METAL AND ASSOCIATED RECYCLABLE MATERIALS FROM THE MOLOKAI LANDFILL FOR THE DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL MANAGEMENT, JOB. NO. 06-07/P-4".

The purpose of the proposed resolution is to allow the County to execute a contract, which contains a provision requiring the County to indemnify Schnitzer Steel Hawaii Corp. (Schnitzer) for preexisting pollution, soil contamination, and hazardous waste contamination at the Molokai Landfill in connection with services it provides under the contract.

At its meeting of January 5, 2007, the Council referred County Communication No. 06-312 to your Public Works and Facilities Committee (County Communication No. 07-4).

At its meeting, your Committee met with the Director of Public Works and Environmental Management; a Deputy Corporation Counsel; and James Banigan, General Manager, Schnitzer Steel Hawaii Corp.

There was no public testimony.

The Co-Chairs of your Committee presented photos of the scrap metal at the Molokai Landfill, and a copy of a document entitled "RECEIPT IS ACKNOWLEDGED OF ADDENDUM NO. 1: DATED JULY 31, 2006: FOR JOB NO. 06-07/P-4 FOR REMOVAL OF SCRAP METAL AND ASSOCIATED RECYCLABLE MATERIALS TO PERMITTED RECYCLING FACILITIES FROM THE MOLOKAI LANDFILL: DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL MANAGEMENT: COUNTY OF MAUI".

COUNCIL OF THE COUNTY OF MAUI
PUBLIC WORKS AND
FACILITIES COMMITTEE

February 16, 2007
Page 2

Committee
Report No. 07-10

The Director stated that the island of Molokai has accepted automobiles and white goods at the landfill for many years. He said that in June 2005, a vendor was selected to remove recyclable material from the landfill, but was unable to supply the needed performance bond. This contract was terminated in Fiscal Year (FY) 2005, and the funds lapsed. The Director informed your Committee that the FY 2007 Budget appropriated money once again for this task, and Schnitzer submitted the low bid of \$777,000. This bid was given based on an addendum to the job description provided by the Department that provided for indemnification of any claims relating to preexisting pollution. The Director further stated that the Department views the request as reasonable.

Mr. Banigan stated that the work is expected to take three months. Schnitzer has not completed a formal assessment of the preexisting pollution at the site, but is aware of the lack of best management practices thus far. Schnitzer will implement best management practices, including the use of steel plates and spill kits in order to prevent further contamination. Mr. Banigan commented that without a baseline study, it would be difficult to identify the current level of contamination. He stated that for this reason, the contractors requested that indemnification be added to the project description at the site visit of July 25, 2006. This request resulted in an addendum to the job description used to solicit bids during the purchasing period dated July 31, 2006.

The Deputy Corporation Counsel stated that the contract with Schnitzer had been reviewed by the Department of the Corporation Counsel, whereas the addendum had not been reviewed. The Deputy Corporation Counsel further stated that the County does not routinely accept liability in such cases.

Your Committee discussed the unusual nature of this request, and stated that such indemnification requests should be seen as the exception rather than the rule. Your Committee further clarified that regardless of statements made by a Department, any request for indemnification would require approval by the Council. Your Committee asked whether notices of violation had been issued by the State Department of Health in this matter, in an attempt to assess the time sensitivity of this proposed work.

The Director stated that while no notices of violation have been received to date, the project is being prioritized in order to address an environmental situation that could result in such future notices.

Your Committee voted to recommend adoption of the proposed resolution and filing of the communication.

COUNCIL OF THE COUNTY OF MAUI
PUBLIC WORKS AND
FACILITIES COMMITTEE

February 16, 2007
Page 3

Committee
Report No. 07-10

Your Public Works and Facilities Committee RECOMMENDS the following:

1. That Resolution No. _____, attached hereto, entitled
“INDEMNIFYING SCHNITZER STEEL HAWAII CORP. PURSUANT
TO A CONTRACT TO PROVIDE RECYCLING OF SCRAP METAL
AND ASSOCIATED RECYCLABLE MATERIALS FROM THE
MOLOKAI LANDFILL FOR THE DEPARTMENT OF PUBLIC
WORKS AND ENVIRONMENTAL MANAGEMENT, JOB.
NO. 06-07/P-4”, be ADOPTED; and

2. That County Communication No. 06-312 be FILED.

Adoption of this report is respectfully requested.

pwf:cr:07009aa:scj

COUNCIL OF THE COUNTY OF MAUI
PUBLIC WORKS AND
FACILITIES COMMITTEE

February 16, 2007
Page 4

Committee
Report No. 07-10

BILL KAUAKEA MEDEIROS **Co-Chair**

DANNY A. MATEO **Member**

MICHAEL P. VICTORINO **Co-Chair**

JOSEPH PONTANILLA **Member**

G. RIKI HOKAMA **Member**