

Recommended Public-Private Partnership Structure and Procurement Process

3.1 Introduction and Background

As noted in Section 1, Introduction, the SWA desires to manage and process garden refuse materials at a new processing facility in Sacramento County. The SWA envisions the in-County facility as a public-private partnership (P3). This section of the report describes the recommended P3 structure, including recommendations on the roles of the public and private sectors, the structure and contractual arrangements for the P3, and the responsibilities and commitments of the SWA and its member agencies. The section also describes the recommended procurement process, including the general approach to procurement of the private-sector partner, the general procurement schedule, the role of the SWA Board during procurement, and recommended elements of procurement documents. Recommendations for public involvement during the procurement process are included.

The process for developing the recommendations for the P3 structure and procurement process has been exhaustive, calling on the knowledge and experience of both public and private entities that are currently engaged in garden refuse management for the SWA member agencies. Knowledgeable staff from all three SWA member agencies, representing planning, engineering, and operating activities, plus communications and media relations, were included. Representatives of the Sacramento Cities/County Solid Waste Advisory Committee (SWAC), specifically chosen for their knowledge of the garden refuse management industry and the concerns of the broader community about composting facilities, were also included. All convened to conduct the P3 analysis and other project planning activities. This group was supported by a consultant team experienced in understanding the risks and benefits associated with public-private partnerships and the various types of P3 structures and contractual arrangements.

The group process was generally as follows:

- After the initial chartering meeting with the broad-based group of agency, SWAC, and consultant representatives, a specific subgroup to focus on the P3 structure and procurement process was identified.
- The P3/procurement group met twice in May 2003 to understand the range of possible P3 structures and their risks and benefits. The stages of facility development and operations, including ownership of land and assets, permitting, design, construction, financing, operations, and product sales and marketing were considered in the context of either public or private responsibility and suitability. During the second meeting of this group, it became apparent that understanding the commitments of the SWA member agencies to the project was essential before the P3 structure could be defined.

- As a result, the project team developed a list of commitment factors for the SWA member agencies to consider individually. Each of the agencies met internally to consider these factors. The result was a statement of each agency's willingness to commit garden refuse streams to the new facility and the conditions and limitations on those commitments. There was considerable agreement among the three member agencies on many aspects of commitment, but a few issues necessitated further discussion. A meeting was held in late June to discuss these issues and to attempt to arrive at a common position and agreement. The discussions continued into August.

The agency commitments have made the preferred P3 structure clear. With this clarity, the project team has developed the recommendations documented in this section of the report.

3.2 Recommended Public-Private Partnership Structure

3.2.1 Recommended Roles of Public and Private Sectors

At present, public-sector participants in the P3 for the garden refuse processing facility include the SWA and its three member agencies. Other public entities (e.g., other cities in the County) may become participants in the P3 or may send garden refuse to the facility through contractual arrangements. Ultimately, the facility may contractually agree to accept garden refuse from public entities outside Sacramento County, but it is likely that such entities would not become SWA members.

The general principles in determining appropriate roles for public and private participants in the garden refuse processing facility and the overall garden refuse collection, transfer, and hauling system involved the following:

- Aspects of facility development and system operation should be assigned to the entity most capable of managing them efficiently and effectively. For example, the private sector should be responsible for product sales and marketing. The SWA member agencies should continue to manage collection of garden refuse.
- The SWA must be able to control and enforce operating requirements at the new facility to avoid nuisance problems that have occurred at other facilities. The SWA should be the holder of the major permits for the composting facility.
- Diversion credits for the member agencies must be assured. The SWA should operate and control the scales and oversee the quality of incoming materials.
- The facility site should be owned by the host jurisdiction with land-use authority as specified in "Regional Green Waste Study" (SWA, 2002).
- Risks and costs should be shared fairly and equitably between public and private sectors. Ownership of assets (buildings, equipment, scales, utility lines, etc.) should lie with the primary user of the assets.
- Garden refuse streams must be committed with a high degree of assurance to be attractive for both public and private sectors as well as to support any financing of the needed assets, whether publicly or privately owned.

- There must be redundancy in the system, so that if processing operations experience difficulties or temporary shutdowns, other mechanisms for handling the garden refuse exist.

Using these general principles, the P3/procurement group developed Table 3-1, which shows the roles and division of responsibilities among the SWA, its member agencies, private operators, and haulers.

TABLE 3-1
Facility Development and Operations: Roles of Public and Private Sectors
Sacramento Regional SWA Garden Refuse Processing Facility Development

Role	Public and Private Sectors					
	County of Sacramento	City of Sacramento	City of Citrus Heights	SWA	Haulers	Private Operators
Landowner	X ^a					
Collection	X	X	X		X	
Delivery to Site	X	X	X		X	
Waste Stream Commitments (Inputs)	X	X	X	X		
Solid Waste Facility Permit and Other Major Permits				X		
Basic Utilities and Site Development				X		
Operator Assets, Utility Extensions, Specific Permits						X
Project Assets						
(Infrastructure)				X		X
Scale House				X		
Design				X		X
Build				X		X
Finance				X		X
Operate				X		X
Stormwater Management				X		X
Input Material Quality	X	X	X	X		
R&D Site and Material Reservation				X		X
Product Marketing/Sales						X

Notes:

- ^a For purposes of the present discussion, it is assumed that the eventual site of the new facility will be within the unincorporated area of the County.
- ^b The SWA would like to have the option of conducting demonstration projects with or independent of the private partner, using small amounts of reserved material.

3.2.2 Recommended P3 Structure and Contractual Arrangements

Recommended P3 Structure

The recommended P3 structure has the following components:

- The SWA will lease the land for the facility from Sacramento County (recognizing that the selected site for the facility is most likely to be in Sacramento County outside the Urban Services Boundary and that Sacramento County will own the site and, as the host community, will hold the Land Use Entitlements).
- The SWA will hold the major processing facility permits: the Solid Waste Facility Permit that defines operating requirements, the Waste Discharge Requirements that define how water quality will be protected during facility development and operations, the NPDES permit that mandates control of stormwater runoff from the composting facility/site, and permits related to air quality (Permit to Construct, Authority to Operate).
- The SWA will build and operate the facility's entrance gate and scale house and any associated equipment or improvements. Because ownership of major site improvements usually runs with land ownership, the SWA/Sacramento County agreement will need to address this issue.
- The SWA will build and operate major utility services (water, electricity, wastewater, telephone) to the facility site and will extend these utilities to the boundary of the private operations. The SWA/Sacramento County agreement will need to address the ownership of major underground utilities.
- One private sector facility operator will manage all primary (chipping, grinding, etc.) and secondary (composting, product handling and marketing) processing at the facility. Redundancy will be created as follows:
 - The County will continue to send green waste, including garden refuse, from the southern portions of its service area to the Kiefer Landfill for use as alternative daily cover.
 - The City of Sacramento will continue to contract with a separate private sector operator for management of 50 percent of its garden refuse stream.
- The private operator will obtain all permits for the actual processing facility improvements (building permits, fuel storage, etc.), will be responsible for extending utilities within its operating area(s), and will own and operate the improvements.
- The private operator will own and operate all structures, equipment, and other site improvements necessary to provide the required processing services, except those provided by the SWA.

Contractual Arrangements

The recommended contractual arrangements place the SWA in the central position of responsibility for the composting facility – a joint powers authority responsible for a regional facility. The recommended arrangement is as follows:

- The SWA will execute a separate agreement with each of its three member agencies. This agreement will contain the commitments and conditions under which the member agencies will send their garden refuse to the regional facility. Specific points that need to be included in the SWA/member agency agreements are further discussed in Section 3.2.3.
- The SWA will execute an agreement with the selected private sector operator after the procurement process has been completed. Specific points to be included in the SWA/operator agreement are noted in Section 3.3.4, which describes elements of the procurement documents.

During the P3/procurement group discussions and internal meetings of the three member agencies, the City of Sacramento suggested that the appropriate contractual arrangement would be for the SWA to hold a contract with the private operator for garden refuse processing operations at the site, but for the private operator to execute separate individual contracts with the member agencies for garden refuse commitments, and with haulers for transport of materials to and from the site. In making this suggestion, the City referenced the contractual arrangements between the City of Riverside, the Riverside County Waste Resources Management District, and a private sector entity, Burrtec Waste Industries, Inc., for a solid waste transfer station. The Riverside contract documents were obtained and reviewed to determine whether this arrangement might be applicable for the new processing facility. The conclusions are briefly summarized here; the more detailed analysis is located in Appendix 3A.

- **The SWA should not use the Riverside transaction structure.** The general services required, the number and roles of the entities involved, and the necessary commitments for the SWA processing facility are significantly different from the Riverside transfer station situation. These differences would make the SWA transaction more complicated and difficult to accomplish if the Riverside model were used. It would take longer to complete and necessitate extensive negotiations between the private operator and four separate public entities. This would result in higher costs and a higher level of risk and uncertainty for the private operator, which would be reflected in a higher ultimate price for the operator's services, and which might cause some potential operators to drop out. If financing for capital costs is necessary, lenders would find the Riverside model applied to the SWA situation unattractive and difficult, possibly resulting in higher financing costs.

3.2.3 Responsibilities and Commitments of SWA and Member Agencies

Table 3-2 shows the commitments that the three SWA member agencies are willing to make to the regional garden refuse processing facility. Although details need to be further clarified, the member agencies are in general agreement and are willing to commit significant garden refuse streams to the regional facility.

TABLE 3-2

Member Agency Commitments Summary
Sacramento Regional SWA Garden Refuse Processing Facility Development

Consideration	County of Sacramento	City of Sacramento	City of Citrus Heights
1. Type of service desired.	Full service, no primary processing at NARS.	Full service.	Full service.
2. Tonnage committed to facility.	NARS tonnage of about 61,400 tpy yard refuse (based on 2002 tonnages)	50 percent of total tonnage if pricing remains about the same as current costs and a maximum of 10 to 15 percent is used for ADC. 50 percent is approximately 40,000 tpy yard refuse (based on 2002 tonnages).	100 percent of yard refuse material included in County totals.
3. R&D interest.	No interest in R&D, an SWA issue to decide, but would like to see SWA commit a small percentage of waste stream to R&D.	No interest.	No interest, a SWA issue to decide.
4. Willingness to pay a premium to achieve long-term reliability and higher end uses.	None.	None.	None.
5. Any goals or requirements for finished product use.	None.	City would want to keep the options open to consider.	Would like ability to purchase product at a SWA rate (assumed less than market rate).
6. Fair and equitable risk allocation approach.	Agree with approach.	Agree with approach.	Agree with approach.
7. Put or pay commitment understanding.	Put or pay is acceptable.	Put or pay is acceptable.	Put or pay is acceptable.
8. Financial commitment.	Pay the same as now paid.	Pay the same as current per ton prices.	Willing to pay somewhat higher fees pending future cost-benefit analysis.
9. Rate structure for SWA members.	Same fee for all members. Agree that contaminated or rejected loads would have additional cost. SWA sets any "public" rate and approves any contracts for additional materials from non-members on a case-by-case basis.	Preferred fee for members; different rates for different materials (i.e. primary processed loads cost less per ton). Agree that contaminated or rejected loads would cost more. Recoup fixed costs with higher rate to future members.	Agrees with flat fee per ton concept with preferred rate for members; higher fees for contaminated or rejected loads.
10. Desire to commit green waste stream for different end uses.	Not Specified.	No more than 10 to 15 percent to be used for ADC.	Diverse marketing approach.

TABLE 3-2

Member Agency Commitments Summary
Sacramento Regional SWA Garden Refuse Processing Facility Development

11. Limitations on rate changes through formulae and indexing in contractual agreements; process for changes due to uncontrollable circumstances; SWA Board's discretion is limited.	Agree with concept.	Agree with concept.	Agree with concept.
12. SWA and each member enter into an agreement.	Agree but want exit ramps.	Agree, since Riverside model does not work for SWA.	Agree.

As shown in Table 3-1, the SWA will hold the major permits for the facility. It is imperative that the SWA be able to control the operations to compel environmentally sound operations by the vendor. The SWA must be able to quickly take over operations if the vendor is failing, because it cannot allow piles of decomposing materials to accumulate on the site and cause major nuisance problems. Although this creates risk for the SWA, there is well-established precedent for this approach in the solid waste industry. The risk for the SWA can be controlled through insurance and financial requirements in the SWA/Vendor Contract.

Agreements between the SWA and its member agencies should include the following elements in addition to those listed in Table 3-2:

- If debt financing is necessary, match the time commitments for tonnages to the facility with the term of financing.
- Specify "exit ramps" for each party, conditions under which each member agency may withdraw from its agreement with the SWA for commitment to the regional facility.
- Specify a mechanism for member agencies to agree to commit additional tonnage, and allow for preferential pricing or another payback approach for such additional tonnage.
- Specify the mechanism for tracking tonnages for purposes of diversion credits for member agencies.
- Make as explicit as possible the balance between risks borne by the SWA and risks borne by the member agencies and reflect the understanding of all parties about the effects of risk on rates and pricing.
- Specify a process for managing rate changes for uncontrollable events such as regulatory changes or force majeure.
- Specify methods for setting rates for new SWA members that join after the public-private agreement is in place or after the facility is already in operation.

- Recognize that the SWA Board will set rates and acceptance criteria for garden refuse from self-haulers and non-SWA members.
- Specify that the SWA will deal with environmental compliance issues and potential vendor breakdown or default through the SWA/Vendor Contract, so that the member agencies are not individually exposed to this risk.
- Consider including a clause about “take back” of products as part of the put-or-pay agreement.
- Specify performance terms for SWA and member agency, dispute resolution, remedies upon default, and similar standard clauses.

3.3 Recommended Procurement Process

3.3.1 General Process for Procurement

The overall goal of the procurement process is to achieve best value, balancing risk and pricing factors and considering other defined selection factors. The general objectives of the procurement process are as follows:

- Attract competitive proposals from qualified parties
- Obtain an acceptable price for the services desired
- Obtain acceptable terms that meet the objectives of the SWA and its member agencies
- Develop an equitable contract that fairly serves the public and private partners

The keys to success in establishing a public-private partnership are the following:

- **Procurement.** A fair, reasonable, and complete Request for Proposals (RFP). The RFP provides the boundaries and defines the responsibility and relationships for evaluation, selection, and negotiation; all questions or disputes will go back to the RFP for resolution.
- **Negotiation.** Fair allocation of risks and responsibilities, protective terms and conditions for both parties, appropriate representations and warranties.
- **Oversight and Monitoring.** Ensure that both parties are getting what they agreed to have annual audits and periodic partnership meetings.
- **Communication.** Frequent and open communication to build trust and understanding.

For procuring services, several approaches are possible; they include the following:

1. Request for Qualifications (RFQ), followed by RFP from qualified vendors (a two-step process).
2. RFQ, followed by invitation to negotiate with one or more qualified vendors.
3. RFP from prospective vendors (a one-step process).
4. Direct negotiations.

These different approaches were considered in selecting the recommended procurement process. Appendix 3A contains a discussion of the advantages and disadvantages of each approach.

Recommended Procurement Approach

The two-step RFQ/RFP process is recommended for the following reasons:

- It allows early identification of qualified private vendors and the selection of a shortlist of the best technically qualified and most financially strong vendors to receive the RFP.
- It provides opportunities to interact with potential vendors during the early stages of procurement, which helps to build trust on both sides and allows the preliminary development of vendor risk profiles.
- It provides opportunities for enhancing the procurement process through “extras” (discussed later in this section).
- It clearly demonstrates a defensible, competitive, comprehensive vendor selection process that will result in selection of a responsible, capable private partner for facility operations.

Recommended Enhancements to the Procurement Process

The procurement process aims to create the atmosphere of trust necessary for a successful partnership, adopt an honest and sincere approach, and present a fair and even field for all proposers. Some of the enhancements of the process that can help meet these aims include:

- A request for expressions of interest and an expression of interest meeting.
- Opportunities for potential vendors to comment on draft procurement documents (RFQ/RFP).
- Explanation of SWA/member agency positions and agreements to potential vendors, to demonstrate that the public partner is committed to the project.
- Inclusion of the draft SWA/vendor contract as part of procurement documents, followed by private meetings with potential vendors to discuss what each one likes and dislikes about the contract. This would be followed by a revision of the draft contract based on all vendor comments and a second round of private meetings with the potential vendors. The draft contract would then be revised a final time and used as the basis for vendor proposals of prices and exceptions to the contract. Each vendor’s comments on the draft contract and final list of exceptions to the contract determine the vendor’s risk profile. The risk profiles are used in balancing price and risk to achieve a best value selection.
- Potential input by qualified vendors to site selection and design basis for the facility.
- Meeting(s) with qualified vendors to clarify points in the proposals.

These recommended enhancements involve frequent and intense interaction between SWA staff and potential vendors and will require time commitments from both public and private partners. However, the increased commitment to interaction during the procurement

process provides a significant addition to ensuring the success of the partnership. The P3 relationship will be a long-term partnership, and personal chemistry and communication styles are important factors to consider in making such a partnership successful. The increased level of interaction will demonstrate how the individual partners will be able to manage the issues and potential conflicts that may arise during the development and operation of the garden refuse processing facility and the overall system for garden refuse management.

3.3.2 Procurement Process: General Schedule

Figure 3-1 shows the general schedule for the procurement process and places the procurement process in the context of the overall facility development schedule, which covers the site selection, environmental/permitting, and design/construction activities leading to operation of the facility.

Important aspects of the procurement process itself are:

- The Request for Expressions of Interest and the Expression of Interest Meeting
- Issuance of the RFQ, review and evaluation of RFQ responses and selection of the shortlist of qualified vendors
- Issuance of the RFP and the draft SWA/Vendor Contract
- Two rounds of contract revisions and issuance of final draft SWA/Vendor Contract at the last stage of the RFP response period
- Evaluation of the RFP responses and selection of preferred vendor
- Completion of SWA/vendor negotiation

Critical path issues include the following:

- The agreements between the SWA and each of the three member agencies must be in place or substantially complete before the Request for Expressions of Interest is issued. The commitments of the garden refuse streams from the member agencies to the new facility and the process for setting initial rates and future rate changes must be clear in order for potential vendors to be interested and willing to commit the time to participate in the procurement process. The SWA/member agreements can be described during the Expression of Interest Meeting, and the agreements themselves can be part of the RFQ document or can be made available at the offices of the member agencies for review by interested parties.
- The SWA/member agency agreements should be substantially completed before the site selection process begins in earnest, so that it is clear that the member agencies are committed. Communities in areas that may be suitable for the new facility need to be assured that the member agencies have carefully considered the need for a regional facility and are agreed on environmentally sound and cost-effective development and operations.

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- The site selection process must be completed and a preferred site and alternative sites must be identified before the environmental and permitting process can proceed. The Expression of Interest process and ongoing involvement of potential vendors can overlap with the site selection and process of environmental review and land use entitlements. This would allow the potential vendors to participate in aspects of site selection and preliminary facility layout and design sufficient for the environmental review.
- The private partner procurement process should not begin until the environmental review and land use entitlement process is close to completion, as there will certainly be environmental mitigation and operating conditions imposed on facility design and operations that may affect the vendors' proposed pricing and risk postures. Experience shows that most of the major conditions that may significantly affect the vendors' operations and pricing emerge during the environmental review process.
- The RFQ/RFP process must be conducted as a continuous process in time, with no more than about 60 days between the end of the RFQ process and selection of qualified vendors, and the issuance of the RFP to the qualified vendors. Potential vendors desire a reasonable assurance that conditions will not change significantly over the course of the procurement, and they need a predictable schedule for their expenditures in pursuing the procurement. The RFP process should end shortly after the completion of the major permits but with enough time that any additional permit conditions can be accounted for in the vendors' pricing proposals.
- The final SWA/Vendor Contract should be in place prior to the start of any financing arrangements for either party. Potential lenders will need assurance of the terms of garden refuse stream commitment, rate structures and rate setting, capital investment requirements, and pay-back period.
- The final SWA/Vendor Contract should be in place prior to the start of construction of any facility site improvements or other capital investments (other than land purchase, which is the responsibility of Sacramento County) because both parties need assurance of each other's commitment prior to making such investments.

The general projected schedule for the development of the regional garden refuse processing facility includes the start of operations in mid 2007. Figure 3-1 shows the expiration dates specified in the member agencies' current agreements for garden refuse processing. Two of the agreements have clauses allowing extension, as follows:

- The City of Citrus Heights has the sole option to extend its agreement with Sacramento County for three one-year periods.
- The Sacramento County/Grover Landscape Services agreement has an option for two one-year extensions by mutual agreement of the parties.

The timing of new service agreements for the City of Citrus Heights and Sacramento County fits with the general schedule for developing the new regional facility and procuring the private partner.

The City of Sacramento agreements are one-year agreements with provisions for annual extensions if both parties agree. However, neither agreement allows extension beyond five years from the date of award of the original agreement. The City has indicated that it will seek new service contract(s) in 2004. (Note that even though the City's agreement with Waste Management is extendable until May 2005, the City has the right to terminate the agreement at any time.) Any new agreement(s) that the City makes for garden refuse management services should recognize the City's commitment of 50 percent of its garden refuse to the new regional facility and should allow the City to terminate the agreement at any time.

Near the end of the environmental and permitting process, the SWA should consider any changes in state and local government policies and regulations, preferred processing technologies, and operating requirements that may affect the SWA/member agency agreements or the procurement requirements.

3.3.3 Role of SWA Board during Procurement

The principal participants in managing the procurement process and securing a private sector partner will be the SWA Board and the SWA staff, with consultant assistance. The role of the SWA board during procurement is described below. The roles of SWA staff and consultant(s) are described in Appendix 3A.

Role of SWA Board

The SWA is currently envisioned as the lead agency for this project, and thus the SWA Board will be the decision-making body for the project throughout the entire process of public involvement, private partner procurement, and facility development. It will take several years to bring the proposed facility into operation. During this period, the SWA Board's role is expected to include the following:

- Acting as a focal point for community involvement issues
- Approving the agreements between the SWA and the member agencies
- Approving the site for the facility
- Authorizing the application for the necessary facility entitlements, including the solid waste facility permit
- Certifying the environmental review document for the project
- Approving the contract between the SWA and the selected private sector operator of the facility
- Approving debt financing for the public sector portion of the facility capital improvements (if financing is the preferred funding mechanism)
- Approving the construction contract for the public sector portion of the facility capital improvements
- Setting the facility rates of the facility for any other users that may emerge in the future
- Conducting oversight and monitoring of facility contract operations

3.3.4 Recommended Procurement Document Elements

General Considerations

In general, the considerations for selecting a private sector partner include:

- **Technical.** Considerations include expertise in the appropriate technology; demonstrated track record of successful operations; length and type of experience in garden refuse processing and the complete range of products; facility management and operating plan; experience in successful marketing and sales of products and market connections.
- **Financial.** Considerations include strength of financial statements, ability to guarantee performance, depth of resources, staying power, and ability to meet required schedule.
- **Reputation and Relationships.** Considerations include reputation as responsible business entity in the industry, good references, reputation for honest dealings, approach during procurement discussions, “gut feeling.”
- **Price/Costs.** Considerations include competitive pricing, openness about pricing structure, willingness to consider cost saving ideas as part of negotiations.
- **Risk Profile, and Posture.** Considerations include willingness to allocate risks fairly and equitably.

Both the RFQ and the RFP will need to contain an explicit discussion of the process and criteria for evaluation and selection. The general considerations are the starting point for developing the specific selection criteria.

The procurement documents will include a letter requesting Expression of Interest from potential private partners, the RFQ, the RFP, and the Draft SWA/Vendor Contract. The general contents of the letter, the RFQ, and the RFP are described in Appendix 3A. The P3 team had considerable discussion about elements that could be included in the draft SWA/Vendor Contract; these elements are described below.

Draft SWA/Vendor Contract. The draft SWA/Vendor Contract should clearly communicate the scope of services, performance standards, allocation of responsibilities and risks, protective terms and conditions, representations, and warranties/guarantees. The term of the contract should be a minimum of seven years; 10 years is preferred. Some of the potential clauses that have been identified during meetings and discussions of the P3 team are:

- Clauses that reflect the commitments and constraints in the SWA/Member Agency Agreements.
- A clause explicitly recognizing the SWA as permit-holder and the SWA’s right to intervene to shut down or take over operations if nuisance issues arise. This clause would also pass through from the SWA to the vendor of any fines or unusual compliance requirements imposed by regulatory agencies.
- Clauses specifying the obligations of the SWA and the vendor for facility management and operation and operating parameters and requirements.

- Clause(s) specifying initial rates and rate escalation limitations, using identified indices such as the Consumer Price Index or actual utility cost increases. Risk for such items as utility rate increases could be proportioned as follows: the vendor takes the risk of utility consumption, while the SWA takes the risk of utility rate increases.
- Clause(s) specifying compensation and payment terms for the vendor; incentives for energy savings or other cost-saving measures or measures to increase profitability or sustainability that are developed by the vendor could be included.
- Clause(s) specifying how diversion credits will be demonstrated.
- A clause allowing the public entity to terminate the contract for convenience provided the private sector partner is “made whole” (i.e., reimbursed for costs incurred up to the point of termination and reasonable close-out charges).
- Clause(s) specifying vendor’s ability to respond to “spot” opportunities for accepting self-hauled materials and other types of materials for processing (for example, materials such as dry wall, soil, or preconsumer food waste); the contract should include a list of acceptable materials. Some form of profit sharing between the vendor and the SWA for additional materials should be considered.
- A clause specifying how expansion of the facility and operations during the term of the contract would be permitted and managed.
- A clause specifying the contingency plan in the event of environmental compliance issues or vendor breakdown or default, and the responsibility of the vendor to bear the costs of correcting the situation.
- A clause specifying that the price risk associated with uncontrollable events such as force majeure or regulatory change will be borne by the SWA (and its member agencies) but that the vendor will take actions to minimize the time and costs to respond.
- A clause specifying the responsibility for management of contaminated loads.
- A clause specifying possible take-back of products by the SWA member agencies, creating a market for the vendor’s products.

3.4 Public Involvement as Part of the Procurement Process

The success of the procurement, and ultimately the success of the public-private partnership, can be assured through increased participation in the procurement process. The public and private parties who are directly involved are the SWA, the member agencies, member agency staff, and the potential vendors. The broader range of stakeholders includes the general public, neighbors and communities around the selected site and along material transportation routes, other elected officials, business community participants, special interest groups, the media, and regulatory agencies.

Because of the lengthy site selection and environmental/permitting process for the regional facility, the actual procurement process will not start until June 2005, as shown in Figure 3-1. The broader range of stakeholders will be involved during the site selection and

environmental/permitting processes as discussed in Section 2, Public Involvement Plan. During the next phase of the regional facility development, the principal stakeholders in the procurement process – the SWA, member agencies, member agency staff, and potential vendors – will also be involved with the broader range of stakeholders and will engage in specific activities to ensure effective communication and exchange of information and ideas. The specific ways in which the principal P3 process stakeholders will be involved are as follows:

- **SWA, Member Agencies, and Staff.** The SWA, member agencies, and staff will be involved in the negotiation of agreements for commitments to the regional facility. During this process, they will simultaneously be receiving information and engaging in building two-way communication through the methods discussed in Table 2-4.
- **Potential Vendors.** SWA staff, with consultant assistance, will develop a list of potential vendors and send the letter requesting Expressions of Interest to all on the list. The Expression of Interest meeting with the vendors will be scheduled at the start of the site selection process. During this meeting, the SWA staff will present the proposed regional facility and P3 concepts, discuss the SWA/Member Agency commitments and agreements, and lay out the process and schedule for moving ahead. The vendors will be invited to make initial comments and to continue with occasional meetings during the site selection process, in addition to being invited to participate through the mechanisms designed for the broader range of stakeholders. Vendors will be encouraged to actively help with identification of potential sites, including sites that they may themselves own.

The project team will maintain a mailing list of interested potential vendors and send information materials to potential vendors when they are made available to other stakeholders. Vendor comments and suggestions will be recorded and tracked. This process for vendor involvement will continue through the CEQA process. As the end of the CEQA process nears, the vendors will be asked to attend one or more meetings to understand the environmental mitigation conditions and to re-express their interest in the procurement process.

Vendor involvement in the actual P3 procurement process is described earlier in this section. The recommended enhancements of the procurement process are designed to increase vendor involvement.

The measures of successful involvement of and communication with vendors as stakeholders are:

- At least three, and preferably five or six, vendors attend the Expression of Interest meeting and agree to participate during the site selection and environmental process on a regular basis.
- During the environmental and permitting process, the vendors actively contribute ideas about potential sites and about facility design, construction, and operation.
- At least three vendors remain interested at the start of the P3 procurement process and are potentially willing to submit their qualifications in response to the RFQ.

3.5 Recommendations

The SWA Board should approve moving ahead with Phase Two, Structuring and Designing the Project, and the SWA and the member agencies should commence the following elements of the Procurement Process:

1. Develop and execute separate agreements between the SWA and each of its member agencies. These agreements will contain the commitments and conditions under which each of the member agencies will commit a portion of its garden refuse to the regional facility. Recommended considerations to be included in these agreements are contained in Table 3-2 and Section 3.2.3 of this report. **Achieving these agreements is essential to moving ahead with site selection, the early stages of private partner procurement, and the environmental and permitting process for the new regional facility. Therefore, this action should be given the highest priority.**
2. The City of Sacramento's current contracts for garden refuse management services expire in 2004 and 2005, and the City has indicated its intent to procure new services in 2004. The Sacramento County and City of Citrus Heights contracts for garden refuse management services remain valid through March 2007, when the new regional facility could commence operations. **Any new agreement(s) that the City of Sacramento makes for garden refuse services should recognize the City's commitment of a portion of its garden refuse to the new regional facility and should allow the City to terminate the agreement(s) at any time.**
3. After the SWA/Member Agency Agreements are in place, issue an Expression of Interest letter to solicit interest from potential private-sector partners. Hold an Expression of Interest meeting with potential private partners to explain the P3 concept and the commitments of the SWA and the Member Agencies and ask for their involvement and ideas as the facility siting and environmental process moves forward.