

11-14-16 ELECTRIC UTILITY COMMISSION MEETING

AGENDA ITEM 8: [Various Depts; AE's portion: \$903,000] Authorize negotiation and execution of a 36-month contract with REPUBLIC SERVICES, or one of the other qualified offerors to Request For Proposals SLW0514, to provide citywide refuse, recycling, organics and special waste collections for City facilities, in an amount not to exceed \$7,725,000, with three 12-month extension options in an amount not to exceed \$3,090,000 per extension option, for a total contract amount not to exceed \$16,995,000.

Karen Hadden: Okay, so Item Number 8...

Jeff Vice: Madam Chair? I did want to point out that Miss Lux is here if she would like to speak at this time.

Karen Hadden: That would be fine.

Jeff Vice: That's all right, never mind, she's opting not to.

Karen Hadden: Okay. Thank you.

Jeff Vice: Thank you for coming, Miss Lux.

Karen Hadden: So Item 8, the speakers we have...?

Jeff Vice: Yes, I'm sorry, speakers will have each three minutes and the first up is Dennis Hobbs.

Dennis Hobbs: I allocate my time to Mr. Gregory.

Carol Biedrzycki: Are you allowed to do that?

Bob Gregory: Doesn't it just say we have two speakers and if we allocate the times for those, to the two.

Jeff Vice: Mr. Gregory, you're of course...

Bob Gregory: Bob.

Jeff Vice: Yep. Bob, I gotcha, Bob.

Bob Gregory: And my son Adam.

Jeff Vice: All right, he's not on here but we'll add him.

Bob Gregory: Oh. Sorry about that. Adam Gregory.

Jeff Vice: No worries. Teamwork.

Karen Hadden: So how many speakers total are there?

Jeff Vice: Two.

Karen Hadden: Two?

Jeff Vice: Six minutes.

Karen Hadden: Okay, great.

Jeff Vice: I guess. If that's the will of the Commission.

Bob Gregory: Can we pass out...

Paul Gregory: Can I pass out some documents to the dais?

Jeff Vice: Sure. Thank you.

Karen Hadden: Welcome Mr. Gregory.

Bob Gregory: Thank you very much. I'm Bob Gregory with Texas Disposal Systems and I'm very pleased to have the opportunity to come before you today, tonight, and speak to you. I sent out a package of information with an email to you on Friday evening. I hope you received it and had an opportunity to look at it. In the case that you did or didn't, you have a copy there and it has some additional information. It has the email with the attachments that were with it, included. It has, in one of the attachments, was a proposed Resolution with facts concerning what we'll be talking about and what we presented to you for your consideration and that has attachments behind a paper clip that represent the facts that we have to support those positions. This came through the Zero Waste Advisory Commission last Wednesday and we're learning staff's position on it as we go so forgive me if it's too much information. It's the old saying, "If I had more time I would've written a shorter letter." But this is a RFP, where the one six years ago was an IFB, an Invitation for Bid, so as you know an RFP allows for exceptions for differences in the RFP more or less. It also allows for a great deal of latitude on what you can take exceptions to. The exceptions can be a lot different of things more or less, the additional items or lesser items, there's a lot of latitude in RFP. This contract has not had an RFP, to my knowledge, before. The staff also signed nondisclosure agreements so we've been able to find out very, very little about this other than what is in the Request For Proposal, nothing from what has been submitted on it other than this material coming out Friday of the previous week right before the ZWAC meeting. So my son Adam will deal with the proposed Resolution we have and the facts. The RCA that you received today was the same as the RCA that was in the ZWAC agenda that is attached and marked up on your email that I sent out, with one exception and it is shown in one of the documents that is in the back of your package and I'm not sure whether staff is taking out special events and emergency events and the statement that "this contract does not provide collection of material for non-City department facilities", but, it's confusing, but your RCA is different than the other two Commissions that this has gone to. I would just like to say in the short time that I have to speak and you know the type, the volume of material that we have on this, it's represented in this email and the marked up memo, the marked up scoring, the marked up RCA that was before staff. Hitting the high points, when the RFP response time was set there was only one respondent. We had a representative there. I watched it on the webinar, or whatever you call it, where you can watch it on the internet, along with a number of people in my office. Republic Waste was not a respondent in a timely basis. It came to the time, it ended, the individual announced they only had one response. It was Waste Management. Then a few days later they came out and said well there's more, there's another one that responded, well they didn't identify that at all. There are, suffice it to say, I've given the detail in this document, but there are numerous false statements made by staff in the RFP and particularly in this RCA. This includes, for the very first time, the foray of the staff into open competition with private haulers. In the past, for the past forty years; I've been in this a long, long time; there's been a balance. The City did not do dumpsters, anything with a front-load dumpster or a roll-off dumpster. The City did carts and residential. There was always that understanding. The City is going into competition, in this, with private operators. Not only private recycling companies and composting companies, but private haulers. This is the death knell to our business. Please don't underestimate the value or the importance of this to us. This is by far the most important thing I've ever come before you before. Last year the City was going to, or staff wanted to extend the contract after the closure of the BFI landfill and staff wanted to extend it to memorialize the acceptance of the Waste Management landfill. ZWAC voted unanimously against it. Council voted unanimously against it. They did not extend the contract. Austin Energy has been operating for a year without a contract. We told them that they could, they knew they could, they said they couldn't. And you will see in some articles behind the Resolution where the news media covered those things. There is absolutely no

urgency on this. There is plenty of time for the word to get out. Please recommend that this not be approved and even recommend that the RFP be thrown out because it has so many brand new things. The current contract six-year term is six million. This is 17 million. That's 11 million dollars more. We're not exactly sure what they are but some of the things includes contracts that we now have that they're allowing to be taken over by this without going out for bid. It is a major, major mess on the City. It's a foray into competition in our industry. It's a flow control on recyclables and compostables, and it is a lot of things that the City staff says it's not. And we're asking you to say no, to ask Council at the very minimum to only approve it – please don't – but if they did approve it, to only approve to negotiate a contract, to come back to y'all, to ZWAC and the Water and Wastewater Commission with a contract negotiated so that we, stakeholders, including all the special events. This gives the City the right to take over all special events. That's a multi-million dollar part of my business. Those people don't even know it. They can't tell it by the posting of this Agenda item. They can't tell at all. The businesses can't tell. The last time the City tried to do this, in a matter of three weeks we had 3,000 business signatures. I feel sure we can have 10,000 by December 1st. Please send the contract back, so, for discussion before there is a vote for final execution, so that the public can know about it, stakeholders can know about it. Y'all can know the impact of it. And please know that Austin Electric has gone for a year without a contract, it can certainly go for a few months more without a contract and work through purchase orders. I heard the buzzer, I'm sorry.

Karen Hadden: Mr. Gregory, your son Adam is also speaking, correct?

Bob Gregory: Yes.

Karen Hadden: Can you stay at the microphone so that if we have questions we can maybe do them together?

Jeff Vice: I'm sorry, I must be confused, I thought Mr. Gregory gave you his time? Did someone else give you his time?

Adam Gregory: Everybody, we were gonna be the only two speakers, I apologize for any...

Jeff Vice: No worries.

Adam Gregory: So everybody else was donating to us.

Bob Gregory: You should have one, two, three, four, five, six times.

Jeff Vice: Sounds great. So you've got plenty of time as I understand it then. Just teasing.

Adam Gregory: Good evening Commissioners, Adam Gregory with Texas Disposal Systems. I want to talk to you about the Draft Resolution that we're proposing that, or hoping that you would consider. We did write this and we wanted to, we included it in the email we sent out on Friday, but in your packet behind the Resolution are a number of additional documents that, some were attachments to the original email but some are additional material that we wanted to provide as neutral backup information for the Whereas sections of the Resolution. I'll go through them and I'll start with the first Whereas. The first Whereas simply states that a comparison of the two Scopes Of Work for the previous RFP, for the existing contract, and for the RFP before you now, shows a very significant increase in the types and amounts of services that this is requesting. Just in very macro terms the original Scope Of Work was nine pages, the one that's before you now is 18 pages long. Those two Scopes Of Work, with many annotations to the current Scope Of Work for the current RFP that beg questions is included there. The third Whereas that has a number "2" next to it on your copy, it reveals that the staff, the RFP, and the statements of staff, have indicated that they fully intend to use this to compete with private haulers for special events. The Scope Of Work shows that clearly and we've also included a list of statements made just last week at the ZWAC meeting that indicate that while they were denying that they

intended to compete, the statements are very clearly showing that that's the case. On the third Whereas, it shows, we state that the City Council adopted revisions to code that clarified the delineation between market served by the public by ARR, through contract and by themselves that are reserved to the licensed private haulers. We've included the pertinent Ordinance language, that's 15-6, 11 through 13. That very clearly delineates what parts of the market are to be serviced by which type of service provider. We believe that this RFP is clearly in contravention of that established City policy. The number "4" Whereas is a reminder of what happened last time that this portion of this contract, the Austin Energy portion, was brought before City Council. We've included the transcript of the December 2015 meeting where Council unanimously rejected staff's recommendation to allow Republic to utilize the Waste Management, Austin Community Landfill, and there's a number of news articles there that clearly show what the Council's intent was when they rejected that. And the fifth Whereas is a reminder that City Council disqualified the WMI/ACL from consideration for large disposal contracts due to potential environmental liability. They did that based on a City of Austin commission study done by Carter and Burgess. The pertinent sections of that report are included as backup that state that significant potential liability exists with the use of that landfill due to hazardous waste. There's an article there that shows that Council disqualified them as well. The next two Whereas are based on the fact that staff has refused or chosen not to answer any specific questions about pertinent details. They've, in response to very specific questions from other Commissioners, they've stated they could not provide any specific information on the proposal or the proposed contract. The number "6" numbered Whereas is simply indicating that the old contract for the same six-year period was just over six million dollars and this is just under 17 million dollars. We've included the old and the new RCA. They've stated that this is simply a renewal of the contract but the Scope Of Work is twice as long and it's nearly a 200% increase in cost that they've indicated was simply due to inflation and a degree of specificity that they've added to their Scope Of Work. The number "7" numbered Whereas states that Council has given staff no direction to expand the existing contract for City departments to include competitive dumpster services with private haulers and processors. Now they've stated, staff has stated recently that they were directed to provide service to these City-sponsored events. Well we've included as backup for this the 15-6 sections of City code that delineate the market that I've talked about before. We've also included the 2009 Ordinance that does direct the City Manager to implement recycling at City-sponsored events for which the Council waives fees. We've also included the Ordinance just passed just in September of this year that is a list of the events that the City Council has passed Ordinance, choosing to waive fees. The list of events in the RFP is much more extensive than that and actually only three of the events that are officially sanctioned by the City are included in that list. The more extensive list in the RFP has 19 events on it, 17 of which TDS is the service provider for. They have decided to conflate the directive of Council to mean that they can compete for recycling, solid waste, and organic service for any event in Austin. They go so far as to say that the City department can choose to say, "I sponsor thee" to any event and that would make that event eligible to receive services under the contract that they're asking for approval now. Mr. Gregory mentioned what our request is and we hope that you would, seeing the backup to these very simple facts that we included in the Whereas, that you would take action to recommend that Council not approve this contract and to issue one that is much more narrow and only for City generated waste at City facilities. We would also ask that you recommend that the Anti-Lobby Ordinance not apply. That might sound a little crazy to you but in our instance, we're dealing with a staff that plays the dual role of competitor and regulator. In that instance it's kind of an unfair situation and something that we can't choose to subject ourselves to is a vow of silence when there's serious policy-making-by-RFP being undertaken by the staff. In the past we've been subject to misapplications of the Anti-Lobby Ordinance that we had to go to court to overturn. Federal judge has rule that staff has misapplied that to us in certain situations. It's too... there's too much potential for very negative consequences and too much demonstrated misapplication by the staff in the past. We hope that you would recommend to Council that staff in the future, and in this case, only issue RFPs that are consistent with established policies. We've seen too often the staff

trying to dictate policy by RFP. Finally, we would ask that you recommend to Council that they not approve any contracts that aren't negotiated and presented and posted for public review. The situation that I believe you're about to hear from staff that they can't answer questions about the proposal or the contract, but they want you to recommend approval, I just don't understand how that happens in a public situation like we're in. I'm happy to answer any questions about the backup documents that we provided for all of these Whereases, they're all factual, and we can answer any questions. Thank you for your time.

Karen Hadden: What's the will of the Commission? Mr. Loots, are you going to be on this item?

Gage Loots: I will be speaking to part of it, yes.

Karen Hadden: If you want to just come on up.

Cary Ferchill: I think we should hear from him first.

Karen Hadden: Yeah. Maybe we should hear from staff first. Okay.

Jessica Frazier: Are you all right, do you want me to help you?

Gage Loots: Yeah, I'll start off. Once again, Gage Loots with the Purchasing Office. So this is an item that we're bringing forward that was a competitively issued solicitation. The solicitation is out there available for public view. We have the summary of the RCA as well as an evaluation matrix that shows the respondents that we received as well as relative scoring for each one of those. So procurement-wise, this is rather straightforward. A lot of the stuff that I'm hearing this evening, more about inner workings of the contract and a lot of it specifically around the ARR portion of it. Just as a reminder this item that's being brought forth to EUC is due to Austin Energy's component of it which is for disposal of the Class II nonhazardous waste.

Michael Osborne: How much is that of the total deal?

Jessica Frazier: I think it's like 900,000.

Gage Loots: It's about 900,000 a year.

Michael Osborne: 900,000 a year?

Karen Hadden: We want to give you lots of time to go ahead and speak to this item in-depth, so anything else, and not create a debate here between the two groups, so if you can just go ahead and talk to us, anything more that we need to know that you've heard discussed here.

Gage Loots: I guess the one item, then we can kind of get into the specifics but, around disclosure of proposals, of contents, any of that, that is per Texas local government code Chapter 252 and that states that any of the proposals that we receive are confidential until the award so we would not be able to disclose the pertinent details of a proposal or any of those details. That's actually from State law.

Karen Hadden: Can you address some of what was said tonight? I see here our Recommendation for Council Action marked up in red, that there are numerous problems, some of which were discussed here tonight, with this RCA. This is where our interest lies. Can you address any of these issues?

Gage Loots: I'm not going to be able to go through in detail to a document that we've just seen this evening.

Jessica Frazier: I could probably.

Gage Loots: Would you like to?

Jessica Frazier: Yeah, so I'm Jessica Frazier, I'm the Finance Division Manager for Austin Resource Recovery. For this contract we're the leading department. Anything having to do with solid waste or recycling goes through our department so that our director can review it for our zero waste goals that are throughout the City. So this contract is for dumpster services at City facilities such as this building, One Texas Center, Town Hall – City Hall – our building and multiple other buildings like Parks and Rec facilities, and other City facility buildings. So it's for the dumpsters that are there to collect the waste and recycling. There is a contract in place that expires this month and it was for the same services, for the dumpster services. The additional service that we're adding on as an option is for composting. That's part of our, again, our zero waste goals to divert as much as possible. So that's one new component to it. The other thing that's in this contract that wasn't in the previous one is a component for special events. Our department is called on to be the servicer for special events often. What happens is a special event organizer is presented with options for all the different private haulers that they can choose and asked to choose amongst them and sometimes they decide to go with us and choose our service. Because we only provide cart service for these special events, because of the volume, cart service isn't sufficient and we have to use dumpsters. Because we don't provide dumpsters through our department we have to contract that out with a private hauler. When we look at contracting for anything if it's over a certain dollar amount, over the threshold over a year, it reaches over that Council limit, which is what can happen in the case of these special events, we have to contract that out. So we look at the list of all the potential events that we might be called upon to service and we ask a contractor or, we do an RFP to say, "Hey, can you give us a bid for this." So we just wrapped all of that stuff into one RFP since it's all for dumpster service. We combined it together. Our current City Facilities Contract, which is what we call it, we use it to provide for special events. I don't know if in the previous RFP if it was called out as specifically as it is in this one, but as we move forward in our contracts and make them better and more specific based on experience we have, based on the needs that we've had or problems that we've encountered with vague language, the RFPs do tend to get a little bit longer because they're more specific and they're more detailed in the needs that we have. I feel like it makes it a little bit easier for the respondents to bid appropriately on what costs might be involved and those services. And then the other thing was the Waste II, the Class II, sorry. Class II hazardous waste component for Austin Energy...

Kathleen Garrett: Nonhazardous.

Jessica Frazier: Sorry? Nonhazardous, I'm sorry. If you have questions about that specifically I'm not the person to answer those. So the contract was, the scope was created, it was bid, it was solicited competitively just as was mentioned, and there were two bidders and this was the top scoring bidder. So I can answer any other questions, there was a lot of stuff mentioned. So if you have specific questions I'd be happy to answer them.

Karen Hadden: What, we were just told that there is no contract in place and you say that there is.

Jessica Frazier: There is, yeah.

Karen Hadden: Can you explain?

Jessica Frazier: There is because we have, so we currently have dumpsters at City facilities that are serviced and we, as a department, don't service dumpsters so we have to contract that out and that contract exists, it's for the same service that we're asking for this contract to be for.

Kathleen Garrett: Jessica, I think they're talking about, Austin Energy does not currently have a Class II, nonindustrial Class II waste contract in place.

Jessica Frazier: So there's multiple contracts that are being discussed at this...

Kathleen Garrett: Right, so this is a citywide contract. We went for an extension last year and were denied the extension by Council, which is why we don't have a contract in place right now. And we were working with ARR on a citywide combined contract because in the past we only had one or two bidders and at the time we were told, "Well we might have economies use the scales, more people would bid if it was a larger contract," you know, et cetera. So the ARR was combining all the different contracts, well they expire at different times and ours expired a bit earlier than theirs. We didn't get the extension so we've been operating without a contract.

Karen Hadden: We, Austin Energy?

Kathleen Garrett: Yes.

Cary Ferchill: Okay so I have a question or two about this. It seems like an echo 'cause I remember when this came up a year ago and we had quite a discussion about it and I remember the City Council essentially spit it back and said, "Re-do it." Is this June 6th RFP the result of the City Council process last December where they said do it again?

Kathleen Garrett: Yes. Yes, this is the combined contract that, our contract and our needs and what was originally in our contract, and all of the other City departments that they're combining their Class II dumpster and waste contracts, yes, this the combined effort of all of the City's departments to have one contract, hopefully to get several bidders which, I'm told they only got two.

Cary Ferchill: Okay. Well I've got then a question for Mr. Gregory here.

Bob Gregory: The old one or the young one?

Cary Ferchill: The elder.

Bob Gregory: The mature one. Yeah, okay.

Cary Ferchill: The distinguished Mr. Gregory. No offense. As I recall last year when this came up, there was some issue that your company had actually proposed and missed a deadline or something like that. Is that correct in my memory?

Bob Gregory: Yes, sir. In 2010, there was a deadline to turn in proposals, or not proposals, it was a response or Invitation for Bid. Fill in the blank.

Cary Ferchill: Right.

Bob Gregory: Our staff did part of the pages, and I don't know if they stuck to the back of other pages, or they just weren't included, but a few of the pages were not a part of the package that went in. We asked for time, there was no time given, they said we were disqualified. Totally within their purview to do that. But we did at least submit some within the timeframe. This time Republic didn't respond within the time.

Cary Ferchill: Okay I do remember correctly. So why did you not, it sounds like from what I'm reading, and honestly I haven't had a chance to digest what you just gave us at all...

Bob Gregory: That's okay.

Cary Ferchill: But why did you not propose in the current tender?

Bob Gregory: In the last ten years, even since Marc Ott and Robert Goode came here, there's been a move to make a Public Utility out of solid waste. The City does all residential collection of waste and recyclables as you know. My company takes all the solid waste from that and about 45% of the recyclables. This is the culmination of about an eight-year process for the City to make a Public Utility out of commercial waste, where

it would put out of business private operators slowly and the City would take over control of commercial waste and the bids that are here and the provisions that are allowed within it, would allow them through City-sponsored events, City-sponsored special events, through contracts that they now have, like the Downtown Central Business District contract that can expand on all the major arteries, Burnet Road, all those, to take over. So that's, I could not bid it because it was so counter to everything we did. We've got millions and millions of dollars' worth of customers' annual business that this contract would take. So I knew I couldn't be up potentially with three or six minutes to respond under an Anti-Lobby, so we did not respond. Matter of fact we've not responded to most contracts over the last year.

Cary Ferchill: Okay, I'm sorry, I'm still a little confused because what I'm trying to figure out is whether this is a bid contest or just a purity policy issue.

Bob Gregory: It's both.

Cary Ferchill: Now it sounds to me like the only argument you've made, to me, is that this is a policy issue. You think that this should be left to free enterprise to take care of the vast, what you're describing as a vast operation, rather than just specifically the piece of it that the City utilizes for its own purposes.

Bob Gregory: It is actually both. There is certainly I believe, what you just said, that the City should stick with what Council has stated over and over and over again – the policy of letting private companies deal with dumpsters and deal with the solid waste processing, recycling, and composting and the City not, other than the Dillo Dirt program that the City of Austin has done for many, many years. But this contract is part of four, it's one of four being pursued by staff right now. One of them we've already done away with: the Dillo Dirt program. But they're going into areas policy-wise that City Council has never let staff do and they're making representations that they have authorization, like the representation of a year ago that you remember that the staff wanted to do a consolidation of contracts. Council didn't direct them to, but the staff wanted to. Since then we have a number of contracts with the City. The airport contract we have. It's a contract that we just doubled the volume of recyclables from 12% to 25%. But yet it's in this contract. The airport contract is within this contract. We believe at the end of our contract, it would just roll into this one. Just like the downtown contract that we have. It would just roll into this one because...

Cary Ferchill: I'm sorry, I don't want to shut you down but I've heard enough I think.

Bob Gregory: That's okay, cut me off.

Cary Ferchill: To answer my question. Staff, I understand this is a policy issue and frankly I think that City Council has a lot more to say about it than we do in general. Is there any comment that you have to this representation?

Jessica Frazier: I would just say that our intent is pure. We need to provide dumpster service to the City facilities. We're not trying to take over commercial services. This contract is for 17 million dollars, if we were going to try to take it over we'd need a lot more money than that in the contract. So this is purely for the operations and the things that we've been doing up to this point. We're trying to get a contract so that we can have someone come collect the trash that's collected at City facilities. We can't do that and in order to pay a private hauler to do it, we have to do it via contract because it's over the Council limit. So the process that we have to follow and is through a solicitation and in that solicitation there's one private hauler that wins. But it's still private hauler, it's still us paying them, the private sector, to provide the service.

Cary Ferchill: Right, thanks. And to Austin Energy, so has this been handled over the last year simply by monthly extensions or continuing to operate under, is it a Waste Management contract or...?

Kathleen Garrett: I have a contract currently with Greene Environmental Services for remediation services for my construction projects and things like that, that allows for Class II waste disposal and I've been using that because I have no other method to use, no other contract to use and obviously I can't let Class II waste pile up at power plants, I've got the safety of employees and things so I've been utilizing another contract with Purchasing's, they looked it over and made sure it was legal to do it and that everything that was in it was okay to do. So that's what I've been utilizing it for right now but that's not what that contract was set up for.

Cary Ferchill: And you need a contract for the Class II.

Kathleen Garrett: Yes sir.

Karen Hadden: And can you clarify once again what's in Class II that you're working with here, with Austin Energy.

Kathleen Garrett: It's all nonhazardous, it's debris from construction, type of stuff. Wood, bricks, trash, dumpster trash that the plants would have, your everyday type trash, things like that. Some soil, could be soil, nonhazardous soil that we're disposing of, just removing. Things like that. It's pretty benign stuff.

Karen Hadden: Are there questions from Commissioners?

Michael Osborne: I have a few. So, on November 9th, the Zero Waste Advisory Commission, what was their action?

Jessica Frazier: They voted against recommendation for the contract.

Michael Osborne: Was there any other comment that they made?

Jessica Frazier: They were going to, they had a list of concerns or issues but they didn't have them cohesive so they were going to draft them, and then after the fact, but that was just on Wednesday so I don't know that they've done it. If they've drafted that yet.

Michael Osborne: Okay, and then the Water and Wastewater Commission, what was their action on it?

Jessica Frazier: They approved it.

Michael Osborne: They approved it, okay. So it's to us tonight. I would like to just look at this, since what was brought to us was this RCA and Bob's marked it up so good here. Have you got a copy of that, the marked up?

Jessica Frazier: No I don't.

Michael Osborne: Can somebody provide a copy of that?

Bob Gregory: Yes, absolutely.

Jessica Frazier: All right, which...

Michael Osborne: I'm not really sure that this is necessarily relevant but I would like get your take on it.

Jessica Frazier: What are you looking at?

Michael Osborne: Let's look at the very top, next to the date, December 1...

Jessica Frazier: On the RCA?

Michael Osborne: Yes, on the RCA. Where it says, "False. Waste Management of Texas announced the sole respondent bid opening held in the Purchasing office."

Jessica Frazier: Do you know anything about that?

Gage Loots: I don't know anything about the specifics.

Jessica Frazier: That was mentioned at the ZWAC meeting last week and I haven't had a chance to contact the Corporate Purchasing to validate that or not. The Corporate Purchasing office handles all of the bid acceptances and closings so I would have to follow up to find out if that's, I mean, the policy is that you have to have the stuff in by the deadline, so I'm not sure why the Purchasing office would circumvent that but I don't have any information on that unfortunately.

Michael Osborne: Okay, the one on the side there...

Cary Ferchill: Hang on one second. On that front, if Republic Services, if Waste Management was the only respondent, I mean that really wouldn't fix your problem, right? It would just be a different devil.

Bob Gregory: If Waste Management was the only respondent, Republic Services would not even be qualified to be before you today.

Cary Ferchill: I understand that, but it wouldn't be going your way either.

Bob Gregory: It would address the situation that it would make clear which landfill it goes to.

Cary Ferchill: Okay.

Bob Gregory: Right now, at least year, it was in your Commission meeting last year...

Cary Ferchill: I remember that, yes.

Bob Gregory: ...where y'all asked the question, "Which landfill is this going to?" They were present, they chose then to tell you the truth, that it was going to the Austin Community-Waste Management landfill. They're not going to do that again this year it appears, because they didn't do it at the ZWAC meeting or tonight. So I think it's pertinent that you do know that. So at least we would know, had it been Waste Management before you tonight. But with Republic Waste, it's to our understanding, they've been hauling much of the waste to San Antonio to their Tesson Road landfill on the east side of San Antonio, just south of I-10.

Cary Ferchill: Okay. I want to give him a chance to get back in the conversation.

Michael Osborne: Yeah. Just looking through this, let's go down to underneath Fiscal Note where it says "False. Waste Management of Texas announced as sole respondent." That's the same question as above I guess. "Closed on July 28th with two offers received." So you don't know if there was one or two, you haven't? You just don't know?

Jessica Frazier: I haven't had a chance to look at that, I'm sorry.

Gage Loots: So the Purchasing office controls the process. There were two offers received. As far as what happened that may have alluded that there was only one at a time, I can't speak to, but we do have a controlled process for, we don't accept anything late. I mean there's somebody that physically receives them by deadline. So the Purchasing Office does control a process. There were two offers that we received within the requirements meeting the deadline.

Michael Osborne: Okay. But you can't confirm, I hate to sound like a Senator, but you can't confirm or deny that, you say "Closed on July 28th, 2016 with two offers received." And they're saying, "Announced as sole respondent at the bid opening held." At the bid opening. How can those two... what's happening here?

Gage Loots: So the process that happens...

Michael Osborne: Are they perjuring themselves?

Gage Loots: I don't know.

Michael Osborne: Okay, that's what I want to know. You don't know.

Gage Loots: I can't speak either way. Whether it happened and it was an oversight where there was one offer that was stuck to another, I can't...

Michael Osborne: All right, all right. And then finally, I guess...

Cary Ferchill: I assure you they're not perjuring themselves. They're not sworn in.

Michael Osborne: I know, yeah. I was just making fun. I don't want to get into this too much, I just, I really loved your quote about if you'd had more time this would've been a lot less information. Which we...

Bob Gregory: At least shorter.

Michael Osborne: Yeah, it's an awful lot of information. Then, "False. TDS and other companies now have contracts covered by the RFP. The recommended offeror is the current provider for these services." What about that discrepancy between the two statements?

Jessica Frazier: So the one thing that they mentioned was, that I remember, was the Aviation contract. There was a list in the RFP of all of the City facilities. Next to Aviation on the trash site it said "Not included" but we included everything just in case. They do have a contract currently with Aviation to provide, I think, trash, recycling and composting, but Aviation, I haven't talked to them about what their intent is, I have no idea, we didn't, I don't think we incorporated their input when we were drafting the RFP because they had their own separate contract. They have very specific needs, and that's why they have a separate contract. So if, when that contract expires, what they plan to do, I have no idea, and that's not the intent...

Michael Osborne: So is this for like, ACL stuff and our big events that we have in town? I mean is that what...

Jessica Frazier: So it's when we're called to work those events. Jessica King, who is the Strategic Initiatives Division Manager, was at ZWAC last week, and had explained those bigger events are not typically the ones that we would provide service for nor would we want to. When we have to service special events, we have to call in a private hauler, so that's an expense that we have to pay, and then we have to use staff that are typically tasked for other things to work overtime and do things like that. We don't have a special events crew per se. So our choice, or our preference would be not to work special events. So when we are consulting with these different organizers, usually it's like, "Hey there's these private haulers, go help them, go have them help you." But there are instances where the event is co-sponsored and the City Council provides fee waivers. The only way that we can enforce a fee waiver is if we are the ones paying the fee. So we can't direct another private company that they're consulting with to do services to waive their fees; it has to come through us. And usually the fee that we waive is for recycling services. The other, the dumpster fees, we give them an invoice and then they pay that. But again it's a private hauler that we are contracting with to provide the service. The bigger events, and there's a list, a very comprehensive list of special events and I want to say there was one on there in error that's not a co-sponsored event anymore. I can't remember which one it was but it was one of the two big ones. But our preference is not to service the special events because it's outside of our wheelhouse. But if we're called on or we're asked to, we're the provider of last resort, so if the organizer decides to choose us we have to have a dumpster service because of the volume.

Michael Osborne: Okay, thank you. Hold on just a second. I'm not going to go into the second page of this.

Cary Ferchill: I'd like to go into the second page.

Michael Osborne: You do?

Cary Ferchill: Yeah, the one that's probably the most important is this that says the contract does not provide for collection of material from non-City department facilities or events and they say, "False. The Staff solicitation is not limited to these facilities and clearly allows for collection of material from private facilities and venues as well as special events on City controlled lands and rights-of-ways." Is that accurate?

Jessica Frazier: So we put that statement in there because there was some confusion by the first titling and what we call the contract now is "city-wide facilities." And so we got a glimpse that there was some confusion on, that we were trying to take over everything, for lack of a better term. So we added that in there to be specific to say this is for City facilities, this is for those special events where we're asked to provide that waste, or provide that service. The contract, like I said, the specifications and the locations is for City facilities. That's the main purpose of this contract. The special events part is added in there for the same reason that she was describing earlier in that we've had to use the current contract that we have for the same service and so instead we specifically outlined that so we would have enough funding and the authorization in this contract to use it for what we're currently doing now. So it's the same stuff we're doing, it's just the contract is more specific. The increase in the dollar amount, I don't know why that is, I actually haven't seen the bid, honestly, so the only reason I can say that the pricing has gone up so much is because of inflation and the cost of providing the service. I mean the last time we did this contract was in 2010, so the only thing I can think is that it's more expensive, traffic is worse, I mean I don't know specifically but the number of facilities that we're asking to be serviced is the same and then the only other extra things that we're adding in, like I said, is the potential to use, to have composting at City facilities. So that's an extra expense that wasn't in the contract before, along with the Class II nonhazardous.

Cary Ferchill: Thank you.

Karen Hadden: Okay I've got one more question. The Zero Waste Advisory Committee voted against recommending the contract. What was the reason why?

Michael Osborne: There was a list that hasn't been published yet.

Jessica Frazier: Yeah, and I took notes on one of the other contracts but I don't think I have it in front of me. Let me see. I don't...

Adam Gregory: I can answer that question.

Karen Hadden: Wait just a moment.

Jessica Frazier: I'm sorry, I don't have that information in front of me. If you give me a second to think I might be able to remember but I've slept a few times since then.

Karen Hadden: That's not...

Shudde Fath: Ask Mr. Gregory to answer.

Karen Hadden: Mr. Gregory, if you will respond to that please.

Adam Gregory: I'll tell you what I recall and I was there. The reasons, the main reasons that they voted not to approve this contract was due to the fact that staff chose not to give them any specific answers regarding the

proposal, specifically what facilities would be used. They were very concerned, as the Council was last time, about what landfill the material would be going to. Staff would not answer that. The last time we talked about your specific portion of this contract, they told you that it was going to Waste Management. They wouldn't tell them. We believe that is very likely going, well it's either going to Waste Management or it's going out of town. That was a big concern of them. There being no explanation for the nearly 200% increase in cost for the same period of time was a very big concern of theirs. They were concerned also that there weren't specific diversion goals and requirements, specifically to do with your section and the emergency services they've added into this. And also they were very concerned with the expansion of services that is being undertaken, attempting to be undertaken by staff without directive from Council. Those are the things that they were concerned about.

Karen Hadden: Thank you very much.

Adam Gregory: And it was a unanimous decision.

Michael Osborne: I have...

Karen Hadden: Commissioner Osborne.

Michael Osborne: I have one more question and I don't think anybody over here can answer it for me but... Bob made a statement that he felt that ever since we had Mr. Ott come into town that there was a process of trying to make a Utility out of our commercial waste disposal. Do any one of you three have any knowledge of that?

Jessica Frazier: Well according to our Ordinance, solid waste, the department ARR is a Utility. So technically we already are a utility. The commercial services component of it, a year or two ago there was an Ordinance that was passed that specifically said that we weren't to take on any new commercial customers, period. So we have about, I think 2,000 or so commercial customers that use cart service. But outside of that most commercial customers use dumpster service, which we don't provide, so it was just a kind of clear delineation to say "Okay don't use, don't go into this service anymore." So we have customers that we're allowed to continue to service but we're not getting any new commercial customers. As far as trying to make it broader and go into the commercial service, it's a clear delineation that we're not to go into that field. We do require dumpster services at our City facilities because technically they're commercial buildings and so we can't have a thousand trash carts; it's more efficient to have the dumpsters. The only other areas, like the emergency services, if there's a flood or there's something like that, same thing, there's so much volume and there's so much stuff that we have to have dumpsters to clear everything out and clean everything up, and same thing with special events. The only other commercial area that we're involved in that they mentioned earlier is the Central Business District. There was an Ordinance, I guess it's been ten or fifteen years ago, that they wanted one service provider throughout the whole area of the Central Business District to keep it more efficient and clean and so our department was tasked with that. And so we have the same kind of process where we, every five or six years when the contracts expire, we do an RFP and we do a solicitation and then whoever the top bidder is, is the person that services. And at this point with the Central Business District, TDS is actually the owner of that contract. So there will be a point in time where that contract will expire and we'll rebid it out and it'll go through the same process, but there's no... that's the limit to the commercial service that we provide and that we want to provide. That's how our department is set up and it's primarily residential service that we provide.

Michael Osborne: Thank you.

Karen Hadden: Okay. Mary Katherine.

Mary Katherine Stout: I just would like somebody to walk through a little bit of the timeline we have from here. We talked about what you've had to do in the interim since we made the decision and Council made the decision in the last year but what would happen tonight if we followed what the Resolution here says? How would you operate going forward?

Jessica Frazier: So I can speak to, because like I said, this is a City facilities contract so there's basically all the other City departments and their buildings that have the dumpsters and then there's the component for the Class II nonhazardous waste, I have to think about it every time I say it. So the contract that we have right now expires at the end of this month, we're in a 240-day holdover I think is what it is. So once we get to the end of that holdover then that's the last that we can use that contract. So this, after we finish talking about this tonight and you guys either approve or deny it, it goes to City Council on December 1st, I believe, and then they decide whether it gets approved or not and if it doesn't, then I'm not sure, I don't want to think about what, I'm not sure what would happen from there. I guess we would have to re-solicit it or depending on what direction Council gave us. We would go from there.

Mary Katherine Stout: Okay. Are there other people that are speaking on this as well?

Karen Hadden: I don't think so.

Mary Katherine Stout: That was it?

Karen Hadden: Yeah. So another question. What about which landfill this waste would go to? What can you tell us?

Jessica Frazier: So that information would be in the bid documents and like I said, I haven't seen them for this contract. But there are multiple different landfills that are approved so we don't, we would make sure whatever landfill they decided to use was up to par on all whatever State regulations and TCEQ regulations and that's about the limit of...

Karen Hadden: So is that information publicly available someplace right now?

Jessica Frazier: Whether the landfills are up to...

Karen Hadden: No, which landfills would be used.

Gage Loots: The specific landfill that would be used would be part of their confidential proposal which is held confidential under State law.

Karen Hadden: Now that is really bothering me. Because last time when we were talking, we were talking about where it was gonna go and we had several sites that had a history of problems and leaking in the community. So are you guys telling us that nobody can tell us where this waste is gonna go?

Gage Loots: It's part of a confidential proposal. We can tell you the requirements that were in the solicitation about what kind of facility would be allowed, whether it was certified, what permits, any of that, all of that is publicly available in the solicitation. But as far as getting into the specifics about what site or what specifically their proposal was? That would all be held confidential under State law.

Karen Hadden: Why was it available last time and not now?

Gage Loots: Sure, that's a good question. So as per State law, the confidentiality goes away once the contract is signed. So we were coming back to you last year with an extension of an existing contract that had been executed a couple years prior. So at that point all confidentiality had been waived and we were free to talk

about anything. You could do an Open Records Request on the actual contract, see it. Because we are in a procurement phase where there is confidentiality and competition that's occurring, that's not available.

Jessica Frazier: But in your recommendation or not, whichever way, you can add that in your recommendation...

Karen Hadden: Okay. Commissioner Wray.

Stefan Wray: Which landfill would you be objecting to for them to use as the landfill?

Karen Hadden: Help me with the correct name. At one time it was BFI. I mean there were several different company names attached to it that had had problems historically. Now you can read reports that it's been remediated, et cetera, but it was out in northeast Austin and it had serious problems at one point in time.

Stefan Wray: Could that be written into a recommendation that the contract be negotiated that it not include that landfill? Is that possible?

Jessica Frazier: So you're giving us... what you're approving is the authorization to negotiate and execute a contract. So what you can do is say, "Yes we want to go forward with this," or "Yes with these certain, we want to recommend." So you can recommend to Council, "We want you to approve this but only if these certain criteria are met in the negotiation of the contract."

Karen Hadden: I don't know if this Commission is set to say which sites it ought to go to.

Michael Osborne: I have a question about that.

Stefan Wray: Can I say something, I haven't had a chance to talk for a while.

Karen Hadden: Yes, please do.

Stefan Wray: So I want to look at the Citywide Dumpster Collection Services evaluation matrix that you have. I'm just kind of curious, putting aside all these other questions about the RFP and the RCA and all that, what I'm seeing here and you can correct me if I'm wrong, is that when you look at the matrix a lot of these numbers are fairly close, slightly higher on the Republic Services side but the one that really stands out is the total evaluated cost. The score for Republic Services is 35 and the score for Waste Management of Texas is 16. So that's a difference of 19 whereas some of these other differences are one, three, two, four, zero, and that sort of thing. So, am I interpreting this correctly in that one of the main differences between the two bids is that the Republic Services contract was bid at a much less cost than the Waste Management of Texas?

Gage Loots: Yes, sir, you're correct. As you're comparing the different scores, most of them are fairly close and there is a large deviation on the cost meaning that Republic Services was significantly less expensive than the other offer from Waste Management of Texas.

Stefan Wray: So when you're looking at these two companies side by side, separating cost out, pretty much the same, but when you consider the offer of one over the other this was a significant cost difference and that was, you could arguably say a deciding factor.

Gage Loots: Yes, that's a fair assessment.

Stefan Wray: Okay.

Karen Hadden: All right we've been on this item for a while and I apologize that we're going long, but personally I have a lot of concerns because I don't think we've gotten good answers to the many concerns that are here regarding the Recommendation for Council Action that we have before us. My personal preference

would be that we wait and take this up again a month from now, and look at it again and have some time to digest documents. If we've been without a contract for a year it seems like we can do a month. But I'm open to comments and suggestions from Commissioners. Carol.

Carol Biedrzycki: Yes, thank you, Madam Chair. This one is very confounding to me and I didn't realize that we were gonna have all these issues associated with it. In fact, I was ready to consent it. So you know how often that happens. Not very often. Is there a way, it just seems to me that there... first of all, I can't wrap my, I just can't wrap my brain around what the real issues are here because it's very unusual for somebody who is awarded a contract to come before a Commission and say, "Don't approve this."

Bob Gregory: We weren't awarded.

Carol Biedrzycki: Oh, you weren't awarded.

Bob Gregory: No, we were not even a respondent.

Jeff Vice: That's the reason they're here.

Carol Biedrzycki: That makes more sense, all right.

Bob Gregory: I'm sorry if I confused that.

Carol Biedrzycki: I was confused by that. All right. Now. Is there a way, obviously there are issues on both sides of the fence here. Is there a way that we could maybe recommend that this move forward but just for a year or, no. Cary's shaking his head. Okay so that would be... I'm trying to figure out a way to maybe, you know like salvage part of it so that we're not, the City doesn't continue to spin its wheels which seems to be what has happened because if I understand this, these issues came up before and that the project was bid with some direction from Council and now I don't know if we're claiming that that direction from Council was not followed or was it followed? That's...

Karen Hadden: Commissioner Osborne.

Carol Biedrzycki: They say it wasn't.

Bob Gregory: It was not.

Karen Hadden: Commissioner Osborne.

Michael Osborne: I wanted to thank you for providing us with a Resolution. I don't think I can ... I can put that over here, but I'm thinking that perhaps the best thing for us to do since it involves some big players in this field and we really did just have it put in our lap here, and really some of us in the last hour. Thank you for the letter I know we got it a few days before but my guess is, is that Council's gonna have to sort this out and I would... this motion needs to be in the affirmative, so I think someone needs to make the affirmative motion. But I'm not going to vote for it.

Karen Hadden: Affirmative motion on the item?

Michael Osborne: Yes.

Karen Hadden: We could also do an affirmative motion to not act on this item.

Michael Osborne: You can table it.

Karen Hadden: No recommendation...

Michael Osborne: You suggested that it be tabled.

Karen Hadden: 'Til next time, yes. Mr. Ferchill.

Cary Ferchill: I just want to say. We've been dealing with this for over a year. Okay? A year ago this came up. Austin Energy... I think we need to break this down into manageable components. Austin Energy's piece of this thing is pretty small.

Carol Biedrzycki: Correct.

Cary Ferchill: It's a relatively manageable piece. A year ago Austin Energy told us they needed a contract, some place to put their waste. And we said, "Well we don't recommend this" and the City Council got into it and sent it back. Now here we are a year later and they still don't have any place to put their waste. And I grant you that a lot of other issues, for a lot of other departments and yes, I have no doubt that this is going to be argued out in front of the City Council. But from my point of view on the Electric Utility Commission, I want to get them someplace to put their waste and give them a contract. And if it is a City Council position that no, they really want to squeeze it down to the smallest possible thing, I don't think anybody's proposing that it not cover what Austin Energy needs it to cover. So from my point of view I'd like to move that we just approve this. It's going to go to City Council. They can decide whether they want to reject it because of all of the other problems that this thing faces but Austin Energy needs a place to put their waste. That's my view of it. So I'll make that motion.

Brent Heidebrecht: I guess I see Cary's point, I sympathize with it, but I guess I have a little bit different spin on it in that all these arguments we've made tonight, not one of them had to do with Austin Energy. And so we're being asked to wade into all these other big controversial items that I don't feel qualified for or really don't want to have to vote on, I guess, approval one way or the other, even though Austin Energy's part is in there. So I don't feel comfortable voting for something where Austin Energy's piece of it is not that big, on issues that really, I can't say one way or the other. I guess I would lean towards abstaining.

Karen Hadden: Well we did not have a...

Jeff Vice: Mr. Vice-Chairman, I just want to point out that any item that's going before the City Council that has a dollar amount related to the Utility that is above the City Manager's administrative authority, we're bringing to the Electric Utility Commission. I do appreciate the notion that this is a cross-the-City kind of contract and we're just a piece of it, but that's why we're doing it and I just need you to know, we are definitely anxious to have a vote, up or down.

Karen Hadden: Thank you Mr. Vice.

Brent Heidebrecht: Is there any way could make some sort of motion that we just approve Austin Energy's piece of it?

Karen Hadden: Hang on one second.

Michael Osborne: You had a motion, you need a second.

Karen Hadden: We had a motion without a second. So I think maybe we might want to consider, I mean based on what the Vice-Chair is saying, we might want to consider a motion that is to not take action on the item or to recommend only the Austin Energy portion.

Michael Osborne: Well if the motion doesn't have a second the motion fails for a lack of a second and it's not approved.

Karen Hadden: So we have no action on the item as it stands right now.

Michael Osborne: Correct.

Cary Ferchill: Can't move without a second.

Shudde Fath: Unless someone makes another motion.

Karen Hadden: Well I would say then that we have no action on this item. So Council can sort this one out. We'll let them dive in. So thank you for all of the input.

Bob Gregory: Thank you.