



MEMORANDUM
TDS ANNOTATED VERSION

TO: Mayor and City Council

CC: Elaine Hart, Interim City Manager
Robert Goode, P.E., Assistant City Manager

FROM: Sam Angoori, P.E., Interim
Director Austin Resource
Recovery

DATE: February 13, 2017

SUBJECT: City Facility Dumpster Contract

The purpose of this memo is to provide an update since the Dec. 15, 2016 Council meeting regarding the City Facilities Dumpster Services contract scheduled for Feb. 16, 2017 Council consideration.

Summary. Due to concerns expressed from private haulers, the City has NOT purchased equipment necessary to provide comprehensive service to commercial facilities, including our own facilities. Therefore, Austin Resource Recovery (ARR) is not equipped to provide waste management collection for the nearly 140 City facilities that require dumpster collection. Since ARR cannot provide this service, the City must hire a separate vendor to do so. Council has established a policy to competitively solicit services rather than pursuing "sole source" contracts when possible. Therefore, ARR issued a solicitation to provide these services.

In fact the City has not purchased equipment to provide services to commercial facilities ("including our own") because City Code sections 15-6-11 through 15-6-13 specifically protects free competition among licensed providers for commercial, industrial, institutional and multi-family waste-related services in Austin, and it would be cost prohibitive for the City to purchase the equipment necessary to provide dumpster service only to City facilities. The concerns expressed by private haulers relate to City staff's failure to adhere to this longstanding City policy in contracting to provide waste-related commercial services to Austin events and in requesting generic (i.e. not specific to any City facility) pricing for commercial services in the RFP for this proposed contract, as well as failing to publicly disclose full details of the RFP response and proposed contract.

The contract available for your consideration by Republic Services, the proposed vendor, provides four areas of services:

1. Collection and processing of trash, recycling, and composting from City buildings;
2. Roll-offs and dumpsters for emergency situations such as storm events;
3. Collection and processing of trash, recycling, and composting from eligible special events; and
4. Collection and processing of Class 2 and non-hazardous waste, including utility poles

As already noted, this RFP additionally requested extensive pricing for a range of dumpster collection services not specific to any of the above, or to any City facility or location. Many private haulers and processors like TDS who, per City Code, compete in the free market to provide commercial services, believe that approval of this contract would result in Austin Resource Recovery (ARR) utilizing this generic contract pricing to broker Republic's services throughout Austin's commercial marketplace – just as staff explicitly intends to continue and expand doing in the commercial marketplace for special events, using this contract – in order to generate significant future Enterprise Fund revenue. Adding to our industry's alarm, the RFP additionally states that "Service locations may be added or changed at the discretion of the City" and "Possible additional services may be required related to the URO, Zero Waste initiatives, or other City needs as required", raising concerns about the unknown full intent and scope of the solicitation and the resulting contract (i.e. the staff can change the landfill, recycling and composting facility to receive the materials collected and hauled by the City's contractor, and the City can add as many collection locations and accounts as they want). In the broadest terms, this RFP and proposed contract appear to many in our industry to have been engineered to give City staff some if not all of the tools needed to effect sweeping changes in City policy and extend control over the city's entire commercial marketplace, greatly expanding the current problematic dual role of ARR as both Industry regulator and competitor. This, together with staff's continued misapplication of the Anti-Lobbying Ordinance, is the reason that TDS did not respond to this RFP.

Options. Council has several options available. Council may choose to:

- Approve all contract sections or limit approval to specific contract sections:
 - If approving, Council may wish to include specific conditions such as limits to maximum expenditures, exclusion of processing facilities, limits to contract duration, etc.
 - Limit approval to negotiation only and require staff to return to Council for execution; and/or
- Reject the contract.

If City staff intended for the City Council to consider and vote on each set of services (the recently-dubbed "sections") contained in this consolidated contract independently, each set should have been contracted for independently rather than in a consolidated fashion, which eliminated numerous otherwise eligible respondents. Breaking a proposed contract into component pieces for city commission and City Council consideration clearly violates best practices in effective, transparent City contracting, just as does refusing to publicly release full RFP responses and proposed contract language prior to requesting approval of execution. TDS believes that wherever allowed by state law, appropriate transparency requires that full, unredacted purchasing solicitation responses and proposed City purchasing contracts be made available for public review at least ten days in advance of being posted for action on any citizen commission or City Council meeting agenda. It should go without saying that it does not take Council action to authorize contract negotiations. TDS urges rejection of this and all other pending waste-related solicitations and proposed contracts.

Recommendation. Staff recommends approving all contract elements. If Council prefers that ARR discontinue providing dumpster management services to events, staff recommends limiting dumpster service to department organized special events. This would mean that special events would secure and pay for their own dumpster collection services. ARR would no longer coordinate dumpster service for any special event, unless the event was organized by a City department.

Please see the [linked](#) “ARR Invoices for Special Events” memo and supporting invoices, which show a total of \$57,656 in City of Austin billings to event organizers and promoters and how the City credited back to them all but \$17,546 in charges, which we assume means that the City paid its contractors and employees for the services, but was only reimbursed \$17,546 of its \$57,656 cost.

Given the protections afforded by local ordinance to licensed providers to compete for commercial, industrial, institutional and multi-family waste-related services in Austin, it is indeed inappropriate for City staff to continue to contract for the provision of dumpster management services to non-City of Austin events. Note that this RFP’s list of “sample” Austin events to which waste-related services could be provided under the contract included numerous events currently serviced by TDS and other licensed providers. To comply with City Code sections 15-6-11 through 15-6-13, the City of Austin must discontinue contracting for waste-related services for any Austin event, other than events majority-sponsored by the City of Austin.

Impact. The current City facility dumpster contract is with Republic Services. The contract expired in November 2016 and is in a hold over that expires on March 31, 2017. Due to extenuating circumstances, Republic could seek a standard consumer price index (CPI) rate increase to continue providing service.

In fact the City currently contracts with a number of licensed providers for dumpster collection and other waste-related services at various City facilities. This proposed contract is not an extension of Republic’s current contract for servicing certain City facilities but a massive aggregation and expansion of City contracts across multiple departments, without clarity as to the fate of facility contracts currently serviced by other providers. Please note that the Austin Energy contract previously held by Republic Services was not renewed in December 2015 and has been managed outside of the City facilities contract via service by another vendor.

If Council rejects contract approval, staff will resolicit. If required to resolicit, ARR would defer to Austin Energy to resolicit for Class 2 and non-hazardous waste separately. ARR will resolicit for City facilities, including department organized special events, and emergencies. Because City Co-sponsored special events would not be included in the revised solicitation, special events would not be eligible to use the City contract and would have to secure and pay for their own waste management services.

TDS requests that the Austin City Council require City management to seek input and direction from appropriate city commissions and the City Council in advance of issuing any new solicitations for waste-related services in order to ensure full compliance with City policies and community priorities moving forward. Given that City staff’s sole rationale for consolidating waste-related contracts across City departments – to achieve “efficiencies of scale” and reduce cost – has been disproven by the dramatic cost *increase* associated with this proposed contract (as compared to the current cost of servicing these City facilities), city commissions and the City Council should in fact determine whether

to direct City staff to require each department to continue to be responsible for their own waste diversion and waste disposal expenses. Once again, special events are commercial accounts, which should be serviced by licensed providers in the competitive marketplace.

Contract Details. The contract covers four service areas. Contract approval can be limited to one or more of the service areas, which are:

- Part 1 – City Facilities – Includes trash, recycling, and composting collection service for City facilities and office buildings. Composting collection is a new service offered under the proposed contract.
 - First 36-months: \$6,590,000
 - Three 12-month extensions (each): \$2,650,000
 - Total Contract Amount: \$14,540,000 (6 years)

City staff designates the landfill, recycling and composting facility the material will be hauled to.

- Part 2 – Emergencies – Provides the City with flexibility for emergency situations. The Department currently manages a contract that handles FEMA qualifying events. This contract would be utilized to respond primarily to non-qualifying FEMA events.
 - First 36-months: \$300,000
 - Three 12-month extensions (each): \$115,000
 - Total Contract Amount for City Facilities: \$645,000 (6 years)
- Part 3 – Special Events – Provides dumpster service to City Co-sponsored events and Department organized events. Can be limited to service only Department organized events.
 - First 36-months: \$155,000
 - Three 12-month extensions (each): \$60,000
 - Total Contract amount for Special Events: \$335,000 (6 years)

Department-organized events should not include events run or organized by a commercial entity. Department-sponsored events could include all special events because all have to rely on permits and City authorization. Again, please see the [“ARR Invoices for Special Events”](#) memo and supporting invoices.

- Part 4 – Class 2 and non-hazardous waste – Provides management of Class 2 and Non-hazardous waste.
 - First 36-months: \$680,000
 - Three 12-month extensions (each): \$265,000
 - Total contract amount for AE class 2 and non-hazardous waste: \$1,475,000 (6 years)

Once again, if City staff intended for the City Council to consider and vote on four distinct “service areas” then each should have been solicited independently rather than in a consolidated fashion, which eliminated numerous otherwise eligible respondents and likely contributed to the dramatic cost increase associated with the overall proposed contract. As noted, City staff designates the landfill, recycling and composting facility the material will be hauled to.

ZWAC Consideration. On Feb. 8, 2017, staff presented a detailed review of the proposed contract to the Zero Waste Advisory Commission (ZWAC). ZWAC voted to reject the proposed contract and cited the following concerns:

In fact ZWAC voted *unanimously, twice* – on February 8, 2017 and November 9, 2017 – to reject staff’s recommendation of this contract, with specific reasons identified.

City Facilities:

- *Opposition to any of the City waste going to the Austin Community Landfill or San Antonio landfill, or other facilities outside the Capital Area Council of Governments region;*
- *Lack of clarification regarding the benefit of the “Citywide” scope of the agreement, including lack of analysis of cost effectiveness of providing some services in-house;*
- *Need to ensure existing contracts are honored fully Emergencies:*
- *Lack of explicit diversion and reuse provisions for emergencies Special events:*
- *Unknown impact to small business community Class 2 and non-hazardous waste:*
- *All concerns from previous discussions remain unaddressed*
- *Overall environmental and community impact, and carbon footprint concerns*

Staff Response to ZWAC Concerns. To address ZWAC’s concerns, Council could add specific direction to staff during negotiations with the vendor.

ZWAC specifically chose not to recommend negotiations with the proposed vendor but to unanimously reject this contract, *twice*, and to support a re-solicitation by City staff only after receiving policy direction from the City Council, including incorporating issues raised during the City Council’s unanimous December 2015 vote not to extend Republic Service’s Austin Energy contract.

ZWAC raised three specific points that require a response:

Landfill Designation. City Council and ZWAC have expressed concern about utilizing the Waste Management Community Landfill, but City Council has not specifically prohibited use of the facility for City contracts. If Council were to follow ZWAC’s recommendation to eliminate waste going to some of the duly permitted landfills within the region, the following information is provided for Council’s consideration. There are 3 landfills in the Capital Area Council of Governments (CAPCOG) region:

- Waste Management Austin Community Landfill in northeast Austin, Texas, approximately 11 miles from downtown Austin. The facility is owned and operated by Waste Management and accepts materials from various large and small scale haulers, including competitors.
- Texas Disposal System in Creedmoor, Texas, approximately 15 miles from downtown Austin. The facility is owned and operated by Texas Disposal Systems (TDS). Staff has been informed by some haulers that TDS is not willing to allow certain competitors to dispose at their facility.

In fact the TDS landfill is open to the public and to all private haulers who choose to use it. No private hauler or competitor with a legal load has ever been denied access to the TDS landfill unless they have refused to pay the disposal gate rate available to all others. We are deeply disappointed to read this inaccurate information in a City memorandum.

- Williamson County Landfill and Recycling Center (Wilco) in Hutto, Texas, approximately 36 miles from downtown Austin. The facility is owned by Williamson County and operated by Waste Management and accepts material from various haulers including competitors to Waste Management.

Staff fails to note that while a fourth permitted landfill in CAPCOG region, the Republic Services Sunset Farms landfill, did close to the receipt of waste on or about October 31, 2015, the 2008 City-negotiated restrictive covenants that resulted in its closure are *not binding to the owners of the land comprising the Sunset Farms Landfill at that time or now*, according to the latest available Travis County Deed Records.

Removal of the Waste Management Austin Community Landfill from the choice of available facilities limits options, especially since Texas Disposal Systems chooses not to participate in the solicitation process and has the authority to prohibit use of their facility by competitors.

City staff's actions – failing to adhere to City Code sections 15-6-11 through 15-6-13, failing to publicly disclose full solicitation responses and proposed City of Austin contracts before city commission and City Council consideration, and demonstrably misapplying the Anti-Lobbying Ordinance – have forced TDS not to participate in solicitations. Please see linked “Reasons Why TDS Did Not Respond To This And All Other RFPs.” Once again, TDS has never barred any of our competitors with legal loads from utilizing our landfill. Our landfill is open to all competitors, all area municipalities and to the public.

Council also asked staff to evaluate the community impact of local landfills. A few areas to consider include quality of life to nearby residents as well as community climate impact.

Quality of Life. Landfills generally are not ideal neighbors. Neighboring residents often complain of truck traffic, truck noise, debris from landfill operations/disposal, and odor. Since Council expressed specific concern about the Waste Management Community Landfill, staff researched current quality of life impacts. Since 2001, the TCEQ received 280 complaints about the WM landfill; 174 of which were filed in 2002. In 2016, a total of 10 complaints were filed with the TCEQ, primarily odor related. According to the WM website, since 2002, the company invested more than \$3 million on environmental controls and aesthetic improvements.

TDS is not only proud to enjoy excellent long-term relationships with our neighbors, but has also received the Gold Award, signifying the best-managed landfill in North America as determined by the Solid Waste Association of North America.

Additionally, Waste Management worked with neighbors, Travis County Audubon Society and Texas Bee Watches to build butterfly and bee gardens on the property. The company received an international certification from the Wildlife Habitat Council for its bee and butterfly garden and bird boxes at the Waste Management Education Center located at the entrance of the landfill.

While bees and butterflies are fantastic, the Waste Management-Austin Community Landfill contains tens of thousands of tons of what today would be considered toxic and hazardous waste, according to publicly available records with state agencies. As a result, the facility has in the past been disqualified from consideration for City landfill disposal contracts due the potential for

significant environmental liability for the users of the site, according to a third party engineering study commissioned by the City. An EPA memo has even identified it as “Austin’s Love Canal.”

Climate Impact. Landfills are significant contributors to greenhouse gas emissions. Methane, which is the result of organic decomposition, is considered 21 times more potent than other greenhouse gases. To manage greenhouse gas emissions, landfills utilize a variety of methods including landfill gas capture

Based on data reported to the Environmental Protection Agency by landfill operators, the Waste Management Austin Community Landfill is the **lowest** contributor of greenhouse gas emissions from an operational landfill in the CAPCOG region.

This is an unverifiable projection based on an inadequate formula and not on any actual measurement. A simple comparative smell test over the past 26 years has been the superior gauge of which landfill releases the most landfill gas emissions. Please see www.texasdisposal.com/epa-formula for a complete explanation.

For emergencies, include diversion requirements for contractor. Requiring the vendor to sort through mixed material to achieve higher diversion rates will greatly impact the cost and time to remove the material. Diversion opportunities are dependent on the type of material collected. For example, during the 2015 Memorial Day Flood, ARR was able to divert over 95 percent of storm debris, primarily brush. But, material brought to the curb by residents tends to be mixed between recyclable and non-recyclable materials. When customers separated electronics, appliances, tires, and other recyclable items at the curb, ARR was able to collect the material separately and recycle them appropriately. However, ARR must rely on customers to source separate. Requiring the vendor to sort through the mixed material after it has been collected would increase costs significantly.

Class 2 and Non-hazardous waste. Utilities are generally limited to three methods to manage their utility pole waste streams (recycle via waste to energy, landfill, or reuse). Given the choices available, and the conflicting sustainability issues involved, final disposition of utility poles should be a policy decision.

Please see <http://www.texasdisposal.com/citywide-dumpster/> for the TDS Landfill Diversion Report on all waste and recyclables collected by TDS under the Austin Energy Contract, 3-9-09 through 4-3-13, showing that TDS diverted 46.9% of Austin Energy's waste materials. To our knowledge, since then, Republic Services and the current contractor have not reported diverting any of the Austin Energy waste materials from landfill disposal.

Given the broad range of unresolved policy issues, TDS strongly recommends terminating this and all other non-expired waste-related solicitations and proposed contracts and procuring waste-related services on a temporary basis as necessary to allow sufficient time for policy decisions and appropriate Council directives before the issuance of new solicitations and award of new long-term contracts. Thank you for your consideration.

Attachments:

-Feb. 8 Staff Presentation to ZWAC



February 15, 2017

Mr. Bob Gregory
Texas Disposal Systems

Re: Texas Disposal System's Greenhouse Gas Emissions Estimates

Dear Mr. Gregory:

The purpose of this letter is to provide clarification as to why the greenhouse gas (GHG) emissions reported to the Environmental Protection Agency (EPA) by Texas Disposal Systems (TDS) have been higher than what would actually be generated.

The standard calculation methodologies approved by EPA overestimate the actual GHG emissions for TDS due to assumptions and constants that are built into the formula and do not accurately consider some of the operational measures TDS takes to reduce the generation and release of methane emissions.

For example, default values for degradable organic carbon and decay rate constant are used based on the type of waste that is typically collected and the amount of rainfall that is typically expected. Actual types of waste collected and site specific decay rate are not used, therefore the formula assumes an excessive amount of rainfall infiltration into the waste in place resulting in a conservatively high estimate of landfill gas generated and emitted. Rainfall on the TDS landfill does not infiltrate the waste as would be expected at a typical landfill because of the method TDS utilizes to apply a six-inch thick clay daily cover, keep a small exposed working face, keep the bottom slope away from the fill area, and maintain berms that prevent storm water run-on to the working face or back into the waste. Additionally, TDS strives for dry entombment of the waste by diverting wastes with high moisture content, such as yard waste, liquid, and sludge, from the landfill. Therefore, TDS does not generate the amount of landfill gas as indicated by the EPA formulas. The landfill at TDS generates very low amounts of odor and leachate which serve as a real indicator of the amount of moisture entering the landfill, and in turn the amount of gas being generated.

Another significant element in the EPA calculation methods which lead to an overestimate of emissions is the assumption regarding the landfill gas (LFG) collection system. TDS' landfill gas collection system today covers about 15% of the area with waste in place. The formula assumes that landfill gas from the remaining 85% of the area with waste in place is vented directly to the atmosphere as fugitive emissions. In reality, due to the procedure of maintaining the minimum six-inch thick clay daily cover and much thicker than industry standard intermediate clay soil cover utilized by TDS, much more gas is pulled and captured from areas not directly around the 15% of the area which have gas collection wells.

The other area landfills benefit from the assumption in the EPA formula that LFG emissions are significantly captured and reduced if they have LFG collection systems that covers most of the landfill and then utilize the collected LFG in an electrical generator or flare them. This creates a false impression that TDS is not capturing and controlling a significant amount of the landfill gas being generated by the landfill since the EPA

Mr. Bob Gregory
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formula does not take into account TDS' design and operating conditions that limit emissions to a small fraction of the amount calculated by the formula. TDS has reached the regulatory threshold for installing a blanket landfill gas collection system so this discrimination in the EPA formula will be eliminated for TDS in the coming years as a full system will be designed and put into operation.

If you have any questions, please contact me at (512) 596-7929.

Sincerely,
Providence

A handwritten signature in black ink, appearing to read "Rajiv Y. Patel".

Rajiv Y. Patel, PE
Senior Managing Engineer, Air Quality
Providence
11149 Research Blvd, STE 260B
Austin, TX 78759

Material Hauled by TDS to the TDS Landfill from 3/9/09 through 4/3/13

Material Description	# of Scale Tickets							# of Tons							Recycled / Reused	% Recycled / Reused		
	2009	2010	2011	2012	2013	Total	2009	2010	2011	2012	2013	Total	Recycled / Reused	% Recycled / Reused				
BRUSH BY THE TON TO TOP			2	4		6							4.5	7.0		11.5	10.8	94.0%
CAPACITORS	6	2	6	3		17	37.5	12.8	43.7	23.3		117.4					23.3	19.9%
CONTAMINATED SOIL	17	15	18	15	3	68	178.1	152.0	225.0	183.7	32.9	771.6					0	0.0%
DIVERTED METAL	1					1	1.9					1.9					1.9	100.0%
FILTER CAKE	30		1			31	187.3			1.9		189.2					0	0.0%
PLANT TRASH	15	21	36	22	3	97	46.9	63.0	72.6	64.8	9.3	256.6					0	0.0%
SOIL IN 55 GAL DRUMS	1	1	7	2	1	12	0.0	0.0	12.4	0.0	0.0	12.4					0	0.0%
UNCOMPACTED TONNAGE	2	1	2	1	1	7	18.7	1.8	4.6	0.8	7.2	33.1					0	0.0%
UTILITY POLES	73	69	48	50	13	253	612.1	525.1	338.7	367.9	82.5	1926.2					1541.0	80.0%
Sub Total	145	109	120	97	21	492	1082.5	754.7	703.4	647.5	131.9	3319.9					1577.1	47.5%

Material Hauled by AE to the TDS Landfill from 3/9/09 through 4/3/13

Material Description	# of Scale Tickets							# of Tons							Recycled / Reused	% Recycled / Reused		
	2009	2010	2011	2012	2013	Total	2009	2010	2011	2012	2013	Total	Recycled / Reused	% Recycled / Reused				
CAPACITORS	1					1	0.7					0.7					0	0.0%
CONTAMINATED SOIL	3			3		6	23.8				20.3	44.1					0	0.0%
UNCOMPACTED TONNAGE	1					1						0.0					0	0.0%
Sub Total	5	0	0	3	0	8	24.5	0.0	0.0	20.3	0.0	44.8					0.0	0.0%

Material Hauled by TDS & Austin Energy to the TDS Landfill from 3/9/09 through 4/3/13

Material Description	# of Scale Tickets							# of Tons							Recycled / Reused	% Recycled / Reused		
	2009	2010	2011	2012	2013	Total	2009	2010	2011	2012	2013	Total	Recycled / Reused	% Recycled / Reused				
Grand Total	150	109	120	100	21	500	1107.0	754.7	703.4	667.8	131.9	3364.7					1577.1	46.9%

Note: No liquid wastes have been disposed of through this contract during its four year term.

