

## 2-16-17 Austin City Council

**Item 29 - 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.**

**Steve Adler:** I tell you what, we have some speakers that are here to speak to us on Item number 29, which is the dumpster contract issue. Recall that, and then have some speakers come up and visit with us. So let's call up, is Jim Nias here? Mr. Nias come on up. Is Modesto Dominguez here? Okay Mr. Nias you have, is Gary Gouche here? And is... so that's it, you have nine minutes.

**Jim Nias:** I think I have one more.

**Steve Adler:** Oh, Brooke Williams. You're right. You have twelve minutes, I apologize.

**Jim Nias:** Mayor and Council, I am Jim Nias, I'm with the Austin office of the Jackson Walker law firm and I'm here today representing Republic Services, which is happy to have been recommended by the City staff to get this contract for waste disposal and recycling from City buildings such as this one, and other City facilities.

**Ora Houston:** Mayor, I can't hear, I'm sorry.

**Steve Adler:** You need to pull the mic a little closer.

**Jim Nias:** Okay. Let me tell you a little bit about Republic Services. They're one of the most well respected companies in the country in the fields of solid waste disposal, recycling, and related services. They're very progressive, they're a leader in turning waste into electric energy and they're community conscious too. They've been members of Keep Austin Beautiful since 1989. They've been a gold member sponsor for the last five years, which means they make significant financial contributions to a program which is a collaborative effort between City of Austin's Watershed Protection department and the Austin schools, to clean up areas in and around the campuses. They've also donated in addition to money, a lot of equipment for cleanup efforts in places like St. John's Community Center, Quail Creek Park, Little Walnut Creek Park and many, many others. They also have a track record with the City of Austin. They are the company that for the last six years plus has already been providing this service to the City of Austin and I think the City staff has been pleased with the service, and if you look at the evaluation matrix in your backup material which evaluated the bid, there were only two bidders or proposers, Republic Services and Waste Management of Texas, and if you look at the evaluation matrix we did a pretty good job on that. We got the highest possible points on the criteria of total evaluated cost, which I think means cost-effective, and we got the total, or the highest possible total on regulatory compliance. So putting together cost-effectiveness and regulatory compliance is a pretty good combination. So with that track record with the City and their experience in the industry and the staff recommendation, you would've thought this would have been kind of a no-brainer recommendation, but when we got to the Boards and Commissions some organized opposition arose from a competitor, Texas Disposal Systems, which you'll probably hear from today. TDS, I'll call them from now on not have to say Texas Disposal Systems every time. And you may ask, well, you know, what's the big deal about a competitor being opposed to you getting the contract? Well it wouldn't be out of the ordinary if that competitor was also a bidder for the contract. But here, as I mentioned, is only Republic Services and Waste Management of Texas for the bidders, the opponent, a competitor in the industry, is not even a bidder on this contract, so why are they opposed to us getting it if they supposedly don't want it? And TDS was asked that question point-blank at the November meeting of the Zero Waste Advisory Commission. Bob Gregory their chief person gave the answer and he said he was opposed to this contract just in concept because what this really was, was an attempt by the City staff to take over the commercial dumpster business. You know the City has always provided the residential waste disposal, you have a utility did that does that, and Mr. Gregory indicated that this was a plot by the City staff to take over commercial dumpster business and drive out private industry which had traditionally in Austin

had that business. I didn't think that made any sense, because why would the City staff be contracting with us, another private hauler, if their intent was to drive out private haulers and take it over? That really didn't... the logic of that was not apparent to me and still doesn't ring true, and TDS themselves has, you know, contracts with the City. They have contracts to do some of the airport work, they have the exclusive contract for the commercial dumpster business in the CBD. That's almost like a franchise. So what is the real agenda? To me it seems to be that, and what was recommended, what their goal seems to be, is to have the Council just throw out this RFP and start over again and to have the new RFP limited in such a way that the landfill that we had been using during this current contract could not be used. It is the Austin Community Landfill owned by Waste Management of Texas, the other bidder, and the result of that, the rationale for that, was that some years ago it appears to have been the case that there were some environmental problems at that landfill. I've had the environmental lawyers at my firm check out the situation now. Now there do not appear to be any open violations of the permit from TCEQ, there haven't been for a good while, and so the result of eliminating that possibility as a receptacle site leaves this with very few options if the waste is going to be disposed of locally. It kinda gets down to where there's nobody left but TDS' landfill out in southeast. So they appear to be setting up a situation where they'd like to have this RFP thrown out and have their landfill be the only option, and have the ability to charge other people for the use of that. That seems to be setting up, it certainly has the possibility of setting up a situation where the competitive nature and the options available to us are whittled down to one. It's that \$8 million asphalt contract I heard with one bidder, I heard about during the consent agenda vote, or something like that. So usually in governmental contracts it's good to keep your options open and to keep competitiveness at a high level and I'm asking you to consider whether it makes really any, whether it's prudent and makes sense to try to throw out this RFP, do a new one as has been suggested by some people, and attach to it a condition that eliminates all but one viable a place to take the waste generated. That seems to wipe out a lot of the competitive advantage that the City might enjoy otherwise. So I have the entire management team here from Republic Services. Modesto Dominguez is the local general manager, he's here, he donated his time to me, obviously Mayor, but if you have any questions of him, he's here to answer questions. And we'd like to at least, before my time's up, rebut a couple things which I think you're going to hear from the opposition. I think you're going to hear that the City staff allowed a late filing of our response to the request for proposals. That is not the case. If you don't believe me and don't believe the City staff, and I'm kind of surprised there's not a presentation by them first, Mayor, but I have a timestamp of bid receipt that I can share with you, and the other thing I want to share with you is, you probably are going to hear the argument that the landfill operated by Waste Management of Texas has a limited capacity left, there's only a couple years left. I have with me also today, which I can share with you, records from TCEQ Central Record, the latest filing by Waste Management of Texas with TCEQ, which shows that they have approximately 13 years capacity left, so we're not running out of capacity, and I would ask you very respectfully, to consider, really, whether it makes any sense to try to be led down a path that might set up a situation where there's only one person, one company, that has the ability to provide this service for you, whether that's really a prudent choice on your part. We think the better choice would be to go forward with the authorization to negotiate the contract and take into account things like, in that process, what the situation is today at the landfill that's proposed to be used, rather than what it was years ago, or whether there are any other options available. That would be the prudent thing to do, from your standpoint doing the best thing for the City. If you have any questions, again we're here, we have been active in the commission hearings because, and you've probably got a bunch of information from the opposition because they're technically not a bidder so they're not constrained like we are from sharing information with councilmembers and boards and commissions. They're masquerading as not a bidder, they want the contract in the end, and they're using this vehicle to get there. I'm sorry to be so blunt about that, but that's what I'm seeing happening. Thank you Mayor.

**Steve Adler:** Okay. The next speaker to speak on this is Bob Gregory. Is Adam Gregory here? Is Gary Newton here? Is Ryan Hobbs here? You have 12 minutes.

**Bob Gregory:** May I give you some handouts?

**Steve Adler:** Yes. Why don't you give them to the clerk; she'll get them out to the table, to the dais.

**Bob Gregory:** Thank you very much. I am Bob Gregory with Texas Disposal Systems and I'm providing

14 sets of handouts, some of you have seen, some of you have not seen. What it includes is a policy statement or policy goals that we are asking all of you to look at. Also our TDS annotated version of the responses to the Monday email from Sam Angoori, with attachments to them, dealing with the environmental claims that the City suggests, and that Waste Management presents, as well as our report that was given to Council a few years ago on the TDS response to the diversion of 47%, 46.9%, of Austin Energy's waste away from landfill disposal; something that staff contends now can't be done. Also included is a list of reasons why TDS did not respond. These are very specific response that I provided you because some of you have asked the logical question, "Why don't you just bid these things?" Because of what you have seen in a policy memo that came out from Council, I mean from staff, excuse me, even today is admissions from staff that they are in competition with private haulers, and the very things that we've said were the case, are now admitted to. I think because my email to you yesterday, which is also in the package there, included the proof that for a year and a half, the staff has in fact been providing services to commercial companies, and in most cases not even, they charge them, but in most cases they credit it off so that they don't have to pay it. So the City is providing the service, Republic Waste through the existing City facilities contract is the toll hauler for the City. The City's paying Republic Waste, but in most cases the City's not asking to be reimbursed from the commercial businesses. It's really hard to be competitive and ask someone to do business with you if you're a private hauler, if the City's providing the service for free and you have to charge. Matter of fact, they would prefer to have it for free but that's not sustainable. We do have a copy of those invoices and a cover letter explaining it to them, and that was attached to the email we sent you today. I'm going to stick closer to a script because I know the seriousness with competitors of what I'm dealing with. I appreciate the opportunity to speak to you today. What we have before us today is asking you to please reject this proposed contract not only in the interest of fairness and transparency, but also in the interest of clear, cohesive, coordinated approach to managing Austin's waste in a way that aligns with our community's values, something this proposal before you today falls far, far short of achieving. I'll speak to the merits of proposal, or the lack thereof, in just a minute, but the primary thing that I think has to be of grave concern to all of us, and everyone in the community, is the veil of secrecy that has characterized this process. Even now, as this is before you posted for action, neither the full content of the Republic Services RFP response nor the full content of the proposed City of Austin contract with Republic Services, is available for public review, although in the past when such contracts were done, such as the 30 year landfill contract that we have, the 20 year landfill contract that Balconies has and that TDS has another one for about 45% of the City's recyclables, were all published fully with prices included for public review and comment with time to respond before they came to Council to act. State law hasn't changed that would require the City to withhold that. It's a lack of transparency and the City's choice to interpret State law that has caused them not to give the community the ability to look. The community simply does not know everything that might be contained in this proposal for contract, or all the possible ramifications of executing it. If that sounds familiar to you, it's like the Simple Recycling contract for curbside collection of textiles. The Simple Recycling contract that City staff unilaterally executed this summer, without first sharing any of the details with City Council or the community stakeholders who are directly impacted and including major nonprofit groups like Goodwill, Salvation Army and others, and that by the way, the Attorney General just released yesterday the 13 missing pages that the staff wouldn't release to us or the nonprofits, until the AG did it yesterday for the rest of that contract – the contract signed last early July, that no one knew about, but we couldn't get it, it wasn't available when you had your last two meetings when those nonprofits were expressing their concern. The result of that choice by City staff to proceed in the same secretive manner that we're now seeing with this RFP and contract could end up costing Austin not only \$1 million for the Simple Recycling contract, but millions of dollars for this contract if it had to be removed because of the lack of transparency. Fixing the problems that result from executing this contract, including sending City generated waste to a landfill that public records show contains tens of thousands of tons of what today would be considered toxic and hazardous waste, potentially creates enormous liability for the City, could cost taxpayers tens of millions of dollars, not just one. So Mayor and Council, before we even get to what we actually know about proposal, the pattern of behavior that has lead us here, needs to be rejected, please, wholesale by this Council in favor of full transparency, so we can avoid making the Simple Recycling mistake all over again, only on a much grander scale. We think that way, one way to do that, is for the City Council to establish that full, unredacted purchasing solicitation responses and proposed City purchasing contracts, at least for waste related services if not across-the-board, should be made

available for all public review at least 10 days in advance of being posted for action on any citizen, commission or City Council meeting agenda. This kind of policy would ensure that everyone is aware of the full details of what staff is proposing to do and has had an opportunity to consider the possible result. It's called transparency. By the way, the chief secretive, the staff's secretive approach in this unique Simple Recycling contract and the Republic Services contract, but is also apparent in every other RFP process for waste related services that was initiated in 2016. You can see from the emails that I've given you, I list five of them. They're all intricately tied together, one affects the other, and like the biosolids management contract that you saw in December which is currently set up to come back to you, and the organics processing contract is set up to come to you in two weeks. They're all the same thing and you can you can count on us to come and raise our concerns about that as well. Now let me speak briefly about what we do know about the proposal. As I said, we know that staff's proposing as part of the contract to send the waste to the Waste Management-Austin Community Landfill and which the City Council has already unanimously rejected doing as recently as December 2015. I would note that your December 2015 vote was to reject a Republic Services proposal to send Austin Energy waste this landfill, and yet that exact same proposal, unanimously rejected by you, is once again before you contained in this much larger contract. Council, not only is the Waste Management landfill problematic for you from a liability perspective as it relates to toxic and hazardous waste presented at this site, but you also need to understand, please, that this landfill has less remaining operational life than the contract period. I provided you the documents provided to TCEQ from Waste Management, from which you can see from their very own filings, how this relates to down to 4 ½ years remaining based on the waste volume intake they are now reporting. You have that in the emails that we've sent you. In other words, staff is recommending that you commit City generated waste to an environmental problematic landfill that has been the source of heated controversy for years, and commit to do so for a time longer than the life of this contract. And this contract, we believe, because it's in the RFP itself, has three one-year extensions that are available only to the staff to extend. The contract does not have to go back to you for the one or two or three of the three year extensions, and the sympathy of the staff seems to be that they would automatically extend that. It's obvious... it's absolutely extraordinary that the staff would fail to ensure you fully understand the critical fact and the extent to which you would compromise your ability as City policymakers to expose the expansion of this controversial facility, which I believe you can be sure that Waste Management, and possibly even Republic Waste, will be doing over the next two years, intending to pursue landfill expansion by the State. An approval of this contract would make it very difficult for the City Council to then oppose a landfill that they've already just written, provided a contract to finish filling the landfill. If we had responded to the RFP, as I explained in my memo, had we provided you this information in any venue outside the few minutes that we have today to address these things, and without the item being posted for the discussion, we would've been disqualified from the from this bidding process as well as all the other bidding processes that would be out pending, and then the City, by the staff's interpretation...

**Steve Adler:** You can finish your thought.

**Bob Gregory:** Excuse me... then the staff would be, by their interpretation, the staff would be barred from using the TDS landfill that receives 100% of the waste, as well as receiving 45% of the recyclables, as well as all the other contracts that we have. So my request is in the policy statement, my request for action includes the issues that are in the emails to you, and I apologize for not being able to get it all in within the timeframe. Thank you very much. I'll be glad to answer any questions.

**Steve Adler:** Not at this point. Thank you. The next speaker is Andrew Dobbs.

**Andrew Dobbs:** Hi there. I have a few extra minutes from David King. Did that show up yet?

**Steve Adler:** I don't have that on my... do you want me to refresh my page and see... David King, yes. Six minutes.

**Andrew Dobbs:** Here we go, thank you. Thank you Mayor and Council, Andrew Dobbs, Texas Campaign for the Environment. Grateful to be here today. This, I think our perspective is slightly different, but the outcome is the same from what TDS just said. We do oppose this contract, and I want to take this as an opportunity to speak to some specific things that came up, and documents that come from staff to y'all on this contract that are deeply concerning to us. There have been attempts in these documents to,

we believe, repeat the greenwashing statements from Waste Management about this landfill, and there's been various greenwashing statements made on that we believe are very concerning. You can ask Council Member Houston, of course, about what this landfill means to the people living there; it is a persistent nuisance. This is not something that used to be bad and is now good. I got a call last week from a neighbor telling us to come out there and see how bad it reeked, okay. This is a facility that causes problems for Austin residents today, and that means we take it into consideration... I guess they have some bees and butterflies, congratulations. They also have buzzards, rats and Ferrell hogs, so if you like wildlife, check those out too. That is something that we have to take into consideration. In terms of the expansion question, it may have said 13 years when their next-door neighbor was, you know, piling trash at like a monstrous rate, but now that that facility is technically closed at least for the moment, they have accelerated their acceptance rate significantly. In fact, they just last year applied for an expansion of their acceptance rate, so that 13 years has now, they have closed the gap on that. There is going to be a day when I'm standing before you, and asking you to oppose the expansion of this landfill. It will be very difficult for you to make that decision, and regulators and courts will devalue that if they can point and say, "Well they agreed to send waste of this facility and knowing that it was gonna be – for six years – when they suspected that it was gonna be closed before that. But now they're coming back and asking us to oppose this expansion." Do not put yourself into that position; send this contract back and say that in the future any contract has to send it somewhere else, send it to Hutto, send it to TDS, send it somewhere else. And real quick, one thing I have to say something about is that in the latest policy document it identifies the 130, the so-called 130 Environment Park in Lockhart as being a facility that's gonna start this year. That is absolutely not true. They have a contested case hearing going, that is going to decide this year. If they win it, it's never going to get built. If they lose it, they're gonna file a lawsuit and it will be years before the thing is built. That's how, and we have been fighting that, and those are basically my friends that we're dumping on their backyards, so I take that kind of personally. The Zero Waste movement in this city, the Zero Waste plan did not come just because we're great people we have progressive vision – we are those things – but that's not why it happened. It happened, and some of y'all will remember this, because we had persistent landfill wars in the previous decade, where it was constant fights over facilities, this facility and others, between landfill neighbors, groups like ours, the companies represented here, and various other stakeholders and we decided that we were going to come, we were gonna find a final answer to all of that by coming up with a zero waste plan. This is reopening those kinds of battles. The City staff used to be friendly to these facilities. We worked and organized and moved them to a zero waste position, and now are seeing a reopening of a kind of friendly position towards these facilities. This is deeply concerning to us. We are not afraid to fight those battles; it is something that we are very good at. It's something that we would prefer not to do, because we like it when we're friends with everybody, at least with some people, and so that is, and so we would like to see this, and so we need reject this contract in order to keep that spirit alive. Specific to a few things in this contract that I wanted to address. One has to do the emergency materials there. I believe it has been misrepresented what we're asking for. We're not asking necessarily for the City to have to dig through disaster debris to determine whether or not it's recyclable. We're asking for a plan. Maybe that would be the plan; maybe the plan would be something completely different. What we know is that the best practices from communities around the country, that care about zero waste and that have extended it to this particular scenario is that you have to have a plan because we know what it looks like when we don't. Right? We've done that – it looks like us landfilling a lot of recoverable materials and a lot of toxic materials in the area landfills. We do not want to repeat that mistake. Let's have a plan and let's make sure that whatever we do – if it's going to Republic, that's fine. Let's just make sure that Republic agrees when they sign the next contract, hoping that this one is rejected, that they say "Yeah, we'll work with you on a plan for diversion of disaster waste. The Austin Energy contract; you have to reject this. You really do, out of the consideration of your own credibility, if nothing else. Right? Because this was brought to y'all in December 2015, it was unanimously rejected, the Mayor was out of town, everybody else up here rejected it. You didn't get the pleasure of doing that; you were doing important stuff. You know, it was unanimously rejected. They waited a year and then brought it back – and Council Member Houston and Council Member Casar asked for specific things to be in the contract in the future. They brought it back without those things and put it into another larger contract that was less clear, and then asked you approve it. If you approve it, it teaches them that it's okay to disregard the direction of Council. That is... and I don't... I'm not... just, we can't do that. Okay? This is why two City commissions have rejected this.

ZWAC did it twice unanimously. EUC didn't approve it because they couldn't get a second. Okay. So only one person on the EUC was willing approve this. Please listen to your appointed commissioners and to your advisors and reject this contract. I'm happy to answer any questions. Thank you.

**Leslie Pool:** Mr. Dobbs, thank you so much for bringing some of the history, some of the background on this situation with the landfill just east of I-35. I was terribly concerned to see that we were allowing that landfill to continue to be filled up when I thought that as community we had fought to stop that mountain from growing.

**Andrew Dobbs:** Absolutely, and one point that I didn't get to has to do with one of the reasons for that was because of the liability issue. Mr. Gregory alluded to this. There is pre-EPA hazardous waste at this site, significant amounts of it. At some point there is a massive cleanup. These cleanups are not cheap; they're, you know, in the hundreds of millions and billions of dollars. So they're gonna start looking for somebody to pay for it, and they're gonna come looking at y'all, and if they can say, "Y'all put a bunch of stuff in there, it's gonna make it a lot harder to say no. If you can say, "No, actually, we rejected and we explicitly said over and over again, never to send anything there," then they can go in for somebody else. That is something that y'all have to consider for Councils of the future. Thank you.

**Steve Adler:** Okay. Michael Whellan.

**Michael Whellan:** Thank you Council Members, Michael Whellan on behalf of Texas Disposal Systems. I really wanted to complete some of the comments that Bobby had especially focused on – what we would like to see happen. I think you've heard, I don't think I could say it any better than you heard from Mr. Dobbs and TCE with regard to what is really going on and how this is gonna impact our community, especially east of I-35. So today we would request that you terminate this and all non-expired waste related solicitations and proposed contracts and procure waste related services on a temporary basis as necessary to allow sufficient time for policy discussion, and appropriate Council directive needed before the issuance of any new solicitations and award of long-term contracts. Right now the program is backwards. City staff is coming to you with its policy, the staff's policy, already baked into the contract and into the proposal, and we've seen that numerous times in the last 60 days. Second, that you please confirm the City's commitment to the City code sections 15-611 through 15-613, protecting open market competition among licensed providers for commercial, industrial, institutional, multifamily, waste related services in Austin. Third, that you please direct City staff to discontinue contracting for waste related services for any Austin event other than events majority sponsored by the City of Austin. This morning we finally got the policy, the nine page policy memo, where they admit that that would in fact put them in competition with your local haulers. That you please reaffirm the City's goals and requirements with regard to recycling, reusing, composting and landfill disposal waste related services for every City generated waste stream, and have City staff update contract evaluation scoring matrixes to reflect each standard. And that you please decide as a Council whether you want to prohibit all future utilization of the Waste Management-Austin Community Landfill and the Republic Services Sunset Farms Landfill for disposal of processing of some or all City generated waste. You are going to build a mountain out there and will not be able to oppose it, if you continue to send things there. And if you please direct staff not to aggregate or consolidate future services contracts for City generated waste across City departments, and instead require each department to be responsible for their own waste diversion and waste disposal expenses. There's a lot of other small haulers in town who are taking advantage of these contracts and doing it at millions of dollars less than is being proposed with this consolidated contract. And finally, that you please direct City staff to develop criteria, internal processes for issuing distinct purchasing solicitation formats based on product and/or service category, because it seems clear that an Invitation For Bid, rather than Request For Proposal would allow for transparency. We all need to make decisions without unknown and unintended consequences. I would point out, if you look up on San Antonio's City Council website agenda right now for next Thursday, a week from now, their full contracts with prices are posted. That's the type of transparency we can look to. San Antonio's a good example for best practices.

**Steve Adler:** Thank you.

**Allison Alter:** I have a question for Mr. Whellan. I'm pretty concerned about some of the implications of these contracts for broader a policy, as we've discussed, and I think we mentioned in work session, and also for the contracting process, and just the commercial marketplace. When we met to speak about this

you shared an example of what was going on in L.A. which was kind of a cautionary tale, and I'm wondering if you could share that with the dais.

**Michael Whellan:** The short version, I didn't go out there, Mr. Gregory did, but that would be long version. The short version is, I said that about my client out loud, but the short version is L.A. has taken more than 100 small haulers and gotten it down to seven, and they will now be handling commercial waste. It took many, many years for that decision to be made and it will yield – a hundred million dollars a year, or 30 million dollars a year? A hundred million dollars a year in revenue to the city of Los Angeles as a result of the amount they are going to be charging citizens. So from an affordability perspective, it hurts the citizens. Obviously it will create a new budget source like aviation department, energy and water, but I really believe that should be a much broader policy discussion where y'all are really looking at the details of what that's gonna mean in terms of affordability and what it might mean to your budget. It might be a good thing. I think it deserves a broader discussion though, rather than what they've done here, which is enter the competitive market, and they have finally admitted to it in their memo that they issued today, that they are in the competitive market. Thanks.

**Steve Adler:** Okay, thank you. Those are all the speakers that we have. Guys, I think, we've just gotten word that Commissioner Moya has passed away. He was 84. He was the first elected Hispanic official in Travis County, he was elected to Travis County Commissioners Court. He was actually the trailblazer that blazed the trail for Senator Barrientos and Mayor Garcia. I want to give people on the dais a second, if they want to say something, and then I want to take a moment of silence here just to recognize his passing and his career. We have, I think, a combined duty to follow in that path. Mr. Renteria.

**Sabino Renteria:** I just also found out that Richard Moya had died. You know he was a very dear friend of mine, you know, he was also a mentor. The reason I got into politics was because of Richard Moya. The demonstration we had down Congress was the economy strike. Richard was a strong union supporter and he organized the Mexican-Americans in east Austin, and because of him, you know, we really did have some really good leaders, which included John Trevino, our first Hispanic City Council member; Gonzalo Barrientos, our first State Rep, went on to become Senator, and Bob Perkins, even though he's not Hispanic but we consider him to be a brother. So he was, you know, his leadership was just... and his public service, you know, he was... a park in Onion Creek was named after him while he was still alive. That's how much the citizens of Austin and Travis County appreciated and really just cherished the work that he did. So I'm also, you know, he improved the quality of life here in Austin. He was a great leader and I really feel, and reach out for his family, and I really want to say, thank you Richard Moya, you did a big service for Travis County.

**Steve Adler:** Ms. Houston.

**Ora Houston:** Council member Renteria let me know yesterday that Richard was failing in health and I knew him starting in 1966 when we both worked at Legal Aid and Defender Society, sponsored by L. Hamilton Lowe on East 11<sup>th</sup> Street. He was always such a gentleman and so kind, and well done good and faithful servant.

**Steve Adler:** Let's take a moment of silence. Thank you. Now let's go back to the business of government. Those were all the speakers that we have, we're now back to the dais. Is there a motion on this item? Ms. Troxclair.

**Ellen Troxclair:** I would make a motion to deny the contract and direct staff to look at this policy sheet – I don't know if the clerk has one that they can put up – “to deny the proposed contract and direct staff to limit the spending authorization to previous contract level and duration, which was \$6 million dollars over six years; include organics collection at City facilities; limit the contract scope to only include City facilities; prohibit delivery of waste to northeast Austin landfills including Austin Community Landfill and Sunset Farms Landfill; remove the Austin Energy maintenance and disposal portion, rebid as a separate item setting metrics for diversion rate, location and other community benefits; explore the possibility of bidding contracts as an Invitation For Bids; present new negotiated contracts to ZWAC and EUC for review and comment prior to City Council approval; and amend the budget to move annual difference between originally proposed contract and the new spending authorization to the budget Stabilization Fund.” My office worked with Council Member Pool and Council Member Kitchen several months ago

when this item first came up, and as well as the Texas Campaign for the Environment, and this is an agreed to amendment that we all came up with and I think are all happy to support.

**Leslie Pool:** And Mayor, I would second the motion.

**Steve Adler:** Hold on. Manager, do you want to comment on some of these?

**Elaine Hart:** Mayor and Council, staff has looked at the proposed amendment and we have some questions and comments about it. Item 1, limit spending authority to the previous contract. I want to mention that the prior contract was authorized in 2010, which is 7 years ago, and will certainly not meet our needs for the same time period that this would have. Also, when we issue an RFP and an Information For Bid, we really don't know what the bid amounts are gonna come back at, so we can't, I mean, if they come in higher than the limit, then the service time, or the services will have to be cut back once we get the bids in, so that would be a little bit problematic. Organics collection was not in the prior contract, so this contract includes organics, the prior one did not. On item 3, the limitation on... emergencies that we're including in this contract are our response to flood events where we have a large amount of debris that we have to pick up and so, in the future if that was not included in this contract, we would have to contract on a as-needed basis based on the emergency of meeting, meeting public health needs, public health and safety needs, if we didn't include that in the scope. We have no problems at all with number 5 or 6, we're certainly ready to do that. We can do an Information for Bids; that's a different vehicle than an RFP. An RFP allows you to include both cost and also qualitative measures in your evaluation, and Invitation For Bid is just a bid contract; whoever is the lowest bid gets the contract. That's the recommendation. You know, any contract we would bring back, we would bring back to the ZWAC committee and the Electric Utility Committee for review, just like we do any other RCA's that we bring forward. And then number eight. Austin Resource Recovery is an enterprise and is not funded by any property tax revenue or sales tax revenue, so any change in this contract would not affect the General Fund nor its stability, Stabilization Fund. Just wanted to point that out. Those are the only comments. I'm glad to answer questions, or staff can answer more detailed questions if you have any.

**Steve Adler:** We may need to. It's been moved, is there a second? Ms. Pool seconds this. Is there discussion on the dais? Ms. Pool.

**Leslie Pool:** I appreciate having the input from the City Manager and what I'm wondering is, should we put this on the table so that we could work through some of the issues that were raised, and so that we can make sure the language is as specific and targeted as necessary?

**Steve Adler:** We can certainly do that and work through this. We also have some questions from staff on what the impact of this would be to their issues.

**Leslie Pool:** Because it sounds like we can delete a couple of the items that were on here and then maybe there's some additional discussion on the language to get it so that it fits within the parameters that were brought by the City Manager.

**Steve Adler:** Part of the issue is whether that's the best use of everybody's time on the dais or whether we should step off. Commissioner.

**Greg Casar:** If some folks, if that's a suggestion that Council Member Pool and others might step off and work on that with the staff, I would support a motion to table.

**Steve Adler:** Okay. Mayor Pro Tem.

**Kathie Tovo:** Can I just understand what the City Manager, what I heard the City Manager say. City Manager, Number 1, it sounds like the spending authorization, limiting the spending authorization to the previous contract level. If I understood what you were saying, you were saying that it was set in 2010 and it wouldn't be, that amount would not be sufficient for our current needs.

**Elaine Hart:** Yes, that's correct.

**Kathie Tovo:** So number one would be...

**Elaine Hart:** We would have to limit the scope of these needs.



**Kathie Tovo:** So we would have to cut back on our services if number 1 is a piece of it. And then that, it seems to me, would impact number 8 because there wouldn't be an amount...

**Elaine Hart:** No...got it, right, so eight is...

**Kathie Tovo:** Okay, thank you.

**Leslie Pool:** And what I would say on Number 1 is, if it's a difference between cutting back on our level of services or updating the amount, I would like to see what the updated amount would be. But I don't know that I'm keen to cut back on our services.

**Elaine Hart:** You could cut back on services or the length of time on the contract, would be the other option, but that's not what you... that was not the scope of this solicitation so you would have to do it on a new solicitation.

**Steve Adler:** Ms. Kitchen, and then Ms. Houston.

**Ann Kitchen:** One question I would have, those that are going to go off and talk about this, I understand the point about Number 8, but I do think it's useful to discuss what happens with the annual difference. So whether that is, maybe it's not the budget Stabilization Fund, but maybe it is another fund within that department, so I would keep that, I would not just delete it. I would have some conversation, when going, I think we said that people are going to go off and discuss this. I think that should be part of the conversation.

**Steve Adler:** Ms. Houston.

**Ora Houston:** I just need to ask a clarifying question. Is it possible just to deny this contract, have it rebid and separated so that we see what the various parts are? Organics was added to this one, which was not a part of it before, and scope would be for organics rather than have all of these things lumped into one contract. What would happen if we just deny the whole thing start the process over?

**Elaine Hart:** I may need some assistance from my purchasing staff but I believe that we could parse this contract and rebid the various services on separate solicitations. It would be just additional staff working time to bring that back to the Council. Certainly we'd want some additional policy direction on the pieces, before we proceed with that work.

**Steve Adler:** Ms. Troxclair, did you want to speak before we hear from staff?

**Ellen Troxclair:** No, he can respond.

**Steve Adler:** Please.

**James Scarboro:** Mayor and Council members, James Scarboro, Purchasing. Under the direction of the Council and the City Manager's office, to initiate a new competitive process. we would like some additional direction and some clarification of Council vision so that we can proceed in a manner that's going to be more consistent with your expectation. Some of things that are contemplated in the proposed motion are certainly doable, but they are doable using multiple approaches. So we want to make sure that the approach that you're envisioning is something consistent with what we can do. For example, you asked about Invitations For Bids, and that's fine, but is the purpose for the Invitations For Bid so that you can see the submissions. If so, there's other ways that we can show you the submissions without doing an Invitation For Bid, we could just change the instructions in the solicitation. If the purpose to, let's see, you asked for multiple competitions to break up the contract across departments. That's doable, it's just... are you contemplating doing this in separate solicitations or are you contemplating this being separate competitive opportunities? If it's separate solicitations we may run... we may encounter circumstance where you have multiple contracts for the same services with the same contractor at different prices at different contract terms. That's a compounding of contract administration cost and it creates a rather complicated auditing scenario. So we just wanted to... if you could provide us with some additional clarification and direction, I think we can definitely put together an administrative approach that's gonna meet your expectations.

**Steve Adler:** Ms. Troxclair.

**Ellen Troxclair:** Thank you. Yes, I mean, I will happily support a tabling of this momentarily while we make some of those clarifications. You know, this was an effort to address the concerns not only of the Council, but also the Zero Waste Advisory Commission, and give staff the direction that they need in order to proceed in a way that is comparable with the policy decisions that Council is looking to make. So I want to make sure that we give you that direction. And although we could proceed just by denying the contract and maybe breaking up the pieces, again, I think this would... I think that the staff was looking for more of a policy direction from us when it came back, so that was the intent of the amendment. And can I ask one quick question to the City Manager. Just because this is an Enterprise Fund, does that prohibit transfer of money from the fund to the Economic Stabilization Fund?

**Elaine Hart:** That would not be a best practice in this case because you're collecting from the customers who benefit from that service, and that would be called just a General Fund transfer, like the Austin Energy transfer and the Austin Water transfer. We typically don't have that in our other Enterprise Funds because it's not customary. In some cities the solid waste collection is a department within the General Fund, and in that case if your rates were higher than the cost to provide that service, that surplus would remain in the General Fund. We've had a solid waste or Austin Resource Recovery fund as an Enterprise Fund for many, many years, and so when they have a surplus of revenue over expenditures it stays in that fund to lower the rates for their customers in future years. And so I would not recommend a General Fund transfer from the Austin Resource Recovery fund without doing a full study and generally I would not recommend it.

**Ellen Troxclair:** I think the purpose is just to make sure that this amount of money is not lost, that it's accounted for some way and maybe set aside to be put to some use in the next budget cycle so we can, if we're going to take some time to talk about it, what the best option would be.

**Elaine Hart:** It would not be lost, it would be retained in that Enterprise Fund and used for their purposes.

**Ellen Troxclair:** Right, I just think that we want to keep tabs on it and not just have it go back to the department to be used on any other purpose that we might not be directing it to right now.

**Steve Adler:** And I'm also going to support this going to table and have someone take a look at it. I'm not sure what my expectations are for it coming back. You know, we had a memo from staff that identified some policy issues. I think there are policy issues in addition to the ones that were identified in the memo that we got. And in these waste contracts we have the recurrent questions with respect to the Anti-Lobbying Ordinance and who can participate or not. I don't know what to do on that either, but the processes we're in now doesn't seem to work. So part of that conversation might be in the context of this is, why do we have that Ordinance, what are we trying to achieve? And is there a better way to do that? Is there a time at which it opens up? Do other cities do it that way? I just, it seems to me that, I don't want to get caught in this loop again at the backend of this. So I'm also happy to put on the table and almost without expectation for what the working group will come back to us and recommend.

**Leslie Pool:** Thanks. Yeah, I was thinking the same thing, especially since I think we need to stay on the dais for a number of the conversations and discussions that we've got in front of us. So I'd be happy to continue forward with denying the contract, and then have a work group work along the lines of what the Mayor and Council Member Troxclair are talking about to try to get through all the various, identify and work through all the various policy issues that are in front of us, and then bring that back at a later date. And I don't know when that later date would be. Mainly it wouldn't be today.

**Steve Adler:** Okay.

**Leslie Pool:** Thanks.

**Steve Adler:** Is there a motion to put this on the table? Ms. Pool.

**Leslie Pool:** And I was the one who suggested tabling it, but what I really would like to do since we have talked about it a little bit further, is dispense with Item number 29, and I think if we withdraw our motion, does it simply die if we take no action? Or do we need to deny Item 29? Do we have to have a motion to deny 29, and then take the additional work, which was the piece that we were talking about working up

on the policy issues? Which is the best way to go?

**Steve Adler:** We have two things going. We have some policy issues that have to be resolved and then we have contract issues as well. Logistically, is there a way, Manager, that you think would be best to proceed?

**Elaine Hart:** If you want to keep this RCA alive, I would postpone it to a future date. If you want to deny this contract and address policy issues before we do another solicitation, I would withdraw. Unless the City Attorney would advise otherwise. Those are the two actions that I believe Council has as options for approval.

**Steve Adler:** So logistically, does staff have a recommendation or a strong belief one way or the other?

**James Scarboro:** Mayor and Council members, staff does not have a recommendation in that regard to withdraw or deny the item. We are prepared to cover the City's needs on an interim basis.

**Steve Adler:** Ms. Houston.

**Ora Houston:** Mr. Scarboro, how fast would you need us to come back with some proposal?

**James Scarboro:** We have some options with regard to the trash collection for the City buildings and collection for, excuse me, the collection at special events. I believe if we received your, if we received your clarification and your feedback within the next few months, we would be okay.

**Ora Houston:** Thank you.

**Steve Adler:** Okay. You've made a motion which has been seconded. That's what's on the floor right now. Do we want to...

**Ellen Troxclair:** Can I amend my motion to deny the contract.

**Leslie Pool:** And I'll second that.

**Steve Adler:** So there's been a motion to... is there an objection at this point to changing that motion from the Amendment that she had, to Ms. Troxclair's changing it to be just deny the contracts at this point. Is there an objection to that? Then that's what the motion is on the floor. Is there further discussion on this motion? Then let's take a vote. Those in favor to deny this contract raise your hand Those opposed? Unanimous on the dais.