

# City Council Waste Management Policy Working Group

May 10, 2017



# Waste Management Policy Questions

## **Solicitation Process:**

- Should the City competitively solicit waste management contracts?
- For City waste management contracts, should Council waive the Anti-Lobbying Ordinance for future solicitations?

## **Solicitation Details:**

- Should materials be directed to, or away from, certain landfills in future solicitations?
- Should some contract and services be consolidated?
- Should the City set diversion requirements for City waste management contractors?
- Is there a preferred way to manage used utility poles?
- Is there a preferred policy for biosolids management?

## **Service Questions:**

- Should Austin Resource Recovery provide special event services?



# More Questions Concerning Anti-Lobbying

# Q: Provide more details on the policies and practices of other governments regarding Anti-Lobbying

Elements of Anti-Lobbying Prohibitions	Austin	Dallas	El Paso	Fort Worth	Houston	San Antonio	Travis County	State
Lobbying addressed in Ordinance/Code	YES	YES	YES	NO	NO (4)	YES	YES	YES (7)
Beginning of Anti-Lobbying Period	Solicitation Published	Solicitation Published	Multiple (3)	Solicitation Published	Proposal Due	Solicitation Published	"Procurement Process"	
End of Anti-Lobbying Period	Contract Signing	Council Authorization	Final Agenda		Final Agenda	Multiple (6)	"Procurement Process"	
All communications must be with designated contact person	YES			YES	YES	YES		
Prohibition also applies to Representatives	YES	YES		YES	YES	YES		
Excludes communications to a list of City staff and officials, in addition to Council	YES		Yes	YES	YES	YES		
Allows any communications made at posted public meeting.	YES	YES (2)			YES (5)			
Allow additional Communications if described in the solicitation	YES		YES	YES	YES			
Certain categories of solicitations are excluded, e.g., Human Services, Cultural Arts, CDBG, sale or rental of real property.	YES							
Includes a list/examples of excluded communications	YES					YES		
Anti-Lobbying Period can be extended due to re-solicit	YES							
Violation may result in: Disqualification from the Solicitation (DQ) or Debarment (DB)	DQ (1)		DB	DQ	DQ	DQ	DQ	
Is the contract voided if later it was found that a violation occurred?	YES							

Notes: (1) Debarment occurs after 3rd violation within 5 years. (2) Only stipulates the Council Meeting where the Award will be considered. (3) Period Begins at Multiple times: Regularly (Solicitation Published), for Unsolicited proposals and Public-Private Partnerships (Date they are submitted to staff). (4) Policy established in their Policy Manual, which is more prescriptive as their Chief Procurement Officer is appointed by the Mayor. (5) Only stipulates the Pre-Offer Conference and the Council Meeting after the Quiet period has ended. (6) Period Ends at Multiple times: for SBEDA (Proposal Due), Council (Agenda Posted) and City Employees (Contract Award). (7) Limited to solicitations involving Federal funds.


# Q: Can contractors communicate regarding their existing contracts without violating Anti-Lobbying Ordinance?

- **Yes** – Contractors can and should communicate with staff regarding existing contracts
- 10. EXISTING CONTRACTS  
*It is not a violation of Article 6 of Chapter 2-7 of the City Code for a person with an existing contract or business relationship with the city to discuss issues related to that contract or relationship with a city employee or official... (R2011-COA-1)*

# Q: Does handing out a business card violate the ALO?

- **No** – Handing out a business card does not violate the ALO
- Respondents violate the ALO when they make a “Representation”
- A Representation is a communication to City staff or official that is related to a solicitation response (several examples provided in the ALO)
- A business card does not constitute a Representation

Q: Can the Anti-Lobbying Ordinance be revised to apply to the communications of non-respondents?



- **No** – Staff does not intend to limit this communication
- The City should only seek to maintain a level playing field for the respondents to the solicitation
- Non-respondents are not under the regulatory control of the City and the City has no authority to limit speech

# Q: If a Vendor is debarred, is there an impact on existing contracts between the City and the Vendor?

- **No** – Existing contracts, that are not associated with the violation, are not impacted
- Debarment is the process of excluding a Vendor from consideration for **future awards** for up to three years (R2010-PO-1)
- If a violation of the ALO is determined after a contract is awarded, that contract may be voided (R2011-COA-1)
- Does not apply to contracts previously awarded that were unrelated to the violation (R2011-COA-1)



# Staff: Recommendations regarding the Anti-Lobbying Ordinance

- Revise the Anti-Lobbying Ordinance
  - *Narrow the definition of “Representations” to target lobbying*
  - *Add communications regarding existing contracts to “Permitted Communications”*
  - *Shorten the No-Contact period*
  - *Revise the “Enforcement” section concerning debarments*
- Revise Anti-Lobbying rules
  - *Clarify process for determining violations*
  - *Clarify process for submitting and facilitating complaints*
- Revise solicitation instructions regarding communications



# More Questions Concerning Confidentiality

# Q: Provide more details on the policies and practices of other governments regarding Confidential Information

- Overview of solicitation instructions from larger municipalities in Texas (see Handout)
- Each were substantially similar regarding
  - *Compliance with the Texas Public Information Act*
  - *Proposal contents confidential through the evaluation process*
  - *Require offerors to mark all content they request be kept confidential*
  - *Make reasonable efforts to protect confidentiality but cannot guarantee*
  - *Information not marked as confidential would be made available, more commonly after contract award*

# Q: Can board and commission members view confidential proposal contents.

- Council has not granted this level of authority to any Board or Commission previously – Not recommended by staff
  - *Board and Commission (Members) would need to sign confidentiality agreements that will remain in effect for years – even past their tenures*
  - *Members may unintentionally become involved in evaluations or negotiation exchanges, or any protests that may result*
  - *Members will not be able to discuss their observations or explain their recommendation for or against an item*
  - *Long processing times for Council items may increase further*
- Based on Work Group discussions contract contents, and not proposal contents, appear to be more meaningful to Members

# Q: Clarify previous instance when TDS's contract was disclosed prior to Council action.

- Only one known instance – Recycling Services (non-competitive)
  - *Staff brought an item to Council recommending contract award for Recycling Services* (June 2010)
  - *Council rejected staff's recommendation and directed the Manager to negotiate contracts with TDS and another contractor* (August 2010)
  - *Staff brought two items back to Council to authorize contracts for Recycling Services* (April 2011)
  - *The entire contents of both contracts were included as backup*

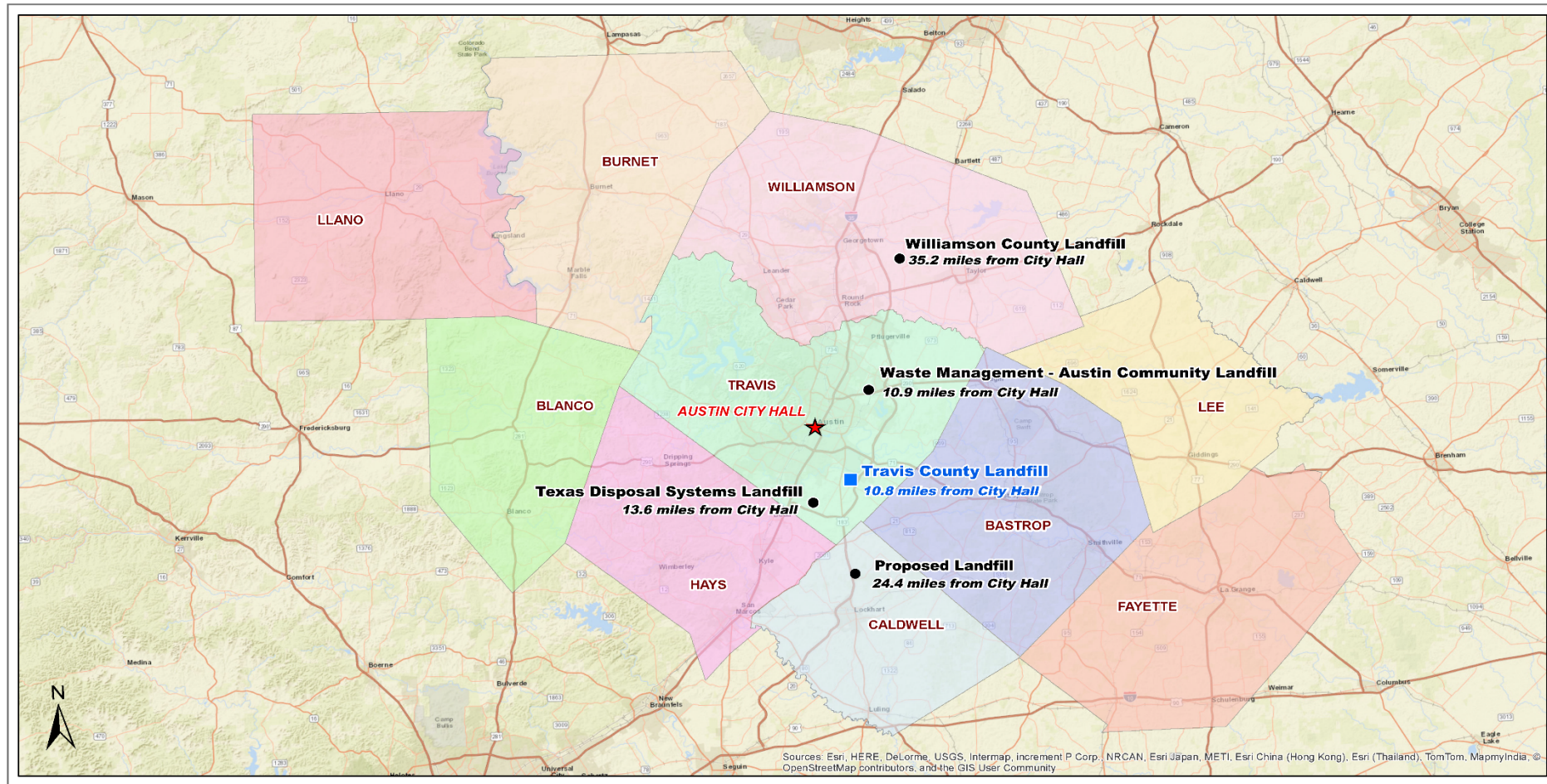
# Staff: Recommendations regarding the management of Confidential Information for certain procurements



- Increase the use of IFBs when appropriate
- Consider the use of alternative IFBs
  - *IFB – Best Value* (Criteria-based IFB)
  - *Low Price Technically Acceptable* (Federal process, not currently used)
- Consider increasing the use of Competitive Negotiations
- Explore approaches to maintain the confidentiality of proposal contents while making contract contents available for review prior to authorization



# Should materials be directed to or away from certain landfills in future solicitations?



## Municipal Landfills in 10 County CAPCOG Region



# Should materials be directed to or away from certain landfills in future solicitations?

## Currently:

- There is no policy direction from City Council that directs materials to or away from any specific landfill.
- For curbside service, City collection trucks haul the material to the Texas Disposal Systems landfill per the current landfill contract.
- For other City contracts, the City solicits bids and the respondents are only limited to landfills with valid operating permits.
- Using our contracts, the City can control the flow of material it generates or is responsible for managing. The City cannot regulate where private haulers take material managed under a private contract.
- As generators of the waste, the City may choose where its materials are managed/processed.



# Should materials be directed to, or away from, certain landfills in future solicitations?

## **Policy Considerations:**

- Should material be directed to, or away from, certain landfills?
- Pros to direct materials to, or away from, certain landfills:
  - Could clarify Council environmental goals
- Cons:
  - Would benefit some vendors and thus affect “competition” regarding collection/disposal service bids