

Waste Management Contracting Policies

# Responses to Procurement Questions



Workgroup Meeting no. 2  
Austin City Hall  
Boards and Commission Conference Room  
May 5, 2017

- Questions concerning Anti-Lobbying
  - *Overview of Anti-Lobbying Ordinance*
  - *How staff implement the Anti-Lobbying Ordinance*
  - *What other cities doing regarding lobbying*
  - *Possible impacts and alternatives*
  
- Questions concerning Confidential Information
  - *Overview of statutes pertaining to Confidential Information*
  - *Types of information offerors typically keep confidential*
  - *What other cities are doing regarding Confidential Information*
  - *Possible impacts and alternatives*



## Agenda



Questions concerning  
**Anti-Lobbying**

# Q: Overview of Anti-Lobbying Ordinance

(1/2)

- Purpose
  - *Fair, equitable and competitive process*
  - *Equal access to information*
  - *Same opportunity to present information*
- Scope
  - *Contracts approved by City Council or as designated by the Director*
  - *Specifies “Permitted Representations”*
    - Must be directed through the “Authorized Contact Person”
    - May be made at meetings posted in accordance with the Texas Open Meeting Act
  - *more...*

# Q: Overview of Anti-Lobbying Ordinance

(2/2)

- **Scope** (continued)
  - *Begins with solicitation's publication*
  - *Ends when any resulting contract is signed (or last contract if multiple awards), or Ends when the solicitation is withdrawn and no re-solicitation is planned*
  - *More than two disqualifications during a 60-month period can result in respondent being debarred for a period not to exceed 3 years*

## Q: How does staff implement the Anti-Lobbying Ordinance? (1/3)

- Create and distribute No-Contact list
- Determine violations
- Facilitate complaints
- Oversee protests
- Oversee rules
- Provide training

# Q: How does staff implement the Anti-Lobbying Ordinance? (2/3)

- Rules
  - *Only addresses protest procedures*
- Practical Issues
  - *Only applies to offerors and not to parties who do not submit responses*
  - *Applies retroactively, to actions of offerors before the offeror responds*
  - *Length of No-Contact period is long and can vary*
  - *Applies to communications whether initiated by the offeror or the City*
  - *Does not address different phases of the solicitation process differently*
  - *more...*

# Q: How does staff implement the Anti-Lobbying Ordinance? (3/3)

- **Practical Issues** (continued)
  - *Little guidance on determining violations*
  - *Does not include remedies for Representations initiated by Staff / Officials*
  - *Does not provide guidance regarding lesser remedies due to mitigating circumstances*
  - *Complicates unrelated communications associated with other existing City contracts*



# Q: What are other Cities doing regarding Lobbying?

- Other governments contacted
  - *Dallas*
  - *El Paso*
  - *San Antonio*
  - *Houston*
  - *Travis County and State* (as applicable)
- All have similar forms of Anti-Lobbying regulations or policy

# Staff: Possible impacts if the Anti-Lobbying Ordinance is not reinstated for waste management contracts.

- Prospective offerors and their representatives may contact Council, their staff and any City employee concerning
  - *Solicitation, while it is on the street and subject to changes*
  - *Proposal contents, after offers have been submitted*
  - *Allegations, concerning other respondents to the solicitation*
  - *All clarifications, evaluations and negotiations, as they are occurring*
  - *Nonresponsive and unsuccessful notices, as they are being received*
  - *Protests and independent hearings, while they are transpiring*
  - *Possibly of becoming directly involved in litigation*
  - *Other unanticipated consequences*

# Staff: Possible alternatives to a full reinstatement of the Anti-Lobbying Ordinance.

- Update and expand the rules
  - *Determining violations*
  - *Processing complaints*
- Revise and streamline the ordinance
  - *Narrow the definition of lobbying*
  - *Shorten the No-Contact period*
  - *Provide options to resolve violations caused by City staff / officials*
- Manage standard communications administratively



# Questions concerning Confidentiality

# Q: Overview of statutes regarding Confidential Information

(1/3)

## Texas Local Government Code

- Sec. 252.049. Confidentiality of Information in Bids or Proposals.
  - (a) *Trade secrets and confidential information in competitive sealed bids are not open for public inspection.*
  - (b) *If provided in a request for proposals, proposals shall be opened in a manner that avoids disclosure of the contents to competing offerors and keeps the proposals secret during negotiations. All proposals are open for public inspection after the contract is awarded, but trade secrets and confidential information in the proposals are not open for public inspection.*

# Q: Overview of statutes regarding Confidential Information

(2/3)

## Texas Government Code

- Sec. 552.110. Exception: Confidentiality of Trade Secrets; Confidentiality of Certain Commercial or Financial Information
  - (a) *(a) A trade secret obtained from a person and privileged or confidential by statute or judicial decision is excepted from the requirements of Section 552.021.*
  - (b) *(b) Commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained is excepted from the requirements of Section 552.021.*

# Q: Overview of statutes regarding Confidential Information

(3/3)

## Texas Government Code

- Sec. 552.104. Exception: Information Related to Competition or Bidding.
  - (a) *Information is excepted from the requirements of Section 552.021 if it is information that, if released, would give advantage to a competitor or bidder.*
  - (b) *The requirement of Section 552.022 that a category of information listed under Section 552.022(a) is public information and not excepted from required disclosure under this chapter unless expressly confidential under law does not apply to information that is excepted from required disclosure under this section.*

Q: What types of information do Offerors typically request to be kept confidential? (1/2)

- Information typically requested be kept confidential
  - *Tax ID numbers*
  - *References*
  - *Financial Information*
  - *Employee names and information*
  - *Prices*
  - *Work plan*
  - *Proprietary and/or trade secrets*



Q: What types of information do Offerors typically request to be kept confidential? (1/2)

- Confidentiality requests under recent ARR solicitations
  - *Tax ID numbers*
  - *References*
  - *Employee names and information*
  - *Prices*
  - *Work plans (compost blends, etc.)*
  - *Third-party relationships*
  - *Marketing plans*
  - *Exceptions*

# Q: What are other Cities doing regarding Confidentiality?

- Contacted same governments
  - *Dallas*
  - *El Paso*
  - *San Antonio*
  - *Houston*
  - *Travis County and State* (as applicable)
- All treat confidential information in proposals the same way or very similar to Austin

# Q: How would negotiations be impacted if proposal contents were publically available?

- Negotiation types impacted differently
  - *Competitive Negotiations* (Negotiations before award recommendation)  
*impacted if proposal information released before award recommendation*
  - *Consecutive Negotiations* (Negotiations after award recommendation)  
*impacted if proposal information released before contract is signed*
- Impact of Offerors and City staff
  - *May decrease participation in City solicitations*
  - *May increase the prices proposed by offerors*
  - *May diminish City's ability to negotiate favorable terms and conditions*
  - *Lower participation may negatively impact City procurement programs*

# Staff: Possible impacts if confidential information is not allowed in waste management procurements.

- Fewer responses
- Less favorable pricing, terms and conditions
- Less specificity in proposal contents and resulting contracts
  - *Materials used, processes employed and corporate background*
  - *Meaningfully differentiate proposals or administer contract*
- Possible security impacts
- Deepen procedural differences between procurements for Austin Energy and other departments

# Staff: Possible alternatives to managing confidential information in waste management procurements.

- Utilize IFB process for waste management contracts
  - *Bidders can still request portions of their bid be kept confidential*
  - *Solicitation contents will have to be more detailed and prescriptive*
  - *Loose ability to consider different approaches and to negotiate*
- Limit the kinds of confidential information City will recognize
  - *Still may not address transparency concerns*
  - *May have similar consequences to eliminating confidential information*



Questions?