

Bob Gregory

From: Bob Gregory
Sent: Wednesday, June 21, 2017 12:36 PM
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Subject: 6-22-2017 Agenda Item 30, Curbside Organics Processing Services Contract
Attachments: Memo Re 6-22-2017 Agenda Item 30, Curbside Organics Processing Contract.pdf

Dear Mayor and City Council Members,

Please see the attached PDF with my TDS comments regarding the 6-22-2017 Austin City Council Agenda Item 30, regarding the Curbside Organics Processing Services Contract.

Sincerely,
Bob Gregory
512-619-9127 (m)

June 21, 2017

From: Bob Gregory

To: Austin Mayor and City Council Members

SUBJECT: 6-22-2017 Agenda Item 30, Curbside Organics Processing Services Contract

Dear Mayor and Council Members:

The process that has led to [Item 30](#) on your June 22 meeting agenda has been extremely unusual and raises issues of great concern regarding public transparency and the judicious use of public resources.

In my [February 27 email](#) to you, I communicated Texas Disposal Systems' (TDS) concerns regarding the proposed six-year, \$4.36 million contract for Curbside Organics Processing with Organics "By Gosh" (OBG), and each of those concerns remain valid as of today. TDS' concerns relate primarily to issues of process, authorization, capacity and cost, as detailed below, and focus primarily on the way staff is still leading a process to establish City policy by RFP.

Importantly, please understand that because the full contract documents have not yet been made public, it remains unknown whether City staff's intent is to use the contract to establish exclusivity with the recommended contractor. However, unambiguous language contained in the [RFP documents](#) and recent staff memos clearly indicate staff's desire to [utilize multiple contractors](#) and specifically reserves the right to [issue a new solicitation](#) at any time in order to add contractors. Further, the RFP documents indicate that the City [does not propose to guarantee delivery of any specific volume](#) of curbside collected organics with food waste to the proposed vendor. Taken together, these issues raise critical questions about recent representations that a signed contract is necessary for the vendor to commit the funds needed to build the facilities required to service the proposed contract, and that OBG may require a higher tipping fee, if the term of the contract is reduced.

PROCESS

As you know, the City Council Waste Management Policy Working Group (PWG) has been meeting for several months to receive stakeholder input and develop recommendations to the full City Council regarding a broad range of critical waste management policy issues. The primary purpose of clarifying City policy regarding solid waste services contracts and where the City's waste is processed and disposed, was to avoid City policy being set by RFP and to ensure a transparent public process for all solicitations. It is not only unnecessary but also, TDS believes, premature to move forward with this proposed six-year contract without the benefit of having first received and considered the PWG policy recommendations.

Perhaps most significantly, TDS hopes and anticipates that the PWG recommendations will include new protocols for ensuring that the full details of future waste management solicitations and proposed contracts are able to be reviewed and analyzed by appropriate Boards / Commissions and public stakeholders with sufficient time for informed comment prior to Council consideration.

Yet in this case, the details and text of the proposed OBG contract remain undisclosed, even upon posting for Council action, including the specific location of a proposed 3rd organics processing facility, which Mr. Gosh has stated is necessary to meet the requirements of the contract. It is not unreasonable to assume that property owners surrounding this undisclosed facility location, either in Travis County or in a surrounding county, will feel that they have been purposely excluded from the process once the location of the 3rd facility is disclosed. Neither the language in the RFP or the OBG RFP response indicates a basis to suggest that the staff proposed contract should commit a specific volume of organic waste to be delivered to any specific facility. Therefore,

we urge the Council to direct staff to finalize and post the specific contract language for stakeholder and Council review and comment before the contract is executed.

AUTHORIZATION

For good reason, TDS believes that the City should ensure that all solid waste, recycling and organics processing facilities upon which the City relies are verifiably authorized by the Texas Commission on Environmental Quality (TCEQ), Travis County, Bastrop County and the City in every manner required to meet all contract requirements.

As you may know, OBG has provided a [letter from Travis County](#) confirming that their 13602 FM 969 facility is operating in compliance with the [Site Development Permit issued in 2002](#). However, we have been informed that Travis County has not yet determined whether the site is actually grandfathered from the [Travis County Solid Waste Facility Siting Ordinance](#), or from the [Travis County Code Chapter 64, Subchapter G. Solid Waste Management or Disposal Facilities in or near Floodplains](#).

Our experts strongly believe that since OBG has changed its TCEQ authorized activities several times since it received its original 2002 Site Development Permit from Travis County, the FM 969 facility is now a “Major Facility” not currently in compliance with either ordinance due to its close [proximity to residences, neighborhoods, schools and churches](#), and its [location within the 100-year floodplain](#) (please note that OBG’s FM 969 composting area is not only within the 100-year floodplain but additionally within a FEMA-designated [“High Flood Risk Zone”](#) which is characterized as having a 26% chance of flooding over a 30-year period).

These changes in TCEQ authorized activities required OBG to obtain new [authorizations from TCEQ](#), which we believe changed the facility’s classification to “Major Facility” status under the Travis County ordinance for Siting of Solid Waste Facilities.

For these reasons, we believe Travis County will likely determine that OBG’s FM 969 facility is in fact not grandfathered from either the Travis County ordinance for Siting of Solid Waste Facilities or County floodplain restrictions for solid waste facilities. This could result in the facility being forced to stop accepting food waste materials until variances are obtained from Travis County, which is not guaranteed and would likely be a time-consuming endeavor. Under this scenario, the City could be left to rely exclusively on OBG’s facility in Bastrop County, which has limited capacity to handle only the first year of the proposed rollout of citywide curbside organics collection services (see below).

Organics “By Gosh” FM 969 Compost Facility, Chronology of Public Records:

2002: *Travis County issues Site Development Permit for a 7.32-acre site located at 13602 FM 969 consisting of two lots and a compost processing area consisting of less than 2.79 acres to Construct Storage Yard. Construction permit cited in the 7-20-17 Council work session did not authorize any specific use, such as composting.*

2003: *Travis County adopts Chapter 62 Siting of Solid Waste Facilities, which does not apply to a facility composting only source-separated yard waste.*

2003: *Travis County adopts Chapter 64.221 through 64.223, which prohibits the operation of solid waste facilities within 500 feet of the FEMA 100-year floodplain. It specifically included composting facilities.*

2007: *TCEQ inspected this facility at 13602 FM 969 in response to complaints about nuisance odor and dust. TCEQ investigation report stated this was an Exempt facility that only composts source-separated vegetative material. Mr. Gosh was quoted by the investigator as saying he was going to submit a Notice of Intent in the future (which would allow the facility to accept food waste and create a new authorization from the TCEQ and qualify it as a “Major Facility” under Travis County ordinances).*

2012: Organics By Gosh began composting food waste for the City of Austin, which was done at a Notification tier facility at 18601 FM 969. (A “Major Facility” under the Travis County Siting ordinance.)

2014: Revised floodplain map of 2014 shows more of the 13602 FM 969 facility to be located in the floodplain.

2014: The 13602 FM 969 composting facility received approval from the TCEQ for a Notification tier compost facility, authorizing this facility as a 10-acre site within a 15-acre tract to add food waste and dead animals to the compost facility feedstocks, making it a “Major Facility” per Travis County Ordinances. (Note: The amount of waste approved to be processed on this site may be much less, since the size of the OBG tract may be less than half of the size identified on OBG’s TCEQ authorization.)

2017: No variance for 13602 FM 969 can be found in the Travis County public records from either the Siting Ordinance or Floodplain Ordinance. Once the OBG facility received authorization for food waste in 2014, it triggered the need for a variance from the Siting Ordinance under Section 62.007 and the Floodplain Ordinance Section 64.223. Otherwise, a small Exempt tier yard waste composting facility operator starting in business prior to 2003 could seek a series of TCEQ authorizations to morph their facility into a commercial Notification tier food waste composting facility, and then into a Registration tier full scale biosolids and grease trap composting facility, and then into a Permit tier full scale household garbage composting facility, all the while continuing to claim to be grandfathered from the County’s Solid Waste Facility Siting Ordinance and Floodplain Ordinance.

Please also recall that [ZWAC’s original recommendation](#) on Agenda Item 30 was contingent upon the requirement that “necessary permits and registrations be obtained” and “with the added restriction that no biosolids or compost from biosolids be mixed with City of Austin food waste or compost from food waste.” Both of these conditions, as well as the issues detailed above and in [my February 27 email to City Council](#), [plainly](#) demonstrate the need for more information and for City staff to produce the full set of negotiated OBG contract documents for public review and comment before the City Council authorizes the execution of the City staff proposed contract.

CAPACITY

The City’s RFP anticipates full citywide expansion of the curbside organics program through the proposed contract to include collection of approximately [72,000 tons from 210,000 residential customers](#) per year. OBG’s [June 2016 RFP response](#) explicitly stated that all of the City’s curbside organic material processing will be done at their 7.32 acre facility located at 13602 FM 969 in eastern Travis County, with a less than 2.79 acre compost processing area approved for construction.

However, when ZWAC reviewed and considered the proposed contract with OBG during its February 8 meeting, questions were raised about the capacity and suitability of OBG’s proposed facility. In response, Mr. Gosh announced for the first time that he agreed his FM 969 facility had insufficient capacity to handle all of the volumes anticipated in the City’s RFP (see page 9 of 2-8-17 [ZWAC transcript](#)). Mr. Gosh then revealed, also for the first time, that his company would rely upon a second, 27-acre facility located 12 miles further east in Bastrop County, as well as a third, as-yet-undisclosed 100-acre facility, to fulfill the whole contract (see page 3 of 2-18-17 [ZWAC transcript](#)). Again, neither of these additional proposed facilities were included in OBG’s initial RFP response and thus were not analyzed or scored by City staff.

As you may know, OBG has represented that it has received TCEQ authorizations sufficient to service the proposed contract at its two identified processing sites. However, while the TCEQ authorizations obtained by OBG do indicate estimates for feedstock acceptance that would theoretically be sufficient to fulfill the proposed contract, critically, those authorizations also include explicit limits on the amount of combustible material that can be stored on site, which are much lower than the figures for estimated feedstock acceptance. Given that OBG has stated that their static pile composting method takes twelve months to complete, this limit on combustible material storage effectively reduces the practical limit on the volume of

material that can be accepted annually in order to remain compliant with the TCEQ authorizations, and plainly renders the two sites incapable of processing the City's full projected volume.

Accordingly, based on the City's projections, OBG's statements and TCEQ authorizations, it is clear that other, as-yet-unidentified compost facilities will be needed to satisfy the City's need for maximum capacity under this contract, particularly if they are co-located with other types of composting, such as biosolids.

All solid waste, recycling and organics processing facilities upon which the City relies should be able to demonstrate the authorized and practical capacity to service the volume of material required under approved contractual terms. In this case, it would clearly be inappropriate to award a contract for organic material volumes exceeding the authorized and practical capacity OBG currently has at its two identified facilities without considering where the other compost facilities will be located and the potential impact on surrounding property owners.

COST

The full cost of implementing curbside organics collection will be borne directly by Austin ratepayers, making informed and judicious cost planning vital. However it is our understanding that City staff has so far failed to evaluate the additional cost impact of hauling organics to the identified Bastrop County OBG facility, and to the as-yet-unidentified OBG 3rd waste processing site.

Even without regard to the unknown added cost of hauling to Bastrop County, based on the available details regarding OBG's proposal, which contemplate tipping fee charges of between \$28.44 and \$29.94 per ton (or in the alternative \$299 per ton of contamination within the collected waste organics based on a semi-annual audit), our calculations using the City's volume projections indicate that the \$1,510,000 spending authorization sought by staff for Agenda Item 30 for the first three years of the proposed contract could be as little as half of the funding actually required.

In the interest of transparency and affordability, TDS believes City staff should be required to conduct and present a full cost analysis that contemplates utilization of all of proposed OBG sites, and that additionally compares these costs to the cost of using the TDS composting facility, as allowed for under the City's 30-year [Waste Disposal and Yard Trimmings Processing Contract](#), and as also proposed in TDS' 4-12-2016 [unsolicited offer](#) for the provision of organics processing services.

Our own analysis indicates that the per ton tipping fee charge to the City alone to tip all of its organics waste with food waste at the TDS compost facility located adjacent to the TDS landfill in southeast Travis County would be more than 30% less than the OBG proposed tipping fee rates – a significant savings to Austin ratepayers. It is my hope that the Council will not reject this offer and the associated cost benefit to Austin ratepayers by awarding OBG the staff-proposed contract.

RECOMMENDATION AND PROPOSED COMPROMISE SOLUTION

As previously communicated, the City's current contract for organics processing services with OBG can be relied upon until October 21, 2017. This means there is ample time to allow the PWG to finalize its policy recommendations before taking any action on any organics processing solicitation or proposed contract. This also means there is also ample time for City staff to vet all of the outstanding issues related to using OBG's proposed facilities for full citywide expansion of the curbside organics collection program, and for an appropriate process for public review and comment on the full set of negotiated OBG contract documents.

Accordingly, TDS respectfully urges you not to authorize the execution of the proposed OBG contract associated with Agenda Item 30. However, if Council feels compelled to act now on an agreement with OBG, TDS would respectfully urge you to please consider only a contract extension of the existing OBG contract for 12 months, potentially with a rate increase, in order to allow the first phase of curbside organics collection rollout to take place beginning in October.

This will allow the Council to consider the forthcoming PWG policy recommendations and potentially direct City staff to draft and issue a revised organics processing solicitation that is fully consistent with newly-adopted City policies and solicitation procedures, including a facility operations compliance status and cost to utilize analysis. City staff could simply extend the OBG contract for one year (as they did the Synagro contract) with the allowed \$299.00 per ton charge for contamination, which is also an alternative quoted within the OBG 2016 RFP response.

With TDS having a large-scale food waste composting facility in operation, there is no chance that the City could be left without a location to deliver its curbside collected organics during the next stage of the program rollout. If necessary, TDS is willing to receive the City's organics waste for composting, at the lower rate referenced above, on a month-to-month basis until the City Council's choice for its contract is made following Council's consideration of the PWG policy recommendations.

If, however, Council decides to move forward with the approval of the non-exclusive staff-proposed contract under Agenda Item 30, we strongly encourage you to include the following specific conditions for the protection of the Council, since City staff has refused to reveal the text of the proposed contract:

- No waste processed under this contract or compost produced from such waste should be used to compost biosolids or be blended with biosolids compost, as per ZWAC's recommendation.
- Facilities located in Travis County which are utilized to process waste under this contract should be specifically approved by City Council and must not be in violation of the Travis County Solid Waste Siting Ordinance or the Travis County Floodplain restrictions for solid waste facilities.
- OBG should be required to obtain a resolution of support from Bastrop County for composting City of Austin food waste at the proposed Bastrop County facility prior to delivering food waste for composting.
- The City should inspect and approve the Bastrop County facility after construction is complete and before delivery of food waste for composting.
- Compost products made under this contract should meet the United States Composting Council Seal of Test Assurance Standards, with samples collected at the City's direction and tested at a facility selected by the City.
- OBG should be required to reimburse the City for the additional cost of transporting food waste to the Bastrop County facility, which was not mentioned in the OBG RFP response or scored by City staff evaluation.
- Approve negotiation of the contract only and require the negotiated contract to be returned to City Council for final approval.

Please know that TDS and many other community stakeholders recognize the significance of this program as it relates to the City's Zero Waste goals, and that we share the City Council's desire to have a successful, long-term curbside organic materials diversion program.

For the long-term success of Zero Waste, TDS believes it is critically important for the City to have verifiable assurance with regard to 1) the TCEQ and County operations authorizations, 2) strict, enforceable restrictions on the facilities' ability to commingle curbside collected organics with biosolids waste products, and 3) the capacity limitations of the facilities utilized by the City. In addition, for the protection of the Council, Austin ratepayers, and community stakeholders, we believe City staff should be required to conduct a full and informed cost analysis prior to contract authorization, and ensure that the process leading up to any Council action has allowed for informed public comment on the full details of any proposed contract, including the specific locations of all proposed waste processing facilities.

Thank you for your consideration. Please do not hesitate to contact me with any questions or concerns you may have.

Respectfully,
Bob Gregory
512-619-9127