

August 11, 2016

**Austin City Council Meeting  
Items 25 & 26**

25. Authorize negotiation and execution of a 60-month contract with Synagro OF TEXAS-CDR, INC., or one of the other qualified offerors to Request For Proposals CDL2003, for the management of biosolids reuse in an amount not to exceed \$9,424,778, with five 12-month extension options in an amount not to exceed \$2,185,180 per extension option, for a total contract amount not to exceed \$20,350,678.

(Notes: This solicitation was reviewed for subcontracting opportunities in accordance with City Code Chapter 2-9C Minority Owned and Women Owned Business Enterprise Procurement Program. For the services required for this solicitation, there were insufficient subcontracting opportunities and an insufficient number of certified M/WBEs; therefore, no subcontracting goals were established.)

26. Authorize negotiation and execution of a 12-month revenue contract with ALLEN CLICK, or one of the other qualified offerors to Request For Proposals JXP0501, for the sale and removal of compost material for an estimated revenue amount of \$64,500, with five 12-month extension options with an estimated revenue of \$64,500 per extension option, for a total estimated revenue amount of \$387,000.

(Notes: This revenue generating contract is exempt from the City Code Chapter 2-9C Minority Owned and Women Owned Business Enterprise Procurement Program; therefore, no subcontracting goals were established.)

**Steve Adler:** That gets us then to Item Number 25 and 26. I think there are some people who wanted to discuss that. There's a motion to postpone this until October 6<sup>th</sup>, I think is the intent on this. Ms. Pool makes that the motion. Is there a second to that motion, so that we can discuss it? Ms. Garza seconds that motion. Let's have a discussion about whether or not this matter should be postponed or not. We have some people that have been identified to speak. Let's hear from staff first, and then we'll call speakers. Can you tell us what the implications would be of postponing this to the 6<sup>th</sup> of October?

**Greg Meszaros:** Greg Meszaros, Austin Water. From the Utility's prospective, October 6<sup>th</sup> postponement would work for us. We have operating contracts in place that will be extended through March. So as long as we keep working on this kind of productively, I think October 6<sup>th</sup> postponement is workable from the staff prospective.

**Steve Adler:** Ok, thank you very much. Any other questions from staff about the postponement? Yes, Mayor Pro-Tem.

**Kathie Tovo:** I'm sorry, I don't have a question for staff, I just wanted to say something.

**Steve Adler:** Okay, let's hold on for a second, any other questions from staff on the postponement? We have some speakers to speak publically. Do we want to call them first? Okay.

**Leslie Pool:** And I just wanted to make a point of clarification. We are looking at postponing both items 25 and 26.

**Steve Adler:** Yes, 25 and 26, the question is postponing those 'til October 6<sup>th</sup>. Thank you Sir.

**Don Zimmerman:** Mr. Mayor, a point of order, quickly. I do want to debate postponement, but I'd also like a chance to move that we refer this to the Public Utility Committee for discussion before it comes back to Council. So at some point I'd like to make that motion.

**Steve Adler:** Okay. We have some people in the public to speak to this item. Bob Gregory, is he here? Do you want to speak to the postponement? Okay, Mr. Whellan, do you want to speak?

**Michael Whellan:** Michael Whellan, on behalf of TDS, and I'm only going to speak to the postponement, not to the substance. First of all, thank you for postponing this, and thanks to Mr. Meszaros for pointing out that we have until March, March of 2017. So we can take a deep breath to examine our overall zero waste policy, and especially what we're doing about composting. When you postpone it though, I would ask that you please add that staff is authorized to negotiate only the contract, so that we don't find ourselves back here in October asking

a lot of questions about something that we don't know anything about because it's back into a box and we have no idea what the triggers are, for how much bulking agent will get allocated for different types of composting, etcetera, etcetera. There's a lot of questions that we've circulated. We will not have the answers to those by October 6<sup>th</sup>, unless you authorize staff to negotiate the contract. And then, just like you do with TDS contracts, and other peoples' contracts, have the contract viewed in the public, at ZWAC, at the Water and Wastewater Commission. So, the second thing I would ask, and this is in the ZWAC Resolution from last night, in addition to authorizing the negotiation of the contract only, that you send it back to ZWAC, and the Water and Wastewater Commission, with the contracts in front of them, so that they can have that full analysis. Finally, I think that's all I need to say on this, thank you very much. So, two things, negotiate only, send it back to ZWAC and Water and Wastewater Commission. And let's be sure that if we're going to change a policy like we're about to do, we have a full discussion about it. Thanks.

**Steve Adler:** Mr. Zimmerman, do you have a question for Mr. Whellan?

**Don Zimmerman:** Mr. Whellan, before you go, I want to point out there are some very interesting technical issues having to do, you know, with this program. They're interesting to me. The idea of the bulking agents, and where stuff's gonna come from, how much it could potentially cost, what are the markets, what are the applications. So, there's a sufficient amount of complexity, and I think it's a very good issue for Council to consider, and the Public Utility Committee.

**Michael Whellan:** I'd like to point out our biosolids are growing like our city's growth. No big surprise.

**Steve Adler:** Okay. Council Member Pool.

**Council Member Pool:** I just wanted to see if I could amend my motion to be, on the postponement, to include some of the elements that Mr. Whellan has offered, which is when it does come back to us, and this would be, I know when it comes back to us, then we can take formal action, but that I would support the request for negotiate only, to hold off on the execution piece, and also, I agree with sending it to the Zero Waste Advisory Commission. They are digging into the details on this, it is more complex than what we may see at first light, and we want to take a longer view, a more holistic view of how we view our organics materials, so I think, and then I have a couple of comments, so I just wanted to make that amendment to my motion.

**Steve Adler:** Okay. I'm trying to figure how to articulate the amendment that you made, and I have a question that's related to that, if you would indulge me just one second, that might get us to that place, and it's a question both for Michael Whellan as well as for staff. And I'm trying to figure out what the right order here is. There are policy questions that are being asked and I don't know how you negotiate the contract until the policy questions have been discussed or answered. So, I mean, if the policy determinations, or the policy questions dictate what the terms of the contract should be, then I'm not sure it's the best use of time to go ahead and negotiate the contract and then to have it come back for the policy questions. If what we're trying to do is kick off a process that addresses the policy questions that are implicated by what is being contracted for, it seems to me that we might want to have that happen quickly and directed by staff to include the policy issues that are raised by the contract. But I might be speaking way out in...

**Michael Whellan:** I think the staff has a policy concept that would be their proposal reflected in a contract. So the advantage of having the contract negotiated for debate is we then would have, just like we do with zoning cases, have at least a straw man to talk about and look at as the staff's policy. Or, to your point, if you want to do the policy separate, I would then postpone this into December, so that we get back here with a full policy discussion in October then come back and have the contract in December, because you won't have time to do them sequentially the way you're talking about, I don't think, between now and October if you want to also send it to ZWAC and Water and Wastewater, for a full debate.

**Steve Adler:** Greg, can you talk about, how do we resolve the policy issues that seem to be inherent in the contract.

**Greg Meszaros:** Just a few thoughts. One, I think just procedurally, if you postpone this, you'd have to authorize us to negotiate, you have to approve something for us to negotiate, a contract, I don't know how you could postpone and we could still negotiate. You'd probably have to talk that through Purchasing. The other, I just want to lay down a couple of other framework of issues here. One, when I said we have 'til March, that's with our existing contract in a hold-over provision. The proposals we took for this expire November 15<sup>th</sup>. So, we have 'til November 15<sup>th</sup> to work through this process or we'll have to do another procurement. You know, I just want to be clear that biosolids come to our processing facility every single day and, you know, we can't go extended periods of time without some kind of strategies to continue to manage our biosolid inventories, so I don't want to indicate that we can go all the way up to March and then everything's fine because we'll have transition periods, and maybe a re-procurement process so we have to be mindful of that. The other thing, I may need James Scarborough's assistance here, but these proposals have some confidentiality qualities to them, so even a negotiated contract cannot be shared in the public domain without the proposer giving the City the authorization to share those details. The proposed firm, Synagro, has provided some authorization, but a full contract process would require additional authorization. I really, I'm not an expert on that, but I would ask the Purchasing manager to come up and speak to that, too.

**Steve Adler:** Okay, what I, and again, in answering your question, what I'm trying to figure out is, it seems to me that we have to tee up the policy issues as quickly as we can because they would give direction and if you have a contract, part of the problem with this teeing up the policy issue, as I understand, is that there was a parallel contract negotiation going on, so there was limited to the discussion we could have relative to the policy issues because of the contract negotiation, and it seems to me that we can't have that, I mean we have to be able to have a full conversation about the policy, and I don't, again I am in search now for what is the best way. What I don't want to do is have staff spend another six weeks negotiating a contract only to have the same, basic policy issues and some limitation or our ability to discuss the policy issues, 'cause we'll be back here moving to postpone it again while we have the policy conversation.

**Michael Whellan:** Then I do, I do think since we have 'til March, I know we need some transition time, I hear what the Director's saying, I like the idea of going then, until at least December, on the contract.

**Steve Adler:** We heard you so let me have some of the other people...

**Robin Harris:** Mayor, Robin Harris with the Law Department. Just one clarification that may help. Council doesn't have to authorize negotiation of the contracts, staff can continue to do that, the only requirement is for authorizing the execution portion of the contract, so they're able to from now until whenever it comes back, just have that conversation with the vendor. As far as the confidentiality issues that were raised, there are some portions that may not be able to be discussed publicly, but they can certainly be viewed by any City official, whether it's a commission member or a Council member, just to look at portions of the contract that may have been drafted and put together, that's going to be dependent somewhat on the vendor.

**Steve Adler:** And, again, help me. I don't know, and it might be Robert, a question more for you than for the people here. I'm trying to figure out how to get the policy question done. I'm a little concerned about asking for the contract to be negotiated and the contract made public, because then we have one contract bidder who's determination as to what they can do, or what their prices are, then it becomes available publically for everybody. I'd rather come up with what the parameters are of the contract; decide whether this contract met those. If we need to re-issue the RFP, if the policy turns out to be different, then everybody would then be competing then equally, under the parameters of a new policy to be able to compete. I just don't know, I don't know how to tee it up. So I'm looking for suggestions on the process. And, I'll give you a chance to speak to that because I just don't know...

**Don Zimmerman:** Mr. Mayor, I have some professional experience writing Requests for Proposals that have to do with engineering processes, and what's crucial here is, if you are very careful and accurate on how you write the Request for Proposal, the Request for Proposal, if it's properly done, could reflect the policy.

**Steve Adler:** But don't we have to determine the policy first?

**Don Zimmerman:** You do, and the Request for Proposal could have that policy embedded, if it's properly done.

**Steve Adler:** But isn't the question before us now that there's some questions about what the policy should be?

**Don Zimmerman:** Yes. There are some questions and what bothers me is they're saying, well, we have this contract that we can't share. In other words, we can't show you what the policy is because it's embedded in the contract, and the contract is proprietary. So it's completely messed up. If we were to start correctly with an RFP that captures the policy correctly then the bids would accurately reflect the policy.

**Steve Adler:** Mr. Meszaros, is there a policy question here? Are there policy questions implicated here that are appropriate for Council to consider?

**Greg Meszaros:** Mayor, it's difficult to answer; it depends on your perspective. We, this proposal, I guess the policy question is whether or not composting is superior to other methods of disposal of biosolids. We have been taking steps to emphasize more composting over other methods of biosolids. There are some questions that's been raised about the type of composting. We're prepared to discuss those today. We have answers to those kind of questions. I don't know entirely what the policy questions are that we would need to determine before we negotiate a contract.

**Don Zimmerman:** I can answer that question. Composting has a, there's a technical aspect to the word composting. Exactly what kind of composting are we talking about? And how many days, weeks, or months does it take to produce the compost? Will there be solids introduced in the compost? What kind of solids? What's appropriate to use as aggregate materials? There are a lot of complex details that could be put in an RFP.

**Greg Meszaros:** Well we have we have answers to those, to those questions today.

**Don Zimmerman:** But the policy question that we can define as a Council, a policy that says, you know, you can't use the word composting unless you specify what composting it is specifically, so that all the companies that would bid on that would know exactly what type of composting we're talking about. Those kind of details are not in, we don't have that kind of detailed description in the RFP, which amounts to policy, and so then the companies can write whatever they want and then Purchasing says, well you can't look at the contracts because they're proprietary.

**Steve Adler:** I understood that one of the impacts of the decision being made today was about what was the future of Dillo Dirt. Is that true?

**Greg Meszaros:** Yes, in the sense that if City staff has made Dillo Dirt under the proposals we have we would we would not be the responsible party for making Dillo Dirt. That Dillo Dirt like products would still be available but it wouldn't be made directly by Austin Water staff. That would be one of the considerations.

**Steve Adler:** My sense is, this is not ready for us to decide today. But I'm still unclear as to what happens next; it looks like there's two choices. One choice is to ask staff to continue negotiating to move further on a contract. Another one is to try to tee up the issue for whatever it is that that issue involves. Are those the two choices? Mayor Pro Tem?

**Greg Meszaros:** Mayor, one suggestion we had thought, I mean, just throwing out an idea to you, you know, is that is to have like a, 'cause this covers Water Wastewater Commission issues 'cause a lot of this is still wrapped around you know running the water utility because biosolids processing is critical to wastewater treatment, as

well as zero waste, you know one option is we could have a meeting or two like a joint committee of those two and we could kind of sort out some of the considerations, and then work after we have some feedback on that, on shaping a contract or determining if we have to go out for resolicitation. That would be one way to get some input on this.

**Steve Adler:** Mayor Pro Tem.

**Kathie Tovo:** Yeah, I think that's the right path. You know I completely agree that this really needs to be discussed further and I think those are the right two bodies to have that discussion. I am concerned about pushing the timeline out so that we may get in a position of not having a contract, and then having you know, running the risk of the fires and things that have happened in the past, so I would suggest that a joint meeting or two be scheduled pretty quickly and then it come back to us, and as I understood the discussion, those two options weren't mutually exclusive, that the policy discussion could happen among the commissions or Council, but could also, but the staff could also continue to negotiate. I want to be sure that we're wrapping up that policy conversation in time for a new solicitation to be on the street, if that's what's required.

**Greg Meszaros:** So let me, so I think what we could do is get input from these commissions on some of these considerations, you know, what is composting? Does that make the definition of composting Dillo Dirt? Cost structures, you know, those kind of issues and then once we see that framework we could make a determination that, yes, the procurement that we have, we can shape a contract to fit those parameters and bring that back forward, or if it comes out that, no, that wouldn't work and we have to resolicit, we could work through that kind of a strategy too. So I think we could bear down on that over the next month or six weeks, and you know I just ask that we stay focused on that.

**Steve Adler:** I think that would be important too. So now getting back to then Council Member Pool's motion, so your motion is to postpone this item, and to request that staff take it to those two commissions for discussion, and then come back to us when it's ready. I mean should we put a time limit on it?

**Leslie Pool:** I was going to suggest October 6.

**Steve Adler:** Okay.

**Leslie pool:** And I do know that there are some members of the public and some other interest groups that would like to also speak, so it is good for us to clarify what the action is that we're trying to take.

**Steve Adler:** So would October 6<sup>th</sup> give sufficient time, Mr. Meszaros, to have that conversation?

**Greg Meszaros:** Certainly from a staff perspective, we will apply appropriate resources to that, and work to facilitate the meetings of the two commissions to make that happen.

**Steve Adler:** Okay, that way you could identify those issues, you could see if the contract was in alignment with that, you could still continue negotiating the contract if you felt that was appropriate, but just to get us in a little bit of a place where the Council feels like they have a better handle on all the issues. And Mr. Zimmerman if there was a Council committee that wanted to take this up in that intervening period of time that would also provide the opportunity for a Council committee to look at it as well if they wanted to.

**Don Zimmerman:** I could ask the Public Utility Commission I believe, Council Member Troxclair serves with me on that so if she asks to put it on it would be on the agenda.

**Steve Adler:** I'll let the committee go ahead and look at their agenda.

**Don Zimmerman:** I just have one final technical question here...

**Steve Adler:** Wait, wait, I want to give somebody else a chance who hasn't had a chance to talk yet.

**Don Zimmerman:** Sorry, go ahead.

**Steve Adler:** Did you raise your hand Ms. Pool?

**Leslie Pool:** I just wanted to clarify the City Clerk was asking the two commissions that we were talking about were the Zero Waste Advisory Commission and was it Water Wastewater Commission?

**Greg Meszaros:** Yes.

**Leslie Pool:** Okay, thank you.

**Steve Adler:** And if, as your looking at it, there are other appropriate bodies that you want to have weigh in, don't feel like you're limited by that.

**Greg Meszaros:** Thank you Mayor.

**Steve Adler:** All right, now we have some people in the public that we also want to give an opportunity to be able to speak to this item and I want to give them that chance to do that. Mr. Zimmerman.

**Don Zimmerman:** I just wanted one technical question. RFP is referred to several times in the memorandum. Director Meszaros, August 8<sup>th</sup>, 2016 referendum, it mentions RFP numerous times. What is the RFP number on that?

**Greg Meszaros:** Oh boy, I think we probably have it. Do we have it Jane?

**Don Zimmerman:** I would think Mr. Scarboro would have that RFP number. I just want to give it to my staff so we can look up.

**Greg Meszaros:** Okay it's RFP CDL2003.

**Don Zimmerman:** Thank you very much.

**Steve Adler:** Okay, Michael Whellan did not use up all his time, Mr. Gregory is there something that you wanted to add at this point? No, sorry, got it, thank you. Next speaker we have is Paul Gregory, okay. Michael Whellan has already spoken, Andrew Bosinger.

**Andrew Bosinger:** Yes Mr. Mayor I'll donate my time to Jerry Harris, counsel for Synagro.

**Steve Alder:** Hello Jerry.

**Jerry Harris:** Mayor, Members of the Council, thank you very much. My name's Jerry Harris, I'm a partner with Hush Blackwell here in Austin and we represent Synagro. First of all we have no problem with the postponement, number one. Number two is, we do not have any problem with sharing the contract at the time that the contract is negotiated and we do not object to it being subjected to full review and questioning by whoever the Council wants it to be reviewed by. I would like to say this, the RFP had some very strong policy matters to set forth. Number one was, the City has a lot of biosolids that they cannot handle and get rid of, and therefore one of the policy decisions was let's handle that so they don't have the fire they had a few years back in the biosolids because there were too many stored there for too long that couldn't be processed and it cost the City four or five million dollars to remedy that fire situation. Number two, the policy decision in the RFP was reduce the land application of Class B biosolids, and that's what this proposal does, and it basically gets rid of the Class B solids and makes everything come out to a Class A biosolid; different levels of compost if you will. So I hope that those policy decisions keep being brought forth in the procedure that's about to proceed and everybody trying to decide what goals need to be achieved here, and there is an economic side here. Our proposal saves the City a million dollars a year that would otherwise be in this situation. So we're fine with policy decisions, we think policy

decisions are important. Synagro is a service company. They're the largest biosolid processors, treaters, and marketers in the United States including Hawaii. Synagro only does biosolids, no landfills, nothing else, they have 16 locations in the United States so we're here to serve what the Austin needs and so we're very open to everything that's been discussed here today. And Andrew Bosinger, the Vice President's here, and I'm here, to answer any questions that you might have at this time, but we're in agreement.

**Steve Adler:** Thank you, please engage and make sure we get all the policy issues considered in this group. Andrew, Andrew Dobbs, speaking on the question of this postponement and this process.

**Andrew Dobbs:** Yes sir, thank you Mayor and Council. Andrew Dobbs, Texas Campaign for the Environment. I want to thank y'all for your consideration of this today and we do support the postponement to October 6<sup>th</sup>, although I won't be here, I'll be on vacation. There are, I think that the most important thing is that there is a lesson to be learned here which is let's not do it this way. This is the body that decides policy for the City and it doesn't really work when a contract comes up with a lot of the policy already baked in, and if it's a policy that everybody's okay with, if it's a contract that everybody's okay with then I guess that's fine, but in the instance that there's concerns from the public interest then we get into this kind of mess, the very sort of mess that we're trying to figure out right now. This is something that should've brought up to Council committees and City commissions months ago, and that's where the decision should have been made, because last night at the Zero Waste Advisory Commission we heard from the Austin Water staff that this is functionally the end of the Dillo Dirt program. That's an iconic popular program, that's award winning, that a lot of your constituents care a lot about and if we're gonna decide to change or end that, that's a decision that should be made in the public, by the public, by our public elected officials. And so that's an important thing for us to note, not just for this case but all future cases. I do have some ideas about ways that we can determine, I think the recommendations that we have made up to this point are still valid for being able to determine some of these policy questions before we come back. The first is to convene a strategic review between all City departments that are generating organic waste, along with other stake holders in the public to take a look at where are these things coming from and going to. We've drafted a resolution, we forwarded it to Council Member Pool's office. We'd love to see that passed so that we could convene that. That's something that the City Manager could do, then could call it together in a matter of days. We do believe that there should be City committee or Council committee hearings on the future of Dillo Dirt and on the policy questions. Council Member Zimmerman suggested the Public Utility Commission. We would propose that it actually be a joint committee of both the Public Utility and the Environment, Open Space, and whatever the other, Sustainability Committee. I think there's an overlap of those committee memberships, there's no reason why we couldn't meet all together and have all those questions brought up. And then we do believe there should be a City policy against the land application of all sewage sludges, both Class A and Class B. And we're glad to hear that the City department and Synagro is ready to end the land application of Class B sludge, but that should be extended to all of this because it's bad for the environment and for human health. These I believe are ways of addressing the policy questions so that we can then hopefully have a contract that we can come back with and that serves everybody's interests. I'm happy to answer any questions.

**Steve Adler:** Great, thank you very much.

**Andrew Dobbs:** Thank you.

**Steve Adler:** The, Brad Parsons. Is Brad here? All right those are all the speakers we have, we're back up to the dais. The motion is to postpone this until the 8<sup>th</sup> of October ask, 6<sup>th</sup> of October asking staff to engage in that policy conversation, certainly can continue with the contract negotiations. It's been moved and, was there a second to the motion? Mrs. Troxclair seconds that in case there wasn't one before. Any further discussion? Those in favor please raise your hand. Those opposed. Unanimous on the dais with Mayor Pro Tem Tovo off. Okay, that takes care of then Item number 25 and 26.