



May 24, 2018

Mr. James Scarboro
City of Austin Purchasing Office
124 West 8th Street, Room 308
Austin, Texas 78701

RE: TLM Protest of Best and Final Offer Process for RFP CDL2003REBID

Mr. Scarboro:

Texas Landfill Management, LLC (TLM) received City staff's request for a best and final offer (BAFO) for RFP CDL2003REBID on May 17, 2018. On May 18, 2018, TLM notified City staff of our intent to protest the BAFO solicitation pursuant to the City of Austin's Solicitation Instructions, Section 0200, Part 17.

TLM protests the BAFO solicitation on two separate grounds: 1) The BAFO solicitation includes no consideration of the financial value of requested additional proposed services, in conflict with the understood purpose of the Request For Proposals (RFP) solicitation format; and 2) The BAFO solicitation includes no Local Business Presence scoring criteria, in conflict with the recommendation of the City Council's Waste Management Policy Working Group.

No Consideration of Financial Value of Additional Proposal Benefits in BAFO Process

During the protest process associated with the initial solicitation of RFP CDL2003REBID, TLM noted our concern regarding City staff's decision to exclude consideration of the financial value of additional proposed services, despite the solicitation's Request For Proposals (RFP) format.

Indeed, as you have stated in the past, the RFP format – as opposed to an Invitation For Bids (IFB) solicitation format – is specifically intended to encourage prospective vendors to propose creative solutions and services beyond those delineated in the solicitation. To categorically exclude consideration of the financial value of additional proposed services when evaluating RFP solicitation responses plainly renders the RFP format inappropriate.

TLM believes City staff should either: 1) Validate the decision to preserve the RFP format for the RFP CDL2003REBID BAFO and amend the scoring process to include consideration of the financial value of additional proposed services if that proposed value is readily quantifiable and immediate benefit to the City; or 2) Re-issue the RFP CDL2003REBID BAFO solicitation as an

IFB that seeks pricing exclusively for specifically delineated services.

Given especially the nature of the proposed additional services in this case, i.e. onsite grinding services to generate bulking agent necessary to produce the biosolids compost that is the solicitation's objective, TLM very strongly encourages City staff to include consideration of the financial value of these proposed services in the BAFO scoring. In fact it would be highly unusual and potentially problematic for a compost producer not to operate associated grinding operations. In this case, if City staff continues to maintain that grinding services should not be evaluated as part of the BAFO scoring, the resulting contract is certain to require two distinct grinding operations onsite at Hornsby Bend (one operated by the City and the other operated by the contractor). This is unnecessarily duplicative and also increases the site's nuisance potential.

Further, it must be noted that the grinding proposal included in our initial response to RFP CDL2003REBID represented an estimated cost savings to the City of approximately \$1M per year (TLM proposed to provide grinding services at \$9.11 per ton, compared to the FY2017 cost of \$36.22 per ton as reported by Austin Resource Recovery). The value of this proposal is clearly quantifiable and immediate benefit to the City.

Failing either step above (to either include consideration of the financial value of additional proposed services or to re-issue the BAFO solicitation as an IFB seeking pricing only for specific services), to ensure a level playing field, City staff at a minimum should certify that it will not accept or consider any offer from any prospective vendor to provide any grinding services, and explain its decision to do so.

No Local Business Presence Scoring Criteria in BAFO Process

As you will recall, when RFP CDL2003REBID was issued on October 9, 2017, it included the standard Local Business Presence (LBP) scoring category. Without explanation, City staff issued an addendum to the solicitation on October 21, 2017 removing all LBP scoring from the solicitation. On November 9, 2017, in response to questions from potential respondents, staff stated that LBP scoring "was removed as recommended by the working group and at the request of the Assistant City Manager."

However, as TLM has previously noted, the City Council's Waste Management Policy Working Group did not recommend removal of Local Business Presence scoring. Instead the July 21, 2017 Working Group recommendation stated: "[emphasis added] the definition of "local" to more accurately represent local business presence. The current point allowance favors businesses with offices within the City limits regardless of the type, nature or history of their presence in the local community. At the same time it penalizes businesses with headquarters just outside the City limits but with substantial business presence in the Austin area."

Plainly, City staff's decision to simply remove LBP scoring from both the initial solicitation and the BAFO solicitation rather than revise LBP scoring as recommended has the effect of

preserving a scoring disadvantage for companies who would meet a revised definition of “local” consistent with the Working Group’s recommendation as compared to those who would not. Accordingly, TLM protests the exclusion of the Local Business Presence scoring criteria from the RFP CDL2003REBID BOFA solicitation and requests that City staff instead apply a revised version of LBP scoring to this solicitation that is consistent with actual recommendation of the City Council's Waste Management Policy Working Group.

Finally, TLM would note that all evidence indicates that City staff has full authority to apply such a revised LBP scoring category to the BOFA solicitation, and to any and all other City solicitations, without seeking City Council authorization. It appears that the definition of “local business” currently contained in the City of Austin’s Solicitation Instructions was indeed adopted administratively in 2012 (following passage of House Bill 1869 during the 82nd session of the Texas Legislature). Further, Council Resolution 20140807-113, which reiterated the City Council’s commitment to contracting with local businesses when possible, included no direction to staff regarding the definition of “local business.” Most recently, City staff’s decisions to entirely exclude all LBP scoring from both RFP CDL2003REBID solicitations, offers a clear indication of staff’s authority to apply a revised LBP scoring category to the BOFA solicitation.

Thank you in advance for your consideration of this letter of protest and the issues detailed. Please do not hesitate to contact me with questions or concerns.

Sincerely,



Adam Gregory
Texas Landfill Management, LLC