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City of Austin  
Purchasing Office  
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Austin TX 78701

Findings, Conclusions, and Recommendation  
Protest Hearing  
RFP CDL2003REBID as filed by Texas Landfill Management, LLC  
Beneficial Use of Biosolids

History and Summary of the Protest

Texas Landfill Management, LLC, ("TLM") timely submitted a response to a rebid RFP in November 2017, as did Synagro of Texas-CDR, Inc., Denali Water Solutions, LLC, and Walker Aero Environmental, LLC. The City of Austin ("COA") sought to establish a contract for the treatment and beneficial reuse of biosolids for the Austin Water Department. After evaluation of the responses by subject matter experts, the COA staff recommended awarding the contract to Synagro of Texas-CDR, Inc.

The COA shared the scoring process and results with TLM, which form the basis of the protest. TLM protests

1. unfounded deduction of points from its proposal in qualitative evaluation categories, specifically:
  - a. Business Capacity and Experience
  - b. Proposed Solution and Schedule, and
  - c. Marketing Plan,
2. improper distribution of points in quantitative pricing category, and
3. improper removal of Local Business Presence ("LBP") scoring criteria.

The COA responded that TLM, although deemed to be qualified, failed to answer or demonstrate all criteria requested in the RFP, and that criteria not made part of the rebid RFP were irrelevant to the scoring, recommendation to council, and the protest.

### Findings and Conclusions

1. The City reissued RFP CDL2003REBID for Beneficial Reuse of Biosolids on October 9, 2017. An Addendum was then issued on October 20, 2017 that extended the bid submittal deadline to November 16, 2017 at 2:00PM.
2. The City issued an Addendum on October 21, 2017 that removed the Local Business Presence ("LBP") evaluation factor from the solicitation.
3. The City issued an Addendum on November 9, 2017 that disclosed the following information about brush, green waste, and wood waste grinding services provided by City crews:  
Number of employees assigned to City grinding operation:  
5 full time employees  
Annual cost for City grinding operation during last five years:  
FY17 \$1,268,024  
FY16 \$1,367,015  
FY15 \$1,200,783  
FY14 \$ 981,378  
FY13 \$ 917,722
4. The November 9, 2017 Addendum also disclosed the following:
  - A. The City chose to issue solicitation CDL2003REBID as an RFP because "It is necessary for the City to review and score cost along with other considerations, such as a proposed solution/approach, experience, capacity, schedule, and various operational plans to ensure the City receives the best possible value, not just the lowest cost."
  - B. Local Business Presence evaluation factor was removed from the solicitation "as recommended by the working group and at the request of the Assistant City Manager."
5. On November 16, 2017, TLM submitted a timely response to RFP CDL2003REBID. The City also received RFP responses from: Synagro of Texas-CDR, Inc.; Denali Water Solutions, LLC; and Walker Aero Environmental, LLC.
6. Five business days later, on November 27, 2017, the City issued a notice to RFP respondents that the solicitation evaluation team had completed their process and had recommended award of the contract to Synagro of Texas- CDR, Inc. A proposal scoring matrix was included with the November 27, 2017 notice, indicating the evaluation team's point allocation for each proposal in five separate categories (Proposed Cost, Business Capacity & Experience, Proposed Solution & Schedule, Marketing Plan, and Service- Disabled Veteran Business Enterprise).
7. Pursuant to a provision in Section 0400 (Supplemental Purchasing Provisions) of the solicitation documents for RFP CDL2003REBID, representatives of TLM met with the Purchasing Office on November 30, 2017 at 9:30am for the purposes of a Debriefing Meeting. At the Debriefing Meeting, TLM was provided the evaluation team's determination of "Strengths" and "Weaknesses" for each evaluation factor of its proposal and was given the opportunity to ask questions. The specific

"Strengths" and "Weaknesses" of TLM's proposal as determined by the evaluation team were as follows:

A. Evaluation criteria: business capacity & experience

1. Score: 13 out of a possible 20
2. Strengths: Composting and bagging experience. Established retail outlets and brand recognition.
3. Weaknesses: Lack of recent large municipal biosolids projects. Lack of organizational structure and personnel to bring online multiple comparably sized operations simultaneously. Did not demonstrate adequate experience specific to biosolids composting.

B. Evaluation criteria: proposed solution & schedule

1. Score: 12 out of a possible 20
2. Strengths: Good odor and fire control plans. 24 hour fire watch if needed. Good mobilization schedule.
3. Weaknesses: Spill response plan not included. Detailed scientific information instead of site and operation plans; not site specific. Did not adequately demonstrate an understanding of the current site layout. Lack of details provided on material volumes onsite and/or produced.

C. Evaluation criteria: marketing plan

1. Score: 15 out of a possible 17
2. Strengths: Existing retail outlets. Existing marketing structure. Designated and developed marketing department.
3. Weaknesses: No information on marketing current products produced at municipal facilities. No details on supply and demand or lessons learned. No product descriptions given on specific City of Austin biosolids products, and how these products will be incorporated into the current product portfolio.

D. Evaluation criteria: proposed cost

Score: 40 out of a possible 40

8. Pursuant to a provision in Section 0200 (Solicitation Instructions) of the solicitation documents for RFP CDL2003REBID, on November 30, 2017 at 3:30pm, TLM filed a notice of intent to protest City staff's recommendation to award Synagro of Texas- CDR, Inc. the contract for Beneficial Reuse of Biosolids.
9. On December 11, 2017, TLM filed a timely protest for review and consideration by the Purchasing Office. TLM's protest was based on the following:
  - A. Unfounded deductions of points from TLM's proposal in qualitative evaluation categories,

- B. Improper distribution of points to other respondents in the quantitative pricing category, and
  - C. Irregular and unjustified removal of 'Local Business Presence' scoring category.
10. The Purchasing Officer, James Scarboro, subsequently notified TLM on December 20, 2017, that he found there to be sufficient grounds to refer TLM's protest to an independent hearing officer to conduct a protest hearing and to provide the Purchasing Officer with a recommendation concerning the protest.
  11. TLM received 100% of the available points in the category for Proposed Cost, thereby deeming TLM the lowest qualified bidder.
  12. The RFP states, on the cost proposal form, that Optional Additional Services or Products will not be used to evaluate "proposed cost".
  13. The contract services will be provided primarily on the COA site at Hornsby Bend.

### DISCUSSION AND RECOMMENDATION

With regard to scoring on qualitative factors, TLM protested deductions taken against it as unfounded and without reference to its actual response.

BUSINESS CAPACITY & EXPERIENCE -TLM received 13/20 points, with perceived weakness in three areas:

**Lack of recent large municipal biosolids projects:**

The projects described by TLM were either new (San Antonio Water System-"SAWS"), smaller capacity (San Antonio River Authority-"Martinez" and City of Victoria, producing 12-14,000 tons annually, compared to Hornsby Bend production averaging 100,000 tons annually), or large, but not recent (SAWS Leon Creek, which ended in 2012).

From another angle, these projects qualify as potentially large, but not yet in operation (SAWS), and ongoing with capacity to become large, having been designed by TLM (Martinez and Victoria). SAWS Leon Creek, although large in the last year, expired 5 years prior and is not recent.

TLM's response showed weakness in this area.

**Lack of organizational structure and personnel to bring online multiple comparable sized operations simultaneously:**

The RFP requested information about numerous non-quantifiable measures describing the "big picture" of the responding company: mission, financial resources, organizational stability, dedicated resources, and knowledge.

TLM's response established a company longstanding not only in its existence but in the focus of its operations, with deep financial pockets, large equipment inventory, active presence in the professional community, and numerous highly expert employees. TLM showed past and current experience working with small and large municipalities

including the City of Austin, broad experience in its field (designing and operating facilities), and a dedication to continuing education in the field.

TLM did fail to list a specific project manager, although Mark Cummings was described as overseeing all aspects of TLM's composting operations and **would be responsible for staffing and acquiring equipment for the Hornsby Bend operation.** TLM named an additional four personnel, describing their qualifications and current responsibilities at TLM, including resumes. Duties for the Hornsby Bend project were described only for Jim Doersam.

The COA stated at the protest hearing that none of the professional organizations in which TLM listed membership were "related to biosolids, but were rather related to solid waste, not to biosolid/composting organizations". A quick Google search reveals that, of the four listed organizations, SWANA offers a certification in composting, and NWRRA recently awarded the Emerald Coast Utilities Authority's Biosolids Composting Facility for excellence in organics recycling. TLM also belongs to the U.S. Composting Council, and the Texas Nursery and Landscape Association, which states that it attracts "green industry professionals".

The scoring for Business Capacity and Experience does not reveal which underlying factors caused a reduction in points, but in the absence of specific measures for the requested information, TLM's response on this factor showed only minor weakness in its failure to specifically name a project manager.

**TLM did not demonstrate adequate experience specific to biosolids composting:**

TLM demonstrated biosolid composting experience dating 2001-2012 in its contract with SAWS Leon Creek. TLM conducts biosolid composting operations for San Antonio River Authority (SARA) since 2015 with a 30 year contract, the City of Victoria for the last 11 years, and has a new contract with SAWS. Even if the new SAWS contract isn't considered as "experience", TLM has biosolid composting experience, without break, for at least 17 years. Without a measurable standard for "adequate experience", it's hard to imagine an industry or profession where 17 years experience would be considered inadequate.

The scoring for Business Capacity and Experience does not reveal which underlying factors caused a reduction in points, but in the absence of specific measures for the requested information, TLM's response on this factor showed no weakness.

**PROPOSED SOLUTIONS & SCHEDULE-** TLM received a score of 12/20 points, with perceived weakness in four areas:

**Spill response plan not included:**

TLM's response included reference to its maintenance of a spill prevention, control, and countermeasures plan, and a statement of general company policy. The Plan referred to oil pollution prevention measures, not to spills associated with loading, transporting, land application, incorporation or use of biosolids as requested by the scope of work. TLM argued that such a spill response was unnecessary as only mature, stable compost would be transported from the site; in its response, TLM states that material

which needed additional time to reach the required stability and maturity standards could be hauled to a different composting facility.

TLM failed to respond with the requested spill response plan.

**Detailed scientific information instead of site and operations plans. Not site specific:**

TLM's response in tab 3 (a) and (b) provide a very detailed description of how the compost would be produced and managed for odor and fire danger, the potential for transport to another site, and how the product will be marketed and sold. TLM guaranteed that it can market and provide beneficial reuse of the composted product. TLM described compost-amended products that it would create and sell through its Gardenville stores, retailers, and wholesalers.

The response in (a) and (b) overlap to some extent: (a) provides information requested by (b), and vice versa, as though the responses were merged and the paragraphs jumbled. It should be noted that the COA said TLM's response here was not "site specific", but its question at tab 3(a) asks for how the company plans to compost on the Hornsby site and/or any other site.

The two responses, read together, contain the requested information, with the exception that TLM's response does not provide an estimate of the maximum compost that would be onsite at any one time.

TLM's response on this factor showed minor weakness.

**Did not adequately demonstrate an understanding of the current site layout:**

TLM points out that it corrected an error in the solicitation regarding the number of basins available for use by the contractor, which demonstrates its understanding of the site. Jim Doersam, a TLM personnel to be assigned to the contract, has direct onsite management experience of the Hornsby composting project, and presumptively, knowledge of the current site layout. TLM referred to the Hornsby TCEQ permit when explaining that, in case of an emergency, Hornsby had 454 acres upon which TLM could apply Class B biosolids. TLM crews have worked at the Hornsby site for extended periods as recently as summer 2017, moving Dillo Dirt.

TLM's response showed no weakness.

**Lack of details provided on materials volumes onsite and/or produced:**

TLM's response estimated 25,000 cubic yards of Dillo Dirt to be sold annually, by inference showing that at least 25,000 cubic yards of compost could be present on the property over the course of a year.

TLM's response included an agreement to donate 3,000 cubic yards of finished and screened Dillo Dirt.

TLM's response showed that 19,000 wet tons of biosolids could be applied to the Hornsby site if required.

TLM's response showed that it was aware of, and prepared to handle, the biosolids stored onsite, approximately 3-5,000 dry tons.

As noted above, TLM did not provide an estimate of the maximum compost that would be onsite at any one time.

TLM's response showed minor weakness in this response.



**MARKETING PLAN:** TLM received a score of 15/17, with perceived weaknesses in three areas:

**No information on marketing current products produced at municipal facilities:**

TLM's response is replete with examples of marketing, examples of products, and record of selling current products with materials from municipalities, so it is not clear why this response was seen as a weakness. The relevant portion at Tab 4 reads as follows: *Tab 4-Marketing Plan: a. Provide information on programs where you have successfully produced and marketed biosolids compost products for other municipalities. Include products you have marketed or are currently marketing.*

If the emphasis (in the perceived weakness statement above) was on current products, the following products are mentioned: Elite Lawn, a biosolid compost product, and Eco Thrive, a compost produced from food scraps and other material, along with compost, mulch, and compost-amended soil products, sold bagged or in bulk through Gardenville, to retailers or wholesalers.

If the emphasis (in the perceived weakness statement above) was on marketing, TLM's response contained a lengthy, thorough description of its marketing tools, including identifying the marketing personnel, the Gardenville stores, the use of advertising on the internet, billboards, radio, print, direct mail, and on social media, presence at home and garden shows and landscaping trade shows, networking events with industry peers, and partnering with Keep Austin Beautiful and Habitat for Humanity. The marketing response showed an understanding of current and future markets, projected end users and uses of compost, and a description of the existing market along with potential market expansion into agriculture.

TLM claims that it has sold 100% of the compost products made at its TOP facility.

TLM's response showed no weakness.

**No details on supply and demand or lessons learned:**

TLM's response indicates that there are peak seasons for the products, often accompanied by a shortage of the product, describing a situation of high demand, low supply. TLM refers to a steadier demand from landscapers and construction contractors, suggests that agriculture may provide another source of demand, or even its own Exotic Game Ranch as an internal customer. TLM's response indicates that it understands that product supply would increase with the additional Hornsby Bend material, then explains how that material would be fit into its current product stream, and how it would develop new avenues for demand.

The COA indicated at the protest hearing that TLM did not provide a list of biosolid products produced at other operations, or any other products produced. Please see the comments in the immediately prior section, "No Information on Marketing Current Products...".

The COA also testified that TLM's marketing plan did not include how to incorporate the city's biosolids into the existing line. From TLM's response: *"Dillo Dirt will primarily be marketed for top dressing lawns, athletic fields, highway right-of-ways and for use on other ornamental landscaping projects. Other compost products produced at Hornsby Bend*

*will be incorporated into various compost-amended soil mixes such as landscape, turf, rose, container mixes, etc. Also, compost is blended in with double ground mulch and marketed as a "living mulch" product which is very popular during the dry summer months."*

The COA identified as a weakness that TLM failed to describe marketing plans that did not achieve the expected outcome and corrective action taken to resolve the issue. TLM's response did not contain an answer for this item; TLM stated that it has sold 100% of compost products made in its facility, and that it further guarantees that it can sell 100% of the Dillo Dirt that it would produce from Hornsby Bend.

TLM's response showed no weakness.

**IMPROPER DISTRIBUTION OF POINTS IN THE QUANTITATIVE  
"PRICING" CATEGORY: TLM received 40/40 points**

With regard to cost, TLM's response was the lowest, and received the maximum 40 points. TLM protests that its proposal to provide grinding services, shown as an optional additional service, at a significant cost savings from the current COA cost, was insufficiently valued for its financial benefit and in the overall evaluation; TLM argues that the savings from its grinding service should have resulted in the other respondents receiving fewer quantitative points. Neither the cost proposal form, nor other language in the package, explain the value or weight accorded an optional service, other than to state that it would not be considered in the cost evaluation. TLM's optional offer did show substantial savings for the grinding services, but without a prescribed value, there is no evidence to support TLM's claim on this point. Optional services were not included in the factors to be evaluated.

Failure to assign a value to the optional offered service did not result in improper distribution of points.

**REMOVAL OF "LOCAL BUSINESS PRESENCE" SCORING CRITERIA**

TLM protested the removal of the Local Business Presence criterion, and offered testimony about the history of the original RFP and the Council working group established to consider a new definition of Local Business Presence. COA staff testified that they couldn't wait for the new LBP definition to be recommended and adopted by Council, and determined the best course was to proceed without the definition. The COA argued that the playing field was leveled for this factor, whereas TLM pointed to the extra points it would have gained under the LBP definition being considered for adoption. It is uncontroverted that the RFP was issued without a LBP factor, and this Hearing Officer cannot consider matters outside the RFP language.

It was not improper for the LBP factor to be removed from the RFP.

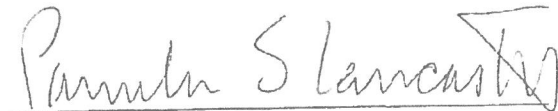
TLM criticized the COA for completing the evaluation of the RFP responses in five business days, for failing to make a site visit, and for not requesting additional information from responders. An RFP response is meant to be complete as presented.



information from responders. An RFP response is meant to be complete as presented. The subject matter experts who reviewed the responses are likely very familiar with the Hornsby Bend site who felt no need to visit during the evaluation period. There was no evidence that the COA diverted from its usual pattern in evaluating the RFP responses.

TLM's final suggestion was that the evaluation panel lowered TLM's scores with intent to prevent award of the contract to TLM, in retaliation for TLM's active involvement in protesting the initial RFP. The scoring process for this RFP required all evaluators to agree on the score, making it unlikely that the entire panel worked in unison to achieve an unfair result. Beyond TLM's surmise that retaliation played a part in this final result, there was no statement, document, email, or even an overheard remark to suggest that COA acted, or had reason to act, other than impartially toward TLM's response. In fact, COA staff offered credible testimony to TLM's reputation as experts who could be consulted for difficult questions.

It is not unreasonable to believe, however, that portions of TLM's response were completely overlooked or read in piecemeal fashion without reference to the whole. Some material described as weak was strong in this Officer's estimation, but the subjective nature of this sort of review doesn't allow a mathematical reassessment of scores; neither is it in this Officer's authority to recalculate. In order to assure a full consideration of TLM's response, this Hearing Officer respectfully RECOMMENDS that the evaluator panel be reformed, ideally with all new members, to re-review and re-score TLM's response.

A handwritten signature in cursive script, reading "Pamela S. Lancaster". The signature is written in dark ink and is positioned above the printed name and title.

PAMELA LANCASTER  
HEARING OFFICER