



TEXAS LANDFILL MANAGEMENT, L.L.C.

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August 22, 2018

Ms. Danielle Lord
City of Austin Purchasing Office
124 West 8th Street, Room 308
Austin, Texas 78701

RE: TLM Protest of IFB CDL2003REBID2

Ms. Lord:

Texas Landfill Management, LLC (TLM) – a sister company to Texas Disposal Systems, Inc. and Texas Disposal Systems Landfill, Inc. – received City of Austin IFB CDL2003REBID2 on August 13, 2018. As per the Solicitation Instructions, TLM protests IFB CDL2003REBID2.

BACKGROUND

IFB CDL2003REBID2 is the third iteration of Austin Water's solicitation to fully outsource management of City biosolids, including all production and marketing of Dillo Dirt.

It is impossible to imagine any more tortured or irregular City solicitation process. It is also impossible not to conclude, based solely on the events of the past 28 months, that this process has been the direct result of City staff's efforts to favor the incumbent vendor, Maryland-based Synagro, and to avoid recommending award of the contract to TLM. The facts speak plainly:

- The original solicitation, RFP CDL2003 issued on April 4, 2016, was cancelled by the City Council on December 15, 2016 when it was determined that staff had facilitated violations of the Anti-Lobbying Ordinance (ALO) by Synagro after recommending awarding the contract to the incumbent. It was later revealed to TLM via a Public Information Request that staff was aware of additional possible ALO violations both by Synagro and Synagro's lobbyist, but never investigated or informed the City Council.
- The solicitation's second iteration, RFP CDL2003REBID issued on October 9, 2017, was cancelled on June 8, 2018 during a Best and Final Offer (BAFO) process when it was discovered that staff had violated City policy and shared the contents of TLM's RFP response with Synagro's lobbyist, after again recommending awarding the contract to the incumbent vendor, despite TLM's lower bid.

- The BAFO process was itself the result of staff's extraordinary rejection of the recommendation of a protest hearing officer who determined that staff had improperly scored TLM's response to RFP CDL2003REBID (e.g. staff had overlooked sections of TLM's response, and mischaracterized strengths as deficiencies) and proposed that TLM's response be re-scored by new evaluators.

BASIS OF PROTEST OF IFB CDL2003REBID2

1. As the scope of work and associated required pricing for IFB CDL2003REBID2 is substantially identical to the scope of work and associated required pricing of RFP CDL2003REBID, staff's release to Synagro's lobbyist of TLM's RFP CDL2003REBID response irreconcilably advantages the incumbent vendor and perhaps other respondents.

As noted, RFP CDL2003REBID was cancelled on June 8, 2018 during a BAFO process when it was discovered that staff had violated City policy and released the contents of TLM's RFP response to the lobbyist of the staff-recommended incumbent vendor, Synagro.

The BAFO process, which included only Synagro and TLM, had been initiated on May 17, 2018, after staff rejected the recommendation of a protest hearing officer who determined that staff had improperly scored TLM's response to RFP CDL2003REBID (e.g. staff had overlooked sections of TLM's response, and mischaracterized strengths as deficiencies) and proposed that TLM's response be re-scored by new evaluators.

While the City Council was notified on June 12, 2018 that RFP CDL2003REBID had been cancelled "due to an unintentional release of records," TLM is not aware that staff has ever informed the City Council that the specific rationale for cancelling the RFP was in fact the release of TLM's proposal to Synagro's lobbyist. Indeed, TLM was only subsequently informed of the release of TLM's proposal to Synagro's lobbyist after inquiring directly to the Purchasing Office.

Accordingly, as the scope of work and associated required pricing for IFB CDL2003REBID2 is substantially identical to the scope of work and associated required pricing of RFP CDL2003REBID, TLM protests IFB CDL2003REBID2 on the basis that staff's release to Synagro's lobbyist of TLM's RFP CDL2003REBID response creates an irreconcilable advantage for the incumbent vendor.

In short, to have revealed to Synagro's lobbyist the contents of TLM's response to RFP CDL2003REBID now allows Synagro to submit a response to IFB CDL2003REBID2 fashioned specifically to outperform TLM's revealed proposal. If this was the basis for cancelling RFP CDL2003REBID, the same facts now render IFB CDL2003REBID2 equally compromised.

Further, not only is IFB CDL2003REBID2 compromised with regard to Synagro, it is unknown whether Synagro's lobbyist or Synagro may have revealed TLM's response to RFP CDL2003REBID to other respondents to RFP CDL2003REBID and/or prospective respondents

to IFB CDL2003REBID2. If Synagro's lobbyist or Synagro did reveal TLM's response to RFP CDL2003REBID to other parties, IFB CDL2003REBID2 is compromised with regard to every prospective respondent who received TLM's RFP CDL2003REBID response, regardless of from whom it was received.

If it can be demonstrated that Synagro's lobbyist or Synagro did not reveal TLM's response to RFP CDL2003REBID to others, TLM believes that the only acceptable remedy to staff's release to Synagro's lobbyist of TLM's response to RFP CDL2003REBID is to decline to consider Synagro's response to IFB CDL2003REBID2, assuming TLM also responds to IFB CDL2003REBID2.

If it cannot be demonstrated that Synagro's lobbyist or Synagro did not reveal TLM's RFP CDL2003REBID response to others, TLM believes that the only acceptable remedy is cancel IFB CDL2003REBID2 and negotiate a contract with TLM based on TLM's low-bid price submitted in response to RFP CDL2003REBID.

2. Staff's decision as announced at the August 15, 2018 pre-bid conference not to evaluate the "Local Business Presence" of IFB CDL2003REBID2 respondents is inconsistent with the inclusion of the "Local Business Presence" form in the solicitation package as well as previous City Council direction.

Assuming it can be demonstrated that Synagro's lobbyist or Synagro did not reveal TLM's response to RFP CDL2003REBID to others and staff chooses to proceed with IFB CDL2003REBID2 excluding only Synagro's response, TLM additionally protests IFB CDL2003REBID2 on the basis that staff's decision as announced at the August 15, 2018 pre-bid conference not to evaluate the "Local Business Presence" of IFB CDL2003REBID2 respondents is inconsistent with the inclusion of the "Local Business Presence" form in the solicitation package, and previous City Council direction.

Specifically, City Council Resolution 20140807-113 states: "The City Council ... recognizes the important contribution of local businesses to the local economy and supports the use of Local Vendor Preferences" and "The City Manager is hereby authorized and encouraged to base Recommendations for Council Action for the award of procurement contracts on the application of Local Vendor Preferences when the City Manager deems that the use of a Local Vendor Preference is appropriate."

TLM submits that it is appropriate to use a Local Vendor Preference for IFB CDL2003REBID2 and requests that the "Local Business Presence" form already included with the solicitation be evaluated by staff, and that staff's evaluation be presented to Board and Commissions and the City Council in conjunction with staff's request for a recommendation and contract award.

3. If staff decides to evaluate “Local Business Presence” in conjunction with IFB CDL2003REBID2, staff’s refusal to revise the definition of “Local Business Presence” to reflect the recommendation of the City Council’s Waste Management Policy Working Group will preserve a disadvantage for companies who would meet a revised definition consistent with the Working Group recommendation as compared to those who would not.

Assuming it can be demonstrated that Synagro did not reveal TLM’s response to RFP CDL2003REBID2 to others and staff chooses to proceed with IFB CDL2003REBID2 excluding only Synagro’s response, and further chooses to evaluate the included “Local Business Presence” form (as per City Council Resolution 20140807-113, noted above), TLM additionally protests IFB CDL2003REBID2 on the basis that the solicitation references a definition of “Local Business Presence” that is inconsistent with the July 21, 2017 recommendation of the City Council’s Waste Management Policy Working Group.

The Waste Management Policy Working Group recommendation follows: “Within waste management matrices, revise 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.”

TLM thus requests that staff amend IFB CDL2003REBID2 and/or the City of Austin’s Solicitation Instructions to apply a revised definition of “Local Business Presence” consistent with the recommendation of the Waste Management Policy Working Group.

TLM believes that staff has the full authority to apply this revised definition of “Local Business Presence” to IFB CDL2003REBID2, and to any and all other City solicitations, without seeking City Council authorization. Indeed it appears that the definition of “Local Business Presence” currently contained in the City of Austin’s Solicitation Instructions was adopted administratively in 2012. Further, staff’s decision to entirely exclude all “Local Business Presence” scoring from RFP CDL2003REBID2, the subsequent BAFO process, and to incorrectly cite the recommendation of the Waste Management Policy Working Group as the basis for doing so – offers a clear indication of staff’s authority to apply a correctly revised definition to IFB CDL2003REBID2.

4. Staff’s decision to exclude grinding services from the scope of work and associated required pricing for IFB CDL2003REBID2 will result in duplicative, inefficient operations.

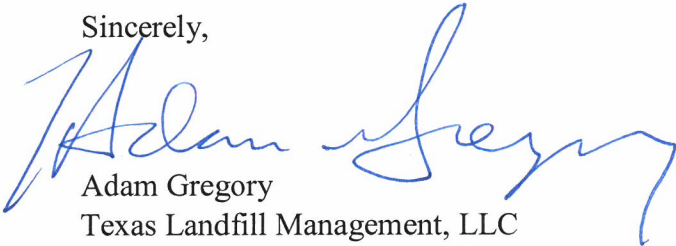
As TLM has previously noted, staff’s decision not to evaluate the financial value of TLM’s prior proposals to provide on-site grinding services (necessary to generate bulking agent required to produce the biosolids compost that is the solicitation’s objective) rendered the earlier RFP format of this solicitation inappropriate. While the solicitation format has now been updated to IFB for its third iteration, TLM protests IFB CDL2003REBID2 on the basis that grinding on-site services should be included in the new solicitation’s scope of work and associated required pricing.

To reiterate, if staff continues to maintain that grinding services should not be included as part of this solicitation, the resulting contract is certain to require two distinct grinding operations on-site at Hornsby Bend; one operated by the City and the other operated by the contractor. Not only would this be unnecessarily duplicative and increase the site's nuisance potential, it would also come at an enormous cost to Austin Water ratepayers. Note, for example, that TLM's RFP CDL 2003REBID proposal to provide grinding services represented an estimated cost savings to ratepayers of approximately \$1M per year (TLM proposed to provide grinding at \$9.11 per ton, compared to the FY2017 cost of \$36.22 per ton, as reported by Austin Resource Recovery).

Accordingly, TLM requests that IFB CDL2003REBID2 be re-issued or amended to include on-site grinding services in the solicitation's scope of work and associated required pricing. To reiterate per Item #1 above, TLM believes that the only acceptable remedy to staff's release to Synagro's lobbyist of TLM's response to RFP CDL2003REBID is to decline to consider Synagro's response to IFB CDL2003REBID2, regardless of whether it may be re-issued or amended as proposed to include on-site grinding services.

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

Sincerely,



Adam Gregory
Texas Landfill Management, LLC