

10-10-18 ZWAC Meeting

Item 4C Hornsby Bend Bio-Solids RCA - Recommend approval to negotiate and execute a multi-term contract with Synagro of Texas-CDR, Inc., to provide biosolid composting services, for up to ten years for a total contract amount not to exceed \$19,300,000.

Gerry Acuna: The next item of business is Item 4C, which is the Hornsby Bend Biosolids RCA, and you should have had a chance to review that tonight and it's come back to this Commission. I think there's a few folks, well, would staff like to discuss this or is there any discussion from staff on this? Actually, we do have a few people that have signed up to speak but please I...

Judy Musgrove: We have no presentation.

Danielle Lord: We have no presentation.

Gerry Acuna: Here I am waiting for the excitement but none. Darn it.

Gerry Acuna: Alright folks.

Danielle Lord: Ready and willing.

Gerry Acuna: There are a few folks that did sign up. The first one is Andrew Bosinger followed by Adam Gregory followed by Cathy Dunham who is donating three minutes to Adam Gregory. Maggie Nienow donating three minutes to Adam Gregory and Sindy Estrada donating three minutes to Adam Gregory.

Adam Gregory: I don't need all that time.

Gerry Acuna: Okay well, it's there. First person, Andrew? Thank you.

Andrew Bosinger: Good evening Commissioners. Thank you very much for your time. My name's Andrew Bosinger. I'm here with, I'm with Synagro. I'm here to just let you know that we're here to answer any questions you may have about this process. For those of you who are familiar with it, it's been a process. It has been a long, drawn out procurement. I think that where we stand now is that staff has correctly decided to do this as an IFB after two failed procurements which were challenged at every turn. What is in front of you is fair, openly procured, and honest, and that's in the best interest of the City. It's the best technical proposal from the most qualified firm in the country that will save the City a lot of money. It's time to move this forward and again, we're here to thank you and to let you know that if there are questions that Synagro can address, we're happy to do so and that's all. Thank you.

Gerry Acuna: Do you have a question? Commissioner Gattuso.

Cathy Gattuso: So can you tell the Commission how this proposal is different from the last two?

Andrew Bosinger: Well, that may well be a question for staff but I would tell you from our perspective it was, it's an Invitation For Bid. It takes a lot of the subjectivity of evaluations out of it. The staff, from again, from the vendor's perspective, put the requirements of the contract into the IFB. They took away, because there had been so many studies and working sessions and discussions and meetings about this, we've gotten feedback from vendors, from Synagro, from TDS. There's been feedback from Texas Campaign for the Environment. There were meetings after meetings and all of those things are reflected in the IFB. So at that point, when there's enough specificity and enough definition of exactly what the City needs to be successful, it comes down to efficiency and price.

Cathy Gattuso: So are there any things that were mentioned, or the different organizations and people, that you talked about that you could talk to us about? Maybe you changed things up or that there were problems that these other entities saw and then you decided to put something different together?

Andrew Bosinger: Well you know, Commissioner, from our perspective the first Request For Proposals that was done on this process was reflective of the end outcome that the City wanted and allowed the vendors the opportunity to creatively and most efficiently, in their minds, get to that end goal that the City desired. As we went through additional procurement processes, and this is the third, some of that flexibility was taken away. It was more specified to say 'you must do this' and 'you must do that.' Which was all fine from Synagro's perspective, those were all things

we were going to do anyway. You must meet certain testing standards for the compost that you're going to produce. We were going to do that anyway. We've been doing it at Hornsby Bend already. We already have compost that meets all those standards. We produce it today. So there were things like that that were added into the procurement that were more specific but not really different from what was being proposed, by Synagro at least, from the beginning. So, have I addressed your question?

Cathy Gattuso: I think so. Thank you.

Gerry Acuna: You know, I will comment and please correct me if I'm wrong. One glaring difference is price.

Andrew Bosinger: Mmhmm.

Gerry Acuna: There was a reduction versus the first RFP that came in; whether that's due to competition or plain old frustration, thank you.

Andrew Bosinger: Well our numbers became public. I mean, everybody knew what our numbers were. And so it becomes a process of 'okay, everybody's seen your number, what do you bid now?' And so you have to find ways to compete.

Gerry Acuna: You know, one comment I will make and I addressed this with Water and Wastewater staff and our ARR folks, I was hoping that perhaps we could have a local vendor working with Synagro to ensure you know future, in the future ensure that this process succeeds. To make sure... and you will do a good job. You have done a great job, thank you. But to educate us and to have a local participant would be wonderful. I mean just in my opinion it ensures that the process is gonna get done. It ensures that Dillo Dirt continues and there is never, if there ever is an issue, a challenge, well we've got two heads which are better than one, to work on it.

Andrew Bosinger: Yes and I assure you there is a substantial amount of local participation. There are many subcontractors that work with us. We're, you know, we want all the people who are selling Dillo Dirt now to continue to sell Dillo Dirt. We're not looking to get rid of Dillo Dirt, replace those vendors. We're looking to help them be successful by giving them a good product to sell to continue to build that brand and to build success in Austin by using local subcontract truckers that we hope to identify. We have identified some in our past proposals you may have seen that we're helping to build their skills and capabilities so they can work in this market effectively.

Gerry Acuna: Thank you, Andrew. Any other questions? We do have, oh my goodness, four other speakers who have signed up. Adam Gregory, you have donated time. You have a total of 12 minutes.

Adam Gregory: Thank you Commission. Adam Gregory with Texas Disposal Systems. I'm surprised to hear Andrew talk about the numerous local subcontractors he has. His proposal certified that they would use no subcontractors, that's interesting. But I will start by saying this has been an incredibly tortured process and to call it compromised would be an understatement. Because of the Anti-Lobby Ordinance, I haven't been able to talk to you folks about this issue. I have my few minutes here. This has been going on for two and half years and the very first proposal and the very first process was very deficient in that it did not require full composting. It was a PFRP contract and it would've allowed the land application of huge amounts of hardly processed biosolids all over the county and all over the area. I'm gonna ask you not to support staff's recommendation today. As you might remember, they cancelled the first solicitation and waived the Anti-Lobby Ordinance because supposedly staff had started a process that resulted in an inadvertent violation of the Anti-Lobby. Well, after that well Council waived the Anti-Lobby and absolved them of previous violations. After that, we found out there were a number of other potential violations that were never even considered and I doubt highly that the Council was made aware of. Now you're gonna choose, this has come down to a choice basically between TLM and TDS, and Synagro. TLM is the subsidy of our company that's bidding for this contract. TLM proposed on the second version, the first, the second RFP. TLM was the low bid, significantly. However, staff evaluated it somehow and came up with a recommendation for Synagro despite the fact that we were the low bid. We protested that. That protest went to an independent hearing examiner. That independent hearing examiner... we're gonna hand out the protest, our latest protest of this process. I want you guys to have it. That hearing examiner agreed with TLM that the evaluation was problematic, specifically that the staff had classified our strengths as weaknesses, in her opinion. The independent hearing examiner recommended that an entirely new board of evaluators reevaluate the proposals. Staff rejected that recommendation. It's rare when they don't accept the recommendation of an independent hearing examiner. They rejected that and said 'we're gonna do best and final offers.' Well, in the middle of that best and final offer process the City staff supposedly inadvertently released TLM's

proposal to Synagro. They did not notify us that Synagro had requested our proposal. They always notify you when someone is requesting things that come from you. They do it all the time when people come and request things that have to do with us. We didn't even know. They gave it to them. So they cancelled the process even though we were the low bid. Even though we were supposed to be rescored by the recommendation of the independent hearing examiner. So we didn't even get to submit best and final offers. So once Synagro has our proposal and our bid, they switch to an IFB which only has to do with the price. And they know our price. We requested Synagro's proposal. They notify Synagro, of course, that we want it and say no. They go to the Attorney General. Synagro and their lobbyist put forth a very detailed letter talking about how unfair it would be for us to have their proposal. How it would be a complete detriment to a competitive process. They don't mention that they have our proposal. So we protested that. The staff seems not to care about that issue. They say it doesn't matter. They're recommending Synagro. What do you expect happened after Synagro has our deal? We do an IFB. They come in just under us, 4%, just right at 4% under us. If it had been 3% the Council would have still had the option to award it to us in an IFB under State law because we're a local business, regardless of how the City calls, determines what a local business is, we are a local business and under State law the Council could have made that choice. Right now as it stands with the IFB, they can't award it to us. I imagine Synagro knew how to get just under there. Again, they refused to give us Synagro's proposal. Synagro had our proposal, our pricing, and the fact that staff gave them our proposal was the only reason they cancelled the second solicitation, the RFP. And then they switched to a process that totally relied on that. It couldn't, there couldn't be a situation that is more tortured and more unfair than what we've seen here. However, even under this proposal TLM is still the lowest cost offer. You might be aware that ARR does the grinding at Hornsby Bend. TLM used to do it. We did it for seven years. We made it apart of every proposal we did to provide the grinding services. Synagro has not proposed to do that. The City of, the ARR spends millions of dollars on that. We proposed a price to do the grinding as part of the composting which only makes sense because the grinding is how you generate the bulking agent that you need to do the composting and you should have the whole thing. Otherwise, you have two grinding operations. We proposed roughly 25% of the cost that ARR spends on grinding out there to do it. And if you calculate the total cost to the City, our, we have multiple proposals that are far lower than even Synagro's latest unfair lowest offer. As the Zero Waste Advisory Commission, I think y'all ought to consider the cost to ARR. They spend millions of dollars, million and half, whatever it is. We used to do it for about a quarter of a million and year and that's what we're proposing to do. There's multiple ways that they can pay for that. There's no question that our proposal to do the whole process is the lowest cost. Second of all, we have control over large streams of bulking agent. There's no risk of us running out of bulking agent, Synagro doesn't, they rely on the City. The City is adding food waste to the brush that goes to Hornsby Bend and more and more of it, as we expand, is going away. Synagro has an emergency proposal to do land application. I think it's in the forty dollar range. All Synagro would have to do is intentionally run out of bulking agent and then they're in the emergency zone. It's more expensive. Higher margin for them. You don't have to worry about that with us. This has been a very, very frustrating process and I think from the beginning we've seen that staff has been dedicated to making sure Synagro gets this contract. They scored them higher than us when we were the low bid and they refused to consider grinding. Didn't give an explanation for it. And again, they gave our proposal away and did an IFB. Imagine that, they came in underneath us. Still don't consider grinding. We're still the lowest cost. We're still the biggest composter in the area. Synagro is owned by private equity companies. Who the hell knows who their owners are? Where they are? We're right here. We've been doing this for years. We've started and expanded and continued composting in Central Texas. There are people in jail because of their lobbying tactics. They've lost contracts because of their lobbying tactics. They're not a good company. TDS is right here, we're accountable to you and we're the lowest cost offer. I hope you will recommend that Council reject staff's recommendation and the only way to fix this horrible process is to recommend that Council negotiate with TLM to provide one of our very lowest cost offers to the City. I'm happy to answer questions. I'm sorry I'm so frustrated.

Kaiba White: Well, I thank you for your comments. I really kind of want to hear staff respond because I'm concerned about some of the things that you have raised here. So I guess really my question isn't for you because I feel like I've heard you but I do want.

Adam Gregory: You can call me up if you want to after. Thank you folks.

Danielle Lord: Do you want to ask a particular question? There was a lot in that.

Kaiba White: Well, sorry, I do have a couple specifics. I mean, I guess first of all this issue of giving away their contract. Like can you maybe start with that because that seems like a pretty critical issue here?

Danielle Lord: Danielle Lord, Austin Water Purchasing. The Purchasing Office isn't here to respond to that right now but I can tell you that it was looked at. It was found that it was a part of their protest originally and they were found to be not in default.

Kaiba White: I'm sorry, they were found what?

Danielle Lord: They found that... there was a protest. TLM protested. And it was looked at and the Purchasing Officer decided that there was no reason to hold up or delay the process.

Kaiba White: Okay, I guess I'm just wondering about the facts.

Danielle Lord: I can't speak to the specifics. Yeah, I can't speak to the specifics of what happened.

Kaiba White: You don't know if the contract was given to Synagro or not?

Danielle Lord: As far as I know, it was. It wasn't a contract but yes.

Kaiba White: Sorry, the proposal.

Danielle Lord: That is public knowledge that it was inadvertently released.

Blythe Christopher de Orive: I have quick question.

Kaiba White: Thank you.

Blythe Christopher de Orive: So if it's an IFP, not a contract, that's not against the law if you give a competing proposal or the amount that is out there, that's not against the law to let another competing company know?

Danielle Lord: I'm not a lawyer so I can't speak to that but I can tell you that none of the pages were stamped confidential and pricing typically is not considered something that is held confidential.

Blythe Christopher de Orive: Okay.

Cathy Gattuso: Then TDS asked for Synagro's proposal and they didn't get it. We are all confused up here.

Danielle Lord: Again, I can't speak to that process and the Purchasing Office isn't here to describe what happened, so...

Cathy Gattuso: Did you know this was a complaint before you came here tonight?

Danielle Lord: I did.

Cathy Gattuso: Wouldn't that have been great to have had that answered for us? I mean, that stands out.

Danielle Lord: I would love to answer it for you but I can't answer on behalf of the Purchasing Office. I work for Austin Water.

Cathy Gattuso: Well in the future is there something that if you knew, if anybody knew that that was coming up, is there a way that the Purchasing Office could actually write something with it stamped from a notary to explain to us? Because this is like, it's just, it just seems really not good business.

Danielle Lord: I can definitely make the suggestion.

Cathy Gattuso: Have they ever done that before?

Danielle Lord: I'm not aware that they have but I can definitely make that suggestion after this meeting.

Cathy Gattuso: Okay. Thank you.

Danielle Lord: Sure.

Gerry Acuna: Commissioner Blaine, Commissioner Barona, I think.

Josh Blaine: I'm not sure I have anything additional to add. I'm also a little baffled at the response to our questions about the facts here. Is there anybody in the room who could speak to maybe even like the precedent of this? It seems outrageous but is there anybody who could speak to...

Danielle Lord: A precedent of releasing...

Josh Blaine: Of releasing a competitive IFB to the other party that's bidding. I mean it seems absurd and a number of us up here are concerned about it, so it feels difficult to go any further on this without some clarity about it.

Danielle Lord: All I can tell you is the Purchasing Officer made the determination that there was no legal grounds to...

Josh Blaine: Was that the same Purchasing Officer who inadvertently gave the bid to the other contractor?

Danielle Lord: I don't know and not at the liberty to say.

Gerry Acuna: Assistant Director Slusher, if you would like to come up and address this, I invite that.

Daryl Slusher: Address the release of the information?

Gerry Acuna: Correct. Please. Thank you.

Daryl Slusher: Well I can't, once again, I can't speak for the Purchasing Office either but it was an inadvertent release of information and I think, as Ms. Lord pointed out, that was a subject in the protest that was denied. And that's about all we can say about it. Because we don't speak for the Purchasing department and it was an inadvertent release of information. By the way, Daryl Slusher, Assistant Director, Austin Water.

Gerry Acuna: Commissioner Barona.

Jonathan Barona: How do I turn this on? Oh, there you go. Good evening. You guys are making it interesting for my first night, so I appreciate that and I'm sure it'll get better. I do have a question about the cost savings for ARR for the grinding. Can you explain why that's not considered in the process to determine overall cost if there's actually gonna be a cost savings?

Danielle Lord: So, I can't speak for ARR for why their operations and why their procedure is the way it is, but we did consult with them before the IFB was released and published and those services were not included in the Scope Of Work.

Gerry Acuna: This is kind of a silly question here, kind of a follow-up question. When ARR does this work, they're compensated by AWU, correct? Or how does that work? Is that... Austin Water Utility.

Judy Musgrove: Judy Musgrove, Austin Water. They do that because it helps them get rid of the yard waste so they bring it on site and grind it for us, but yeah we don't pay for that. It's a cooperative agreement that's been there for years.

Gerry Acuna: Yes it has, actually. Any other questions? Commissioner White.

Kaiba White: Well I guess I'm just wondering if somebody from ARR could maybe speak to this issue on the grinding.

Nikelle Meade: Board members, Nikelle Meade here on behalf of Synagro. We are not bound by any of whatever it is Purchasing is bound by with regard to explaining that situation, but I'm happy to give you the facts as we know them if that would be helpful. I don't know if ARR wants to speak to it.

Richard McHale: Richard McHale, Austin Resource Recovery. ARR has traditionally done the grinding out at Hornsby Bend. We do not charge Austin Water Utility for that service since they are basically assisting us in taking care of the yard waste and moving it into Dillo Dirt. So it's been an agreement. So there is actually is no cost to Water Utility for that.

Kaiba White: Is there a cost to ARR though?

Richard McHale: There is a cost for us to operate the equipment out there but that equipment is not solely just for that. We also utilize that equipment for when we handle storms and other situations like that.

Kaiba White: So is it your opinion that there would not be a cost savings by having some third party do that grinding?

Richard McHale: I haven't seen the cost proposal so I really can't speak on the savings.

Kaiba White: Well I guess I'm saying if you weren't grinding for the purposes of creating Dillo Dirt, would you be spending less money on those grinders?

Richard McHale: You know, in the beginning when this first started, TDS was the processor out there. It was determined that the City would take over that chipping program from TDS. We did that. I don't know that... I believe that was a cost to Water Utility at the time. I don't know what the cost relationship is to what they're proposing to what we're actually doing right now though.

Kaiba White: Okay. Thank you.

Gerry Acuna: Commissioner Howry.

Philip Howry: Sounds like to me, I just want to get this straight. If the proposal or the Scope Of Work went out first, it was programmed as an RFP. Is that correct? A Request For Proposals?

Judy Musgrove: That's correct.

Philip Howry: Okay then it was converted, then you had the prices come in, and those are not public. An RFP is not public information.

Judy Musgrove: Our first RFP was released. Everything was released. All the costs and everything. And then the second RFP didn't get to that point.

Philip Howry: Was released to what?

Judy Musgrove: To the public.

Philip Howry: To the public?

Judy Musgrove: Yeah, we've had two RFPs now a bid. This is our third.

Philip Howry: Typically in this business an RFP is an RFP. It's not for public information. An Invitation For Bid is a sealed hard dollar bid that's a public bid opening. Everybody knows what it was. So with the RFP did you have a prescribed day and time for a public bid opening on the RFP or not?

Danielle Lord: Can I just answer one of the parts of that question? The first part is that the original RFP that was released in 2016, Council requested a copy of that contract be included in the RCA so the entirety of Synagro's proposal with a few redactions that were confidential was released including their pricing and all of the methodology that they were going to use for that proposal. The second RFP was published and that was the one that I believe that you're referring to that was cancelled because of the inadvertent release of the information. The third was an IFB and yes, all of these come in a sealed proposal package. The proposal or the IFB are both all sealed and all publically opened.

Philip Howry: Okay, that's fine. But you have a definitive Scope Of Work. Everybody knows what you're bidding on and there's no inclusions after the fact. I mean, the Scope Of Work is defined in an IFB.

Danielle Lord: That's correct.

Philip Howry: In an IFB.

Danielle Lord: That's correct.

Philip Howry: Now, I don't get the impression that was the case in the RFP.

Danielle Lord: That is correct. There was methodology that they could propose.

Philip Howry: Okay, so there were some other things that were involved with it. It sounds like to me that the whole, the integrity of this whole sealed bid system has been violated. I don't see how we could have an honest competitive bid system here the way it's been handled. And we obviously don't have anyone from Purchasing that can tell us, can speak to the integrity of it. So in all fairness, I mean, I like the competition. I like the fact that we have, as opposed to this sole source one million dollar solicitation that we did previously, I like the idea with tax money that we have competitive, sealed, hard dollar bids where we all know that we had an open competition. And so my recommendation is to start over with this. Come up with a totally defined Scope Of Work, everybody knows what you're bidding on, what you're not bidding on, what's not included, what is included, the work that ARR is going to do

or not do with the grinding, and so everybody knows what they're bidding on and put it back out so we can have a fair process here for all the bidders.

Danielle Lord: That's exactly what we did in the IFB and we also released an RFI with all of the Scope Of Work contents and allowed for open comments. Those comments were also included in the solicitation package. So the Scope Of Work was completely open both in the RFI as well as the IFB, and there were no additional proposals that were received.

Philip Howry: So did you receive any RFIs from the proposed offerors?

Danielle Lord: Yes sir we did. All of them.

Philip Howry: And to define the scope, did you issue modifications to the solicitation...

Danielle Lord: Yes we did.

Philip Howry: ...so that all the bidders knew what it was?

Danielle Lord: Yes sir. We sure did.

Philip Howry: Okay.

Nikelle Meade: If I may, I just have to say, Commissioner Howry and other Commissioners, I think what is going on here is that either purposefully or just in something that was said by Adam Gregory, it's been put on the table that something improper happened with regard to the IFB process and somehow their price was released before the bid opening. That did not happen. In, buried in a request for public information, part of their proposal from an old RFP that we aren't even talking about anymore, was released to us. The thing that is of really critical importance, I think, for the Commission to understand is that they're saying that we based, we lowered our price by 4% from the price that they had in that proposal. The price they bid, the price that they used to respond to the IFB, is not even the same price that was in the proposal. So, it effectively, the price that was in the proposal is completely irrelevant to what we're talking about today, and I think it's also of importance, and we wanted you all to know that, they had all of our pricing as well because our proposal was voluntarily released to the public and so I think they're mixing the RFP process with the IFB process. The reason the IFB process was done was because there were so many issues with the RFP process, exactly as you're describing. And so the IFB process was done to clean that up and none of that information was released ahead of the public opening.

Philip Howry: So, are you with the City?

Nikelle Meade: I'm with Synagro.

Philip Howry: So how do you know how it was processed internally?

Nikelle Meade: I'm not speaking to how it was processed internally. I'm speaking to how... I'm trying to clarify that... and unless Mr. Gregory's gonna stand here now and say that this is what he's trying to say, there has not been any allegation that any of the pricing during the IFB process has been compromised. And I think that you have to agree that that's correct.

Adam Gregory: I don't think anyone stated that. The issue is... and she's stating that we didn't respond the same from our RFP to our IFB. That's wrong. We kept our pricing the same to the penny. To the penny. Because of how ridiculous it was that they had given them our RFP response. Now they talk about their proposal being sent out. That is not true. The very first RFP was an entirely different process. You remember, we joined up this Commission with Water and Wastewater to fix that problem. That RFP involved the cancellation of Dillo Dirt. That RFP had no requirements for the processing standard of the material. All you had to do was hit PFRP which takes 15 days. So it was a bogus composting RFP. That's why it got thrown out. And what's odd is that as the... that was their highest price with the lowest requirements. As we've competed with them and requirements have gotten actually more realistic and more stringent about the quality of the product you have to make, their price has gone down. Bad faith proposals. They've been making lots and lots of money on this City for a lot of years. And I will repeat what I said before. There are people in jail because of this company's lobbying practices. Nikelle ought to be proud of this company... hey, Gerry, thanks. I'm serious. This is a messed up, this is a totally screwed up process. And they've said the Purchasing Officer said that wasn't right. They disagreed with our protest. That doesn't matter. Our protest is

right. The hearing examiner agreed with us. The real proposal, the RFP that had the actual requirements for how to process this stuff and keep Dillo Dirt, they got that price. We didn't get theirs. They came in right underneath us.

Gerry Acuna: All right, thank you.

Adam Gregory: This process should be thrown out completely and really the only thing to save it is to work with us on our low cost bid. They can't do the grinding. We've done the grinding before. We're gonna literally do it for 25% of the cost. ARR reported before it's about \$36 a ton.

Kaiba White: Hey Adam, can I interrupt for a question?

Adam Gregory: Yes, I'm sorry.

Kaiba White: Thanks. You just said something that I think was important. Well, a few minutes ago, you said that your bid was the same exact cost as the proposal that you submitted. Is there any way that we can get, not that I am trying to disbelieve you, but can staff speak to that issue, is that accurate?

Danielle Lord: That it's exactly the same from the last?

Kaiba White: The same price.

Danielle Lord: You know, that was cancelled...

Kaiba White: I realize it was cancelled. I'm just saying if the number was the same...

Danielle Lord: I know.... I have a hard time answering that.

Adam Gregory: It was fourteen dollars and fifty-three cents. Both times.

Gerry Acuna: Adam, please.

Kaiba White: Sorry, can you...

Danielle Lord: I'm sorry. I wish that I had an answer from you. I do not have an answer. The only thing I can tell you is their current price that was released and it's published...

Kaiba White: Okay.

Danielle Lord: The other, the last solicitation was cancelled. It was restarted with the IFB. We did not have any release or inadvertent release of information during this process. It was a competitive full competition. We got sufficient competition from the competitors. It wasn't just these two that also compete. That's what I can tell you.

Kaiba White: Okay well thanks. Can I make a motion?

Gerry Acuna: Please.

Kaiba White: I'd like to move that we recommend that Council hold off on moving forward with this contract until this body can get more information from Purchasing by having them attend one of our meetings and answer some of these questions that we have, and whoever else is needed in order to answer these questions so that we really understand what we're talking about here. That's my motion.

Gerry Acuna: All right so we have a motion to hold off.

Cathy Gattuso: Can I add a friendly amendment to that?

Kaiba White: I think we need a second first.

Gerry Acuna: We need a second first.

Cathy Gattuso: Oh, a second first.

Gerry Acuna: We have a second from Commissioner Blaine. Do you want to speak to...

Cathy Gattuso: Yes. So I'm still a little confused on this grinding or chipping... is that the same word? Is that the same process you said? Okay. How that figures in, because that is coming out of the budget of ARR. So I want to see how that all fits. Because that doesn't make sense to me.

Gerry Acuna: Commissioner Hoffman, you had a question?

Heather-Nicole Hoffman: We have our first and second? Yes, I was going to say TDS, TLM had the specifics of what was required and you included additional services for grinding in your bid proposal. Is that correct?

Adam Gregory: It allowed for proposing additional services. They just would not consider it even though it's a major savings to the City.

Heather-Nicole Hoffman: Did you have it as a line item so they could compare the price without grinding?

Adam Gregory: I had it as a line item. I even proposed it as a line item to our lowest bid and I even calculated the inclusion of that into an all-in price so they have multiple ways to calculate the benefit of that.

Heather-Nicole Hoffman: Okay.

Adam Gregory: I will point out...

Heather-Nicole Hoffman: So you did have an apples to apples bid, is that correct?

Adam Gregory: I will point out ARR has reported their cost to be roughly \$36 a ton to do that. We proposed about \$9.10. About 25% percent. About a million dollars savings to ARR. I think ARR needs a million dollars.

Gerry Acuna: If I'm not mistaken, I think Gabe, you submitted documentation concerning the three proposers? Is that correct? Originally, it should be. I didn't see that in here. And some of those questions actually, the breakdowns, the cost breakdowns were in there, the reference that Mr. Gregory is making to voluntarily or at least processing, or grinding some of the material, is in that RFP process, or the documents that were actually evaluated if I'm not mistaken.

Gabe Gonzalez: I believe I emailed them to you yesterday afternoon.

Gerry Acuna: Correct, and I thought we might have one here in our packets.

Gabe Gonzalez: They weren't included in this one.

Gerry Acuna: Okay.

Danielle Lord: I do want to say yes, it was an apples to apples comparison and then as well it was an alternative bid that came in with the grinding services that TLM did provide both. So, yes there was one that was one that was an apples to apples comparison and that's what you see on the bid tab is what we asked for in the Scope Of Work.

Heather-Nicole Hoffman: Okay.

Gerry Acuna: I think Mr. Gosh, you wanted to comment briefly?

Phil Gosh: Could I please?

Gerry Acuna: Please.

Phil Gosh: Thank you. I thought it might be helpful if I just kind of shared my experience bidding in the RFP and kind of how that played out for us. So we did a bid on another item, the organics processing. So we did the bid and folks, TDS did not bid on that, and so what they did is our RFP was a public information, so they requested that and got that information from our bid. So as we would come before y'all there would be information that they would present to y'all about my price, about everything about my thing, about our bid. So it's just interesting and something to notice when there's public information and that's been brought up here to y'all of like how bad Synagro is, I just think that's something really to notice. Because exactly what they're accusing Synagro, they did. The other, couple other things, this has gone on for a long time and how much cost has this cost our City? The two and a half years of meetings and on and on, you know what does that cost? This whole process has gone on and on and on. And the initial bid was an RFP. It was based on other merit other than price. They lost. Synagro won. So then we redid it as price only and Synagro won. TDS lost. What's the conversation? Because of something they want to add to it because... that's not what the bid was. Everybody knew what the bid was. Synagro won the bid and TDS lost. What is there to... what is the issue? So it's been said, 'Oh, they're not a local presence.' They have a very strong local presence. They make a high quality product that everybody loves and buys. That's how they make their money. That's how they got a lowest bid. 'Cause they're making a great product and they're selling and lot of stuff, and they're getting a lot of good organics on our environment. I'd work with them gladly. They're great to work with. Bulking agent, they work with all people to get bulking agent. There's lots of options out there. Lot of people have over they need to get rid of and

they're willing to help. And that promotes our C&D ordinances and other things that we need. So there's been kind of just this thing that's gone... I'm not a real politician but I just know when you've been blessed you should bless other people. When you've got lots of legal and political and investments and that plays in, I just think that's not healthy for us. And we're better than that. And I say vote for... do not pull this and let it go. You want other people to be here and bid on these things with a process like this? Every time somebody's gonna come up and say stuff. I mean that's not healthy for us. It's not. So I say, please, let's step up. Thank you.

Gerry Acuna: Thank you Mr. Gosh. Staff, the importance of this document being placed in front of Council. Can you explain that to us? I mean how important this is?

Judy Musgrove: Judy Musgrove, Austin Water. We have a contract right now that expires the end of December. We're actually out of funds, or almost out of funds. We have \$600,000 dollars left which will get us... we can pay the compost that's on site but we can't go much past that and they've stopped processing the biosolids that are coming off the belt. We're just storing it right now. Waiting for this new contract so, we need the contract to be in place. We've been able to extend it up to now because we had money authorized for that contract. That money's gone. I mean, it's almost gone. So we will be out of money probably by the end of October.

Gerry Acuna: And what is the impact?

Judy Musgrove: So that means that biosolids just continue to store up and we'll have to keep them there waiting until the next contract comes around or get an emergency situation going. But it's not really an emergency until it gets to the point where it's been onsite, and smells, and all that. We're gonna try not to get it there but we are concerned. And not only that, the yard waste is piling up, because we're not using that either because there's no one to compost so we are, and this has been a long, long process. We started this two years ago and it's taken a lot of time and effort and I feel like we're at a good point now. I'd like to move forward.

Gerry Acuna: Commissioner Masino. I'm sorry.

Daryl Slusher: Ms. Musgrove already said pretty much the same thing I was going to say but I just want to reiterate first of all with all the discussion going back, that inadvertent release of information wasn't on this bid process. I think that you understood that in what you were saying, but I just wanted to make that clear for the record because there's been a lot of discussion of it, and Ms. Musgrove is right, we've been at this for two years. This is our third attempt to get a contract and the biosolids, they just don't stop coming in so we need to get a contract to deal with this.

Gerry Acuna: Commissioner Masino.

Amanda Masino: Yeah, I just, you know, adding onto what Kaiba and some of the other Commissioners have said here, I can appreciate that we've been at this a while. You're certainly frustrated. You're waiting to get this biosolids issue solved and yet some of the key people who can answer the questions that reasonably would have arisen from this discussion are not in the room and that seems like a fairly straightforward thing to have this information for us, so that we can make an informed decision and not just be pressured into 'it's urgent now and by the way we've been waiting a long time.' And perhaps that's not the intention of those folks not being here but that's certainly the impression it gives. And it would be great to have that discussion with the appropriate people in the room or the documentation ahead of time. The second thing is that I notice in this Report of Prior Council Action that there is discussion of the joint meetings and how we decided to try to work together on a biosolids policy that would inform RFPs. That's when the Anti-Lobbying concerns came up and that became an Item for Council action. And somewhere along the way I think we lost... part of the intention of that group was not just to raise concerns about lobbying, it was to create some sort of biosolids policy. And that's gone. I love that much of that discussion is actually in the solicitation. That's great. But the goal of having that policy was so that we wouldn't have to continue to talk about bulking agent and talk about all of the details each time. That we would have a policy to keep checking solicitations against. And that's gone. We had a version at ZWAC, Wastewater Commission had a version, we couldn't get them to sync up and then the thing sort of just seems to stall. And that's been another year there.

Gerry Acuna: Correct.

Amanda Masino: And so just I want to raise that as being something that we should also be paying attention to so that we don't get into this situation again.

Gerry Acuna: So to further discuss the challenges facing the Water Utility and biosolids, assuming that this doesn't get passed this evening, how quickly could you invite, if we were to defer the item, let me back up here. If we were to defer the item until our November meeting, have the respective bodies here that can answer some of these questions or basically submit these in writing to us, would be a good start. Is that a possibility that we could reintroduce this at our November meeting and get this done prior to the end of the year?

Daryl Slusher: We're scheduled for a November 1st Council meeting. I think Ms. Musgrove's already detailed that we need to get a contract approved.

Danielle Lord: I would like to say that, you know, that last solicitation was cancelled and that conversation goes along with the last solicitation. The release of information was on the prior solicitation. There was no release of information on this solicitation. The solicitation that is before you, there has not been any inadvertent release of any information. There was full competition on this solicitation.

Gerry Acuna: You know, my concerns are, I'm sorry, Commissioner Blaine, go ahead.

Josh Blaine: Yeah, I hear your technical definition there but it seems pretty obvious that the solicitation just a few months later was very closely related and that the price that was submitted that they had access to was known and therefore responded to in the next. So it doesn't, I'm not convinced by saying that the information from the IFB was released because the information that was released was very much related, and it's hard for me to hear Mr. Gosh express integrity in this situation given this blatant unresolved piece around price, specifically because this decision was made around price. Because a lot of the work that's been done around the details of that original RFP were worked into the IFB which is great, but then because we're talking just about price and that was released and then it was this 4% down, I mean it's just, it's very hard for me to have faith in this process and I'm frustrated because I've been involved in this for two and a half years too, and you know, I don't know the way forward but it certainly doesn't seem approving the contract tonight, or recommending approval of the contract tonight is what I'm willing to do.

Danielle Lord: Both solicitations were quite different. This was requirement based so there were no proposals received. It was, if you compare them side by side, they are not exactly the same. There was a lot of details that went in. Staff spent an amazing amount of time trying to incorporate exactly what the requirement would be for all of the control plans, sampling plans, emergency conditions and taking in consideration of the Work Group and all those recommendations, so they are not exactly the same but I understand what you're saying. It has been a long process.

Gerry Acuna: It has been an extremely long process. A lot of us sat at these meetings a year ago. Over a year ago. And again we thought this was a resolved issue and we'd be processing biosolids making, Dillo Dirt and moving on. Obviously we're not to that point yet. Back to my question, Assistant Director you're going to Council on the 1st. Is there any way to perhaps get that on the same Council agenda as our November 15th item?

Daryl Slusher: We would have to discuss that as a management team. We are focused on, we've put this off a lot as we've already discussed so.

Gerry Acuna: I agree. I don't want to kick the can down the road anymore. There's a lot of cans that have been kicked here and this is just one of 'em, and it's time to actually get to work. I sincerely mean that. We need to get to work. And every time a big issue comes up and these, something like this happens and we've got to get beyond. We owe that to the rate payers. We owe that to the citizens of Austin. Plain and simple. And I understand that this process appears to be flawed. I'm willing to accept your, well I have accepted your motion and your second and hopefully figure out a way to still have something in place come January 1st. I mean, to me that's important to do. Help me, how can we get this done?

Daryl Slusher: Well, I mean, y'all can vote on your motion and Council can consider that when we bring it to them on the 1st.

Gerry Acuna: Thank you folks.

Gerry Acuna: Did you have a comment, Andrew?

Andrew Bosinger: Thank you, Mr. Chairman. I just want to say was this process flawed? The IFB process? Not at all. Not at all. Did we like it that our proposal and our price were the least? A lot of information about our approach to

the business and the first two failed RFPs were released? No, we hated it. Maybe something was released of TDS'. I can stand here and tell you with my hand on a Bible, I had no idea what their pricing was. I never saw any of their stuff. These allegations that they're throwing out about Synagro, it's smoke in the air to try to confuse, delay, cause what you do when you're losing is you do, you try to kick the can down the road. You try to reframe the discussion. Oh, let's have a discussion about grinding. That wasn't in the Scope Of Work that everybody bid on openly and fairly. It just wasn't there. So to try to reframe the discussion now, it's sour grapes, and I'm sorry. I didn't like this process. It's been a huge cost to Synagro. It's been a huge cost to the City. With all due respect, it's time to move on. They didn't like it. We didn't like it. It wasn't a pretty process. But what we are left with was an open, honest, fair, equitable IFB process. That's a win for the City. Thank you.

Kaiba White: I have a question.

Adam Gregory: I have to respond to that. I have to respond to that.

Gerry Acuna: No, please, Adam.

Adam Gregory: I have to.

Gerry Acuna: Commissioner, please. Question.

Kaiba White: If you don't mind, I had one question for you. You said you didn't know what their price was. Are you representing that nobody at your company could have known what the price was or just that you personally didn't look at that document?

Andrew Bosinger: If anybody at Synagro would have known it would have been me. I've been up to my ears in this thing for eight years, I've been responsible for this.

Kaiba White: So you did not receive the document?

Andrew Bosinger: Frankly, if this isn't gonna get approved tonight and it's gonna be kicked further down the road and we're gonna have back and forths, I would like to see proof that we got that. Because I've never seen it. I don't know if it's true or not that it was ever sent to Synagro. Because I certainly never got it. You can stand up here and say anything you want. There's no fact checking going on here.

Kaiba White: Well just, thank you, I appreciate that. Just so you know that is what I'm looking for is some fact checking and I don't have any personal problem with your company and I supported us moving forward with the contract previously. I just have some concerns about the allegations that have been brought up tonight and we don't seem to have access to the people who can fact check any of this and that is the nature of my concern.

Andrew Bosinger: I understand.

Kaiba White: Moving forward in the dark.

Danielle Lord: May I respond to that? And I hope that I'm not stepping out of bounds but the authorization is on the RCA and you can back into anybody's price. It's basic math. It's not like it's a secret, specifically in the situation when there's requirements. So I just want to say that TLM, Synagro, anybody can look at that and back into the authorization of a solicitation.

Kaiba White: Sure. Thanks.

Gerry Acuna: All right, any other questions Commission?

Andrew Bosinger: I would just say Commissioner, no matter what happens, another procurement, whatever, you're always gonna have complaints. Not from Synagro. But this has been every single procurement from where they were involved. I'm sorry, but it's true. It's 'we weren't treated fairly, this wasn't a good process.' They wouldn't be standing here saying that if they'd had the low price. They'd be saying great, good job, let's move.

Kaiba White: I hear that.

Andrew Bosinger: Every project we've been involved with the City for eight years has been protested or attacked by TDS. It's just the nature of the business. It's not gonna stop.

Kaiba White: I hear that and I think that's why, whether it's next month or whenever it is, when these things come to us we need all of the people that can answer these detailed questions here because you're right, these questions are gonna come up every time and so we just need those people here in the room so that we can do our business more efficiently.

Gerry Acuna: Trying to reel this baby back in real quick. Assistant Director...

Adam Gregory: I'd like to say...

Gerry Acuna: Please. No.

Adam Gregory: Please let me respond.

Gerry Acuna: No.

Jonathan Barona: Can I ask a question?

Gerry Acuna: Yes please.

Jonathan Barona: We're going back to the very beginning I guess. On the IFB, you only received the one proposal right? The other one wasn't complete?

Danielle Lord: That's not correct. We received several proposals and we did receive two from TLM. We had an alternate that had grinding and then we had the actual offer that was an apples to apples comparison to all other bidders in this process.

Jonathan Barona: Thank you.

Danielle Lord: Sure.

Adam Gregory: I would just say if they didn't release our proposal to Synagro, why would they cancel the process and if they didn't have ours, why, and if they thought it was fair and this IFB process was fair and open and honest,

Gerry Acuna: Mr. Gregory

Adam Gregory: ...why did they argue before the Attorney General how unfair it would be if their RFP response had been released to us? They're being completely dishonest with you.

Danielle Lord: Every time we, I would like to also say every time there is a solicitation, and this is in regards to what was just mentioned, every time a solicitation is cancelled, that information becomes public and we go through the same process again.

Adam Gregory: Except when it comes to Synagro's proposals.

Gerry Acuna: Please. Please, let's get beyond this.

Danielle Lord: Even Synagro's proposal was made public. Everything is released after.

Adam Gregory: That is not true.

Danielle Lord: You can do a public information request after the solicitation is closed when we're not in an active solicitation and yes sir, you can get it.

Phil Gosh: So I just have a question. If this is a bid on price, if this is a bid on price, and if they bid what they chose to previously, isn't that on them? Wasn't it lowest bid wins the bid? So it's like 'well we didn't, they had our information...' what difference does that make? This was a low bid price. And they chose not to bid the lowest. And now they're saying, 'Well we should do something' and then everybody has to pay for that. I just wonder how healthy that is.

Gerry Acuna: Thank you. Thank you. One last comment please.

Micah King: Thank you Commissioner. Micah King for Husch Blackwell on behalf of Synagro. I just wanted to come up and tell you my history with this case in terms of the information that I saw because the records that you're talking about were sent to my paralegal, and later to me. And when we were told by James Scarboro that some information had been released erroneously, it came as shock to us actually. And I will say that I didn't forward anything to

anybody at Synagro, and they did not have anything that was erroneously released to my knowledge. I'll go back and look, but that is my recollection. In addition, and I would like to see exactly what was released and have this confirmed but, my understanding is that this was information released in response to open records request 42083, and that concerns the hearing examiner's findings in response to TDS' protests. One of their protests. And I do not see any price in that letter and I would just like that cleared up as well.

Gerry Acuna: And I can appreciate that. In fact I was gonna ask, regardless of what happens tonight and I have to go back with Assistant Director Slusher, whatever we vote tonight, that's going to Council on the 1st and they will address it there, unless of course they decide to bring it back for some strange reason. Having said that, I am still curious to have that information also. I mean, if this is the case then we should know that there was an error made and it was our fault. If that's not the case then it's a different issue altogether that we should be aware of. So having said that, again we have a motion on the table. We have a second. Do we have any discussion on the motion? Actually, Gabriel, can you read back the motion please, as stated?

Kaiba White: Commissioner Gattuso, were you asking for an amendment to my motion earlier?

Gerry Acuna: Commissioner Gattuso. Let's read back your motion and then she can...

Kaiba White: Okay. Sorry.

Gabe Gonzalez: Commissioner White motions, recommended to hold off moving on with the contract. Wants the Purchasing Office to come and answer questions. Seconded by Commissioner Blaine.

Gerry Acuna: Would you like to add a friendly?

Kaiba White: I think you were asking about the grinding. The cost of the grinding.

Cathy Gattuso: A friendly amendment?

Gabe Gonzalez: I believe, the Commissioner Gattuso amendment, how does grinding fit into contract?

Cathy Gattuso: I'm sorry what?

Kaiba White: I think what the cost of the grinding.

Gerry Acuna: Correct. The cost to ARR for the grinding, of the grinding.

Cathy Gattuso: Yes. Thank you.

Gerry Acuna: All right so we have a motion, a second, a friendly added. Any further discussion? Hearing no further discussion, all those in favor say aye.

Several Commissioners: Aye.

Gerry Acuna: All those opposed raise your hand. Abstentions. You abstain? All right. Thank you folks.

The Vote:

For: Phil Howry, Joshua Blaine, Melissa Rothrock, Gerry Acuna, Cathy Gattuso, Amanda Masino, Kaiba White, Blythe Christopher de Orive

Opposed: None

Abstentions: Jonathan Barona, Heather-Nicole Hoffman