



City of Austin

Purchasing Office

P.O. Box 1088, Austin, TX 78767

October 4, 2018

Delivered by Email: agregory@texasdisposal.com
and U. S. Postal Service

Adam Gregory
Texas Landfill Management, LLC
P.O. Box 17126
Austin, TX 78760

Subject: Protest Decision – IFB 2200 CDL2003REBID2 – Beneficial Reuse of Biosolids

Dear Mr. Gregory:

The City of Austin Purchasing Office has reviewed your protest dated September 26, 2018. Based on the reasons set forth below, the City finds the Protest contains no legal or factual grounds to substantiate the claims raised. The grounds for your protest are insufficient to schedule a hearing and your protest is denied.

Background

- On August 13, 2018, the City of Austin's Purchasing Office (Purchasing) published solicitation IFB 2200 CDL2003REBID2, for Beneficial Reuse of Biosolids.
- On August 22, 2018, Purchasing received a protest from Texas Landfill Management, LLC.
- On August 31, 2018, Purchasing issued a protest decision in regards to the first protest submitted from Texas Landfill Management, LLC.
- On September 4, 2018, Bids in response to the solicitation were received and opened, one of which was from Texas Landfill Management, LLC.
- On September 14, 2018, Texas Landfill Management, LLC submitted a timely notice of their intent to protest.
- On September 26, 2018, Purchasing received a timely second protest from Texas Landfill Management, LLC. (See attached)

Texas Landfill Management, LLC (TLM) Claim – 1

TLM believes City staff appears to have withheld evidence from the City Council of an Anti-Lobbying violation by Synagro. In summation TLM believes that on two occasions, October 6, 2016 and October

17, 2016, Synagro contacted Monica McClure of the Purchasing Office who TLM states was not the authorized contact for the solicitation.

Additionally, TLM believes the content of the contact with Monica McClure appeared to violate the ALO's communication restrictions.

City Response – 1

There is no Anti-Lobbying violation for Synagro contacting Monica McClure.

Danielle Lord, Procurement Manager, was the initial Authorized Contact Person for RFP 2200 CDL2003. At the time of this communication, Monica McClure, Contract Management Specialist IV, worked for and was under the direction of Danielle Lord. On April 20, 2016, Ms. Lord issued Addendum No. 1 to this solicitation, adding Monica McClure as an additional Authorized Contact Person (See attached). The referenced communication between Synagro and Monica McClure on October 6, 2016 occurred after Ms. McClure was added to the solicitation as an Authorized Contact Person and therefore did not violate the City's Anti-Lobbying Ordinance.

Staff also investigated the content of the contact with Monica McClure and did not find evidence to substantiate a violation.

TLM Claim – 2

TLM believes City staff improperly released TLM's confidential bid price to Synagro.

City Response – 2

None of the information in the proposal from TLM released by the City was marked as confidential. This has been addressed and included in previous protests. See attached protest decision dated August 31, 2018, Claim 1.

The information requested from TLM in their public information request was submitted to the Texas Attorney General for a ruling because unlike TLM's proposal, the contents being requested were marked by Synagro as Confidential. Per the solicitation instructions:

A. Proprietary Information:

- i. All material submitted to the City becomes public property and is subject to the Texas Public Information Act, Chapter 552, Texas Government Code, upon receipt.
- ii. If an Offeror does not desire proprietary information in the Offer to be disclosed, each page must be identified and marked proprietary at time of submittal. The City will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General.
- iii. Failure to identify proprietary information will result in all unmarked sections being deemed nonproprietary and available upon public request.

- iv. For Bids submitted in response to an Invitation for Bids (IFB), the City will not consider any requests to keep the contents of a Bid Sheet Proprietary or Confidential.

TLM Claim – 3

TLM alleges Synagro appears to have falsely certified that they did not have a conflict of interest in their bid documents submitted in response to RFP 2200 CDL2003REBID2. Specifically, TLM alleges that by having a copy of TLM's proposal from the previous solicitation, RFP 2200 CDL2003REBID, that Synagro now had a conflict of interest with the current solicitation, RFP 2200 CDL2003REBID2, and that Synagro's response to Section 0810 V2, Non-Conflict of Interest and Anti-Lobbying Certification Form, that they had no conflict of interest, was a false statement.

City Response – 3

TLM's proposal was not marked as proprietary or confidential and as such was a publicly available document when RFP 2200 CDL2003REBID2 was published. The City is not aware of the receipt of any falsely certified bid documents in regard to this solicitation.

TLM Claim – 4

TLM believes City staff appears to have knowingly accepted false bid documents from Synagro based on the release of TLM's proposal response to RFP 2200 CDL2003REBID.

City Response – 4

City staff did not knowingly accept false bid documents.

TLM Claim – 5

TLM believe that they are the "lowest responsible offerer" to IFB 2200 CDL2003REBID2 based on "total cost concept."

City Response – 5

The City has already addressed this claim, as it was included in TLM's previous protest. (See attached protest decision dated August 31, 2018, Claim 4). The City clearly indicated in the solicitation, and in response to TLM's earlier protest, that bidders were free to include prices for any additional related services in their bids but that the prices for any additional services would not be included in the solicitation's price competition.

Adam Gregory
Texas Landfill Management, LLC
October 4, 2018
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Determination

I find there to be no legal or factual grounds to sustain any of the protest's claims. For these reasons the protest is denied. This decision is final.

Thank you for your interest in doing business with the City of Austin.

Sincerely,



James Scarboro
Purchasing Officer

cc: Matthew Duree, Procurement Manager
Shawn Willett, Deputy Procurement Officer

Attachments: Protest Letter – September 26, 2018
Addendum 1 – RFP 2200 CDL2003
Protest Decision – August 31, 2018



September 26, 2018

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

RE: TLM Protest of IFB CDL2003REBID2

Mr. Duree:

Texas Landfill Management, LLC (TLM) – a sister company to Texas Disposal Systems, Inc. and Texas Disposal Systems Landfill, Inc. – protests IFB CDL2003REBID2. TLM is requesting the Purchasing Office reject Synagro's response to this bid and instead recommend to City Council that it accepts TLM's bid.

To call IFB CDL2003REBID2 compromised would be a compliment. Over the course of nearly 30 months since the first version of this solicitation was issued, TLM has observed a clear, ongoing pattern of conduct by City of Austin staff suggesting an effort to manipulate and usurp authority from the Austin City Council and rig the solicitation review process to advantage the incumbent vendor, Maryland-based Synagro. Never in more than 40 years of doing business in Austin and across Texas have TLM's executives ever witnessed a plainer appearance of impropriety; for the Austin City Council to now adopt staff's recommendation would, TLM believes, represent a spectacular failure of governance.

TLM protests IFB CDL2003REBID2 on the following grounds:

1. CITY STAFF APPEARS TO HAVE WITHHELD EVIDENCE FROM THE CITY COUNCIL OF ANTI-LOBBYING VIOLATIONS BY SYNAGRO.

In December 2016, City of Austin staff appears to have misled the Austin City Council into voting to support a retroactive waiver of the Anti-Lobbying Ordinance (ALO) to cure ALO violations by Synagro that were initiated by staff during the first version of this solicitation while apparently WITHHOLDING DOCUMENTS from the City Council containing evidence of OTHER anti-lobbying violations that were initiated by Synagro, NOT by staff. Based on the evidence in their possession at the time – which was revealed via a public information request only AFTER the December 2016 City Council vote – TLM believes City staff should have disqualified Synagro from this solicitation process. Instead, staff not only appears to have

ignored evidence of ALO violations initiated by Synagro in October 2016 but also to have possibly hidden the evidence from City policymakers. TLM believes the City Council should now be presented with the presumably suppressed evidence and consider whether to act to rescind or amend the December 2016 retroactive blanket ALO waiver for this solicitation. With the waiver rescinded or amended by the Council, TLM believes staff should subsequently find that Synagro violated the ALO in October 2016 and is thus ineligible to respond to IFB CDL2003REBID2.

2. CITY STAFF IMPROPERLY RELEASED TLM'S CONFIDENTIAL BID PRICE TO SYNAGRO.

3. SYNAGRO APPEARS TO HAVE SUBMITTED FALSELY CERTIFIED BID DOCUMENTS TO CITY STAFF.

4. CITY STAFF APPEARS TO HAVE KNOWINGLY ACCEPTED FALSE BID DOCUMENTS FROM SYNAGRO.

In June 2018, City of Austin staff may have violated City policy and the Texas Public Information Act by [improperly releasing](#) the full contents of TLM's confidential low-bid response to the second version of this solicitation to Synagro's lobbyist. As a result, the second version (RFP CDL2003REBID) was cancelled and the third version (IFB CDL2003REBID2) was issued more than two months later. However, the [scope of work and required pricing](#) for the second version and the current, third version are entirely IDENTICAL; as such, staff's release to Synagro's lobbyist of TLM's previous low-bid response for identical services irreconcilably advantaged Synagro, who in fact subsequently lowered their bid price in the third solicitation to beat TLM's improperly revealed previous low bid by approximately 4% (1% outside of the margin that would have allowed the City Council, under state law, to instead select a local vendor like TLM to receive the contract). Further, Synagro's response to the third solicitation included Section 0801 V2 of the City's standard bid documents ("[Non-collusion, non-conflict or interest, and anti-lobbying certification](#)") apparently falsely certifying that Synagro "is not currently aware of any potential or actual conflicts ... which enabled Offerer to obtain an advantage over other Offerers." Knowing that Synagro was improperly in possession of TLM's confidential bid for the identical scope of work contained in the cancelled second solicitation, staff nonetheless accepted Synagro's Section 0801 V2 certification. To cure the improper release of TLM's bid price for the previous identical solicitation, as well as Synagro's false certification of Section 0801 V2 for the third solicitation and staff's knowing acceptance of apparently false documents, TLM believes City staff must now recommend to the City Council to contract with TLM to perform the scope of work based on TLM's low-bid price response to RFP CDL2003REBID.

5. TLM IS THE "LOWEST RESPONSIBLE OFFERER" TO IFB CDL2003REBID2 BASED ON "TOTAL COST CONCEPT."

TLM's response to IFB CDL2003REBID2 included an offer to provide "optional additional services" in the form of on-site waste grinding (necessary to generate bulking agent required to produce the biosolids compost that is the solicitation's objective); it additionally included an ["alternative offer for consideration"](#) containing a bundled price of \$16.99 per ton for both composting and grinding. TLM's calculations indicate that this proposal represents an estimated cost savings to ratepayers of approximately [\\$1M](#) per year. Synagro's proposal includes no such additional offer. TLM's response to IFB CDL2003REBID2 thus meets the City's definition of ["Lowest Responsible Offer"](#) as it results in "the lowest cost to the City in a total cost concept." TLM requests that City staff identify TLM as the ["Lowest Responsible Offerer"](#) for IFB CDL2003REBID2.

Additional details on each complaint follow:

1. CITY STAFF APPEARS TO HAVE WITHHELD EVIDENCE FROM THE CITY COUNCIL OF ANTI-LOBBYING VIOLATIONS BY SYNAGRO.

As indicated above, IFB CDL2003REBID2 is the City staff's third version of Austin Water's solicitation for "beneficial reuse of biosolids." In December 2016, the City Council voted to support a staff recommendation to retroactively waive the requirements of the ALO for the first version of this solicitation in order to cure at least two known ALO violations by Synagro that were believed to be the result of a staff-directed solicitation evaluation process.

As the [Recommendation for Council Action](#) for [Ordinance 20161215-052](#) stated: "Passage of this item would have the effect of holding harmless any offerors that have participated in the City solicitations described in the proposed ordinance who may have unintentionally communicated with City employees or officials. Passage of this item would also prevent such offerors from being disqualified from submitting responses and be eligible for contract awards for these materials or from participating in any future solicitations for these materials."

Based on the [transcript](#) of the City Council discussion, it is indeed plain that Council approval of staff's proposed Ordinance retroactively waiving the ALO for the first version of this solicitation was based on information provided by City staff, AND Synagro, that staff itself was solely responsible for Synagro's ALO violations.

As Mayor Steve Adler noted during the discussion: "I would waive [the ALO] going back because I think [the City] precipitated any problem that might exist." Andrew Bosinger of Synagro similarly noted before the City Council: "What we're talking about ... is whether a meeting was adequately posted or not ... we, Synagro, as the recommended bidder on this, [were] acting at the City's instruction."

However, subsequent to Council's approval of the ordinance retroactively waiving the ALO for the first version of this solicitation, it was indicated via a public information request that Synagro

had at least TWICE violated the ALO in October 2016 INDEPENDANT of the staff-directed RFP evaluation process, and that City staff appears to have deliberately withheld evidence of these violations from the City Council before asking the Council to adopt a blanket retroactive ALO waiver.

As documented in the attached and linked internal City emails:

- On Monday, [October 17, 2016](#), in an email titled “Potential violation of Anti-Lobbying Ordinance,” Monica McClure – a Corporate Contract Administrator in the Financial Services Department and not the authorized contact for the solicitation – documents a phone conversation with Andrew Bosinger of Synagro in which Bosinger recounts multiple instances of direct contact between Synagro’s registered lobbyist, Nikelle Meade, and City officials while the ALO was in effect. While simply the content of the phone call between Bosinger and McClure violated the ALO, the communications described by Bosinger during the call indicate multiple additional violations. McClure’s email (again, titled “Potential violation of Anti-Lobbying Ordinance”) describing the exchange was sent directly to the Purchasing Office’s authorized contact person for the solicitation, Danielle Lord, but neither Lord or Purchasing Officer James Scarboro appear to have undertaken any investigation and failed to inform the City Council of the potential violations.
- On Thursday, [October 6, 2016](#), Andrew Bosinger of Synagro forwarded an email to Monica McClure – again, not the authorized contact person for the solicitation – with an attached memorandum from Synagro’s registered lobbyist, Nikelle Meade, containing content appearing to violate the ALO’s communication restrictions, including conveying “a complaint about the solicitation to which the communication relates.” While the content of the lobbyist’s memorandum was originally directed to authorized contact Danielle Lord, Bosinger’s email forward of the memorandum to McClure resulted in what I believe is an indisputable ALO violation. This email was also forwarded to both Danielle Lord and James Scarboro by Monica McClure, but once again it appears no action was taken and staff failed to inform the City Council of the evidence of the potential violation.

In summary, it is impossible to avoid the appearance that City staff chose in December 2016 to mislead Mayor Adler and the City Council by failing to appropriately inform them of known possible ALO violations by Synagro UNRELATED to staff’s compromised RFP evaluation process, which was instead presented to Council as the SOLE RATIONALE for requesting Council support for a retroactive ALO waiver.

As staff is aware, after the City Council voted in December 2016 to adopt the retroactive ALO waiver for the first version of the solicitation and direct staff to issue the second version, the Council subsequently (in April 2017) voted to temporarily waive the ALO for ALL waste-related solicitations, to accommodate a comprehensive policy review process by the City Council’s Waste Management Policy Working Group. As the second version of the biosolids solicitation (RFP CDL 2003REBID) was not issued until October 2017, the Council’s temporary ALO waiver was then in effect and thus the ALO did not apply to the second solicitation; accordingly TLM did not at that time submit a complaint regarding Synagro’s 2016 ALO violations.

However, after the second solicitation was cancelled as the result of City staff's release of TLM's confidential RFP response to Synagro's lobbyist, staff issued the current IFB CDL2003REBID2 with the Council's revised and re-instated ALO in full effect. This ALO complaint thus became valid again upon Synagro's response to IFB CDL2003REBID2.

Note the previous 2016 version of the ALO disallow respondents who have violated the ALO from responding to "the same or similar solicitation" if the original solicitation is cancelled. TLM maintains that City staff's failure to inform the City Council in December 2016 of known ALO violations by Synagro in October 2016 and to instead request support for a retroactive blanket waiver based on withheld information improperly cured ALO violations by Synagro that were neither "unintentional" nor the result of "acting at the City's instruction." As a result, TLM believes that Synagro is now improperly eligible to respond to IFB CDL2003REBID2.

To cure the deception perpetrated on the City Council by City staff and Synagro, TLM believes City staff must now present the presumed suppressed evidence of Synagro's ALO violations to Mayor Adler and the City Council so they may consider whether to act to rescind or amend the December 2016 retroactive blanket ALO waiver for this solicitation (Ordinance 20161215-052). With the ALO waiver rescinded or amended by the City Council, I think City staff should subsequently find that Synagro violated the ALO in October 2016 and is thus ineligible to respond to the current version of the solicitation, and retract their September 12, 2017 recommendation for award to Synagro.

2. CITY STAFF IMPROPERLY RELEASED TLM'S CONFIDENTIAL BID PRICE TO SYNAGRO.

3. SYNAGRO APPEARS TO HAVE SUBMITTED FALSELY CERTIFIED BID DOCUMENTS TO CITY STAFF.

4. CITY STAFF APPEARS TO HAVE KNOWINGLY ACCEPTED FALSE BID DOCUMENTS FROM SYNAGRO.

As noted, RFP CDL2003REBID was [cancelled](#) in June 2018 during a BAFO process when it was discovered that staff may have violated City policy as well as the Texas Public Information Act and released the contents of TLM's full RFP response, including TLM's confidential bid price, to the registered lobbyist of the staff-recommended incumbent vendor, Synagro. (Note that the BAFO process, which included only Synagro and TLM, had been initiated in May 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.)

As the scope of work and required pricing for IFB CDL2003REBID2 is IDENTICAL to the scope of work and required pricing of RFP CDL2003REBID, staff's release to Synagro's lobbyist of TLM's RFP CDL2003REBID response irreconcilably advantaged Synagro. Indeed

when Synagro responded to IFB CDL2003REBID2, they lowered their RFP CDL2003REBID bid price (from \$16.25 per ton to \$13.93 per ton) to beat TLM's improperly revealed RFP CDL2003REBID low bid (\$14.53 per ton) by approximately 4% (1% outside of the margin that would have allowed the City Council, under state law, to instead select a local vendor like TLM to receive the contract).

Further, Synagro's response to IFB CDL2003REBID2 included Section 0801 V2 of the City's standard bid documents which may have falsely certified that Synagro "is not currently aware of any potential or actual conflicts ... which enabled Offerer to obtain an advantage over other Offerers." With TLM's confidential bid for the IDENTICAL scope of work in RFP CDL2003REBID in hand, Synagro in fact had a demonstrable advantage over TLM.

Indeed, in direct contrast to Synagro's IFB CDL2003REBID2 Section 0801 V2 certification, Synagro's own lobbyist, Nikelle Meade, testified to the nature of Synagro's competitive advantage in responding to IFB CDL2003REBID2 in a August 14, 2018 [memorandum](#) to the Texas Attorney General, requesting that the content of Synagro's response to RFP CDL2003REBID be protected from release by the City of Austin (even after the City had released TLM's response directly to Synagro's lobbyist) by writing:

"The City recently canceled [RFP CDL2003REBID] and has reissued the solicitation for **the very same biosolids contract** through an Invitation for Bids (and "IFB") process, which, like an RFP, is a competitive solicitation process governed by City procurement rules. In addition, we expect that the Requestor, via TDS or TLM, will submit a bid in response to the pending IFB. As a consequence, [Synagro's RFP CDL2003REBID response documents] are comprised of information that, if released, **would give advantage to a competitor or bidder**... The disclosure of the requested information could allow TDS, TLM or other competitors of Synagro to gain insight into Synagro's proprietary solutions and business information. **It would also allow competitors to undercut Synagro in terms of bid price.**"

(After TLM executives learned that TLM's confidential bid in response to RFP CDL2003REBID had been released to Synagro's registered lobbyist via a public information request, TLM submitted a similar request for Synagro's response to RFP CDL2003REBID; this time City staff refused the information release and referred the inquiry to the Texas Attorney General.)

In [rejecting](#) TLM's previous protest of IFB CDL2003REBID2 based on staff's release to Synagro's lobbyist of TLM's RFP CDL2003REBID response and Synagro's resulting competitive advantage, City of Austin Purchasing Officer James Scarboro indicated a view – consistent with City staff's pattern of behavior – that IFB CDL2003REBID2 is "inherently different" from RFP CDL2003REBID because of the distinct solicitation formats. However with even Synagro characterizing IFB CDL2003REBID2 as a "solicitation for the very same biosolids contract," TLM believes the burden should be on City staff to explain to policymakers how the SUBSTANCE rather than the FORMAT of the two solicitations differ. (Note that 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 Council that the specific rationale for cancelling the RFP was the release of TLM’s proposal to Synagro.)

As there is in fact NO distinction in substance, to cure the improper release of TLM’s bid price for the previous solicitation, and Synagro’s apparently false certification of Section 0801V2 for the third solicitation, TLM believes City staff must now recommend to the City Council to contract with TLM for IFB CDL2003REBID2 based on TLM’s RFP CDL2003REBID price.

5. TLM IS THE “LOWEST RESPONSIBLE OFFERER” TO IFB CDL2003REBID2 BASED ON “TOTAL COST CONCEPT.”

As noted, TLM’s response to IFB CDL2003REBID2 included an offer to provide “optional additional services” in the form of on-site waste grinding (necessary to generate bulking agent required to produce the biosolids compost that is the solicitation’s objective); it additionally included an “alternative offer for consideration” containing a bundled price of \$16.99 per ton for both composting and grinding. TLM’s calculations indicate that this proposal represents an estimated cost savings to ratepayers of approximately \$1M per year. Synagro’s proposal includes no such additional offer. TLM’s response to IFB CDL2003REBID2 thus meets the City’s definition of “Lowest Responsible Offer” as it results in “the lowest cost to the City in a total cost concept.” TLM requests that City staff identify TLM as the “Lowest Responsible Offerer” for IFB CDL2003REBID2 and recommend City Council execute a contract with TLM for the reasons described above.

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



**ADDENDUM
CITY OF AUSTIN, TEXAS**

Solicitation: RFP CL2003

Addendum No: 1

Date of Addendum: 4/20/16

This addendum is to incorporate the following changes to the above referenced solicitation:

I. Clarifications:

- I.1 Section 0500, Scope of Work item 3.5 is hereby revised to read as follows:

The Contractor shall provide, install, and maintain onsite scanning technology to accurately measure the volume of biosolids **for invoice quantities. The load scanner will serve as the control point for biosolids measurement. Biosolids shall be removed from the belt press area daily and moved to a staging area. Biosolids removed from the staging area shall be loaded into trucks, scanned and assigned a code for tracking. Tracking codes shall be used to differentiate between biosolids designated for compost, on-site land application, off-site land application or other approved reuse method.** Measurement data from the load scanner shall be provided with the monthly invoice in an excel spreadsheet.

- I.2 Section 0500, Scope of Work item 3.7 is hereby revised to read as follows:

The Contractor shall maintain the biosolids processing and storage areas as directed by the City's Site Contact. **The Contractor shall be responsible for keeping the area around the basin drain valves clear of debris.** Maintenance of these areas shall include, but is not be limited to daily removal of all biosolids from the belt press area, cleaning and building berms necessary to contain the biosolids, and other work needed to ensure the areas are neat, safe, and usable. The Contractor shall store biosolids such that the oldest biosolids can be accessed first for beneficial reuse.

- I.3 Section 0500, Scope of Work item 4.2 is hereby revised to read as follows:

The Contractor shall land apply, if directed by the City, approximately 12,000 cubic yards of biosolids annually onsite at Hornsby on approximately 400 acres. The City will verify the loading rates based on agronomic rate calculations. The Contractor shall ensure that fields are marked for buffers and setbacks. The Contractor shall plan, track, and report cubic yards and dry tons applied per field on a monthly basis. The Contractor shall provide loading, spreading, and any other equipment and personnel necessary to complete this task. The Contractor shall be responsible for annual soil sampling and lab analysis of the onsite applications fields as required by the Hornsby permit. Soil sampling shall be performed in November and results submitted to the City Site Contact no later January 1. **Annual soil sampling is required even if on-site land application is not performed.**

I.4 Section 0500, Scope of Work item 5.2 is hereby revised to read as follows:

The City will allow the Contractor to utilize approximately three acres onsite to receive bulking materials for the Contractor's composting operations at Hornsby. **Grinding is not allowed at the bulk drop off site.** The bulk drop off site shall be fenced with an opaque fence at the Contractor's expense and kept locked except when the Contractor is present. Site security is the responsibility of the Contractor.

II. Questions:

Q1: Will the City accept an annually renewable performance bond?

A1: **An annually renewable performance bond is acceptable.**

Q2: The RFP seems to indicate that invoices will be based on the number of cubic yards removed from the City's Belt Filter Press area, but that volume is to be re-measured prior to leaving the plant for land application on or off the Hornsby Bend Site. Is there an operational reason to re-measure volume for land application that is not required for composting? How does the City intend to resolve differences in the measurement of the amount of biosolids coming off the belt filter press versus contained in trucks hauled to land application? We suggest that the City have a single point and time for measurement of volume that will be used at the agreed basis of payment with the on-site weigh scale as the most accurate and preferred alternative.

A2: **The Contractor shall provide, install, and maintain onsite scanning technology to accurately measure the volume of biosolids for invoice quantities. The load scanner will serve as the control point for biosolids measurement. Biosolids shall be removed from the belt press area daily and moved to a staging area. Biosolids removed from the staging area shall be loaded into trucks, scanned and assigned a code for tracking. Tracking codes shall be used to differentiate between biosolids designated for compost, on-site land application, off-site land application or other approved reuse method. Measurement data from the load scanner shall be provided with the monthly invoice in an excel spreadsheet.**

Q3: In section 3.7 of the scope of work, will the City clarify that direction on maintenance of the site will be "reasonably" provided? As written, the statement provides unlimited discretion to the City – i.e. could direct the Contractor to maintain the site in a manner that is un-attainable.

A3: **AW will not be unreasonable; the sludge needs to be cleared daily from the belt press area and the storage areas kept cleaned up. The way it is being maintained now is acceptable.**

Q4: Will the City provide a summary of any odor or dust complaints experienced at Hornsby Bend during the past two years?

A4: **There has been one odor complaint and no dust complaints.**

Q5: Is the use of one of the basins for green waste receiving allowed?

A5: **Yes. The drop-off of green waste to the basin area by a commercial vehicle is allowed.**

Q6: Will the City allow on-site consumer purchase of compost product?

A6: **On-site sales will be allowed but limited to loads of 6 cubic yards or greater.**

- Q7: Will the City consider selling or leasing its existing composting equipment to any proposer?
- A7: AW will not lease its existing equipment. If AW decides to sell the equipment it will be auctioned “as is” to the highest bidder.
- Q8: Can the proposer use the DilloDirt product name?
- A8: AW has not made a final determination on the use of the DilloDirt name at this time. Proposers should assume it will not be available.
- Q9: On Tab 5, Part C of the Scope of Work, can the City please clarify its objectives for asking for a schedule for handling belt press biosolids at 50%, 75% and 100% of annual production? We would like to understand more clearly so that we may provide an appropriate response. Is the City seeking or considering seeking proposals that contemplate the private party managing less than 100% of the annual production?
- A9: AW realizes there could be a “ramp up” period involved when the Contractor first starts working on site. If that is the case AW would like a timeline or schedule of how long it will take the Contractor to get to where they are processing 50%, 75% and 100% of the biosolids coming off the belt press, and what the plan is for the remainder of the biosolids during that time period.
- Q10: RFP section 3.2 requires the Contractor to be responsible for all permits. The current permit has the City of Austin as the permittee and runs until Oct 31, 2017. With the anticipated term commencing December 1, 2016, can the permit be left under City of Austin? Will future permit terms be left under City or will they need to be permitted under the proposer?
- A10: The City will keep the current permit for Hornsby Bend in the City’s name and when it is time will apply for the renewal. The Contractor will only be responsible for any offsite land application permits.
- Q11 (a-d): Attachment C permit questions:
- a. Page 1 of pdf - Are there any limits on processing dry tons per year. There is a limit on land application that is set at 6.27 dry tons per acre (454 acres for land application).
- A11a: There are no limits in the Hornsby Permit except for onsite land application.
- b. Page 1 of pdf - Who irrigates lagoon supernatant? Is this to be part of the Contractor’s scope?
- A11b: City will continue to run the irrigation process.
- c. Page 23- IX.D. If the Contractor becomes the permittee, is a licensed wastewater operator required to run the compost facility?
- A11c: Not applicable.
- d. Page 23- IX.E – will the proposer be in charge of groundwater assessment and monitoring plan and reporting? Will the City provide copies of existing reports/plans?
- A11d: No. The City will continue to perform all the groundwater sampling and reporting. The reports are available, if they are still needed given the answer to this question we can make them available.
- Q12: Would the City please clarify the statement “Maximum 25 points” at the end of the last paragraph of section 0600, Evaluation Factors and Award?
- A12: The City may decide to conduct interviews and/or visits to the Proposer’s site. A shortlist of Proposers may be asked to attend an interview; specific questions and topics will be provided to the Proposer to answer or clarify. The City may tour the Proposer’s site to view their operations. The Proposer can earn up to an additional 25 points for this

interview and/or site visit. There is a possibility for a total of 125 points instead of just 100 points if the City conducts interviews and/or site visits.

Q13: Will the Contractor invoice and be paid for biosolids composting on a screened cubic yard biosolids or measured curing pile?

A13: No, invoices can only be generated for material that has left the site.

Q14: Will the Contractor have a volume number when the biosolids are taken from the belt press?

A14: The volume measurement will be as the material leaves the staging area.

Q15: The Contractor should not invoice until after PFRP and removal, correct?

A15: Yes, that is correct.

Q16: Will the Contractor's payment be based on the cubic yardage coming off the belt filter press, regardless of any changes up or down?

A16: The Contractor shall provide, install, and maintain onsite scanning technology to accurately measure the volume of biosolids for invoice quantities. The load scanner will serve as the control point for biosolids measurement. Biosolids shall be removed from the belt press area daily and moved to a staging area. Biosolids removed from the staging area shall be loaded into trucks, scanned and assigned a code for tracking. Tracking codes shall be used to differentiate between biosolids designated for compost, on-site land application, off-site land application or other approved reuse method. Measurement data from the load scanner shall be provided with the monthly invoice in an excel spreadsheet.

Q17: If there is a volume increase, will the Contractor be paid for the higher volume?

A17: Yes.

Q18: The Contractor's payment on the outgoing material is for the biosolids only irrespective of any carbon source amendments?

A18: Correct, the payment is for biosolids only.

Q19: So 100 cubic yards [of biosolids] is 100 cubic yards [paid] whether it's 50 or 200 [cubic yards in volume] going out the door?

A19: Correct.

Q20: How will the material be measured?

A20: The City requires load scanning technology in the scope of work.

Q21: Is there a procedure for the verification of the accuracy of the load scanning technology?

A21: The manufacturer's recommended procedure for calibration will need to be followed.

Q22: How will the City verify that the load scanner the Contractor uses is as accurate as the LoadScan LVS 2?

A22: If the Contractor chooses to use a load scanner other than the LoadScan model, then he must submit third party accuracy testing results on the model proposed. If the manufacturer does not have a report of documented accuracy, then the Contractor must submit a proposed testing protocol for City approval. All costs of accuracy testing will be borne by the Contractor.

- Q23: Will the City expect the Contractor to do grinding on the 3 acres, or to transfer to another place to do grinding?
A23: Grinding can be done in one of the basins or pad area designated for the Contractor's use.
- Q24: Can the Contractor grind at Hornsby at all?
A24: Yes.
- Q25: The Contractor must transfer the material offsite to sell it from somewhere else, correct?
A25: Bulk sales with a minimum load size of 6 cubic yards or more can occur at Hornsby
- Q26: Will the Contractor be required to renew TCEQ permit?
A26: No. AW will continue to be responsible for renewing the TCEQ permit.
- Q27: Will the Contractor be required to renew the Storm Water Pollution Prevention Plan?
A27: No, however if the bulk drop off site requires any additional permitting that will be the responsibility of the contractor.
- Q28: What is the City's plan for ongoing maintenance on the drain areas for basins 1-5?
A28: The City will operate and maintain the lift station that drains those areas. The priority is to clear out any standing water in Basin 2.
- Q29: What is the Contractor required to do as far as maintaining the drains of the basins so that they function?
A29: It is the Contractor's responsibility to keep area around the telescoping valves clear of debris. The City will operate the valves.
- Q30: So essentially, it is from the belt press and beyond that the Contractor is responsible for keeping clean?
A30: Yes.
- Q31: There will be up to 50,000 cubic yards when the Contractor arrives on site. Is the Contractor allowed to store existing 50,000 cubic yards plus an additional 50,000 cubic yards that can be stored?
A31: Yes. In the first year the Contractor must address the 50,000 cubic yards that are already stored onsite, plus move enough offsite to not exceed a total of 100,000 cubic yards onsite at any one time in the first year of the contract. Subsequent years the contractor is limited to having 50,000 cubic yards onsite at any time.
- Q32: Does the Contractor have a role in determining when an emergency has taken place and the biosolids can be transferred to a landfill?
A32: No. AW will determine if an emergency transfer of biosolids to a landfill is necessary.
- Q34: Regarding Section 0400, Paragraph 10.A.: What level of discretion does each party retain to reject a price change request that is compliant with the provisions of Paragraph 10?

- A34: Requests for price escalations that are supported by one of the indexes identified in the 0400 and in accordance with the terms stated will be granted by the City. Requested adjustments will be rejected if they do not correspond with the Contractor's direct costs.
- Q35: The City's intent is to limit landfill use to emergencies, but the landfill pricing can only be used when landfilling is requested by the City. Does this mean that the Contractor cannot conclude on its own that an emergency situation exists requiring landfill disposal? Can landfilling be used as part of the ramp-up plan?
- A35: Only the City can designate when it is time to utilize the landfill option. Landfill is not an approved method of disposal since it is not beneficial reuse and in compliance with the Zero Waste Ordinance. Therefore it is not approved to be used in the "ramp-up" plan.
- Q36: Bidder requests that the City pay demobilization costs, costs of breaking subcontracts (including equipment leases) and other expenses incurred by Contractor should the City exercise its termination for convenience right set forth in Section 300, paragraph 28.
- A36: This should be notated on the Purchasing Office Exception Form with a justification and suggested alternate language.
- Q37: Regarding Section 0500: Bidder understands the minimum removal requirements. Is there a maximum amount that the Contractor would be required to remove?
- A37: The contractor can assume the maximum will be 135,000 cubic yards in a calendar year.
- Q38: Please confirm that any contaminated material or other material that does not meet land application legal requirements is beyond the scope of work.
- A38: The contractor is only required to process Class B sludge.
- Q39: Is the Contractor required to, or may they elect to, remove the load scanning technology at the end of the contract term?
- A39: The Contractor is responsible to move the load scanning equipment off site at the end of the contract term.
- Q40: Bidder requests that the discovery of any hazardous substances/materials (as defined by applicable law) at the site that were not identified in the RFP be accepted from Section 0300, Condition 9. For this scope of work, bidder has neither the opportunity nor the need to examine the site sufficiently to determine if this risk exists. If it does exist, it should be the City's responsibility to address.
- A40: This should be notated on the Purchasing Office Exception Form with a justification and suggested alternate language.

III. **Additional Contacts:** Additional Authorized Contacts have been added to this solicitation for contractual and technical issues. Additional Authorized Contacts include:

Primary Contact (no change):
Danielle Lord
Corporate Purchasing Manager
(512) 974-2298
Danielle.Lord@austintexas.gov

Secondary Contact (no change):

Joshua Pace

Buyer II

(512) 974-3127

Joshua.Pace@austintexas.gov

Contract Administrator:

Monica McClure

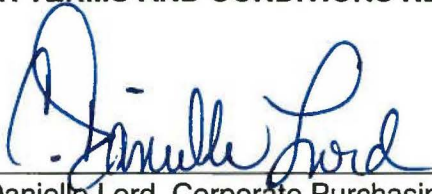
Contract Administrator

(512) 974-1714

Monica.McClure@austintexas.gov

- IV. Attached is the sign-in sheet from the Pre-Proposal Meeting on April 18, 2016 at 1:00 PM.
- V. Attachment B (Volume) of solicitation CDL2003 is hereby updated to include 2016 volumes and is attached to Addendum 1 as a reference.
- VI. **ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.**

APPROVED BY:



Danielle Lord, Corporate Purchasing Manager
Purchasing Office, (512) 974-2298

4/20/16

Date

ACKNOWLEDGED BY:

Name

Authorized Signature

Date

RETURN ONE COPY OF THIS ADDENDUM TO THE PURCHASING OFFICE, CITY OF AUSTIN, WITH YOUR RESPONSE OR PRIOR TO THE SOLICITATION CLOSING DATE. FAILURE TO DO SO MAY CONSTITUTE GROUNDS FOR REJECTION.

PURCHASING OFFICE MEETING SIGN-IN SHEET

RFP & Description: CDL2003- Beneficial Reuse of Biosolids

Meeting Date: April 18, 2016

Buyer: Danielle Lord

Corporate Purchasing Manager

Place/Room: Hornsby Bend Biosolids Management Plant
Room: Auditorium
2210 FM 973
Austin, TX 78725

Please Print Legibly

Name	Company/Agency/Dept.	Phone	Email
Richard McHale	COA-ARR	4-4301	richard.mchale@austintexas.gov
Donald Hardee	COA-ARR	974-4345	donald.hardee@austintexas.gov
Darrell Richmond	AWU-Parcel	972-0313	darrell.richmond@austintexas.gov
Andrew Bosinger	Synagro	410 271 1020	abosinger@synagro.com
Craig Geyer	Synagro	520 631 4982	cgeyer@synagro.com
CRAIG MAULTSBY	Synagro	512 543 0755	cmaultsby@synagro.com
Charlie Golden	DWS	494 890 1698	Charlie.golden@denotewater.com
Allen Click	Allen Click	512-422-8850	allen.click@gmail.com
John Vindana	LHC	512-556-1313	JGVNTX@Hotmail.com
Irving Lopez	COA	972-1972	Irving.Lopez@AustinTexas.gov
Adam Gregory	TDS		agregory@texasdisposal.com
Ryan Hobbs	TDS		RHOBBS@ " "
PAUL GREGORY	TDS	512-653-2061	pgregory@texasdisposal.com

Revised 8/4/2014

PURCHASING OFFICE MEETING SIGN-IN SHEET									
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RFP & Description: CDL2003- Beneficial Reuse of Biosolids

Meeting Date:	April 18, 2016
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Buyer: Danielle Lord
Corporate Purchasing Manager

Place/Room:	Hornsby Bend Biosolids Management Plant Room: Auditorium 2210 FM 973 Austin, TX 78725
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Please Print Legibly

Name	Company/Agency/Dept.	Phone	Email
Judy Musgrove	AIR PROCESS ENGINEERING	972-0157	JUDY.MUSGROVE@AUSTINTEXAS.GOV
Lisa Bortman	AIR PROCESS ENGINEERING	972-1954	LISA.BORTMAN@AUSTINTEXAS.GOV
James Bennett	Air Division Manager	972-1461	james.bennett@austintexas.gov
Ken Lockard	Air Hobby Bird	972-1953	Kenneth.Lockard"

ATTACHMENT B-VOLUME

Hornsby Bend BMP Belt Press Summary

Year	Month	Avg % TS	Dry Tons	Wet Tons	Approx. Volume* Cubic Yards
2013	Jul	17.9	1,902	10,626	12,612
	Aug	17.4	1,705	9,799	11,631
	Sep	17.2	1,503	8,738	10,372
	Oct	17.1	1,641	9,596	11,390
	Nov	18.2	2,098	11,527	13,682
	Dec	18.7	2,002	10,706	12,707
Total		17.8	10,851	60,993	72,395

Year	Month	Avg % TS	Dry Tons	Wet Tons	Approx. Volume* Cubic Yards
2014	Jan	15.7	1,850	11,783	13,986
	Feb	15.1	1,600	10,596	12,577
	Mar	15.2	1,434	9,434	11,198
	Apr	15.5	1,672	10,787	12,804
	May	15.4	1,399	9,084	10,783
	Jun	16.0	1,361	8,506	10,096
	Jul	16.0	1,116	6,975	8,279
	Aug	16.6	1,489	8,970	10,647
	Sep	18.0	1,393	7,739	9,186
	Oct	18.0	1,670	9,278	11,012
	Nov	17.3	1,458	8,428	10,003
	Dec	18.1	1,539	8,503	10,092
Total		16.4	17,981	110,083	130,663

Year	Month	Avg % TS	Dry Tons	Wet Tons	Approx. Volume* Cubic Yards
2015	Jan	17.4	1,275	7,328	8,697
	Feb	18.3	1,147	6,268	7,439
	Mar	17.8	1,393	7,826	9,289
	Apr	17.6	1,391	7,903	9,381
	May	18.0	1,326	7,367	8,744
	Jun	19.2	1,404	7,313	8,680
	Jul	19.2	1,625	8,464	10,046
	Aug	20.7	1,651	7,976	9,467
	Sep	19.7	1,762	8,944	10,616
	Oct	18.2	1,483	8,148	9,672
	Nov	18.8	1,608	8,553	10,152
	Dec	18.3	1,429	7,809	9,269
Total		18.6	17,494	93,898	111,451

Year	Month	Avg % TS	Dry Tons	Wet Tons	Approx. Volume* Cubic Yards
2016	Jan	17.1	1,239	7,256	8,612
	Feb	17.5	1,413	8,076	9,586
	Mar	17.2	1,395	8,111	9,627

* Volume estimates are based on 1 cubic yard = 1685 pounds of biosolids



City of Austin

Purchasing Office

P.O. Box 1088, Austin, TX 78767

August 31, 2018

Delivered by Email: agregory@texasdisposal.com
and U.S. Postal Service

Texas Landfill Management, LLC
ATTN: Adam Gregory
P.O. Box 17126
Austin, TX 78760

Subject: Protest Decision – IFB CDL2003REBID2 – Beneficial Reuse of Biosolids

Dear Mr. Gregory:

The City of Austin Purchasing Office has reviewed your protest dated August 22, 2018. Based on the reasons set forth below, the City finds the Protest contains no legal or factual grounds to substantiate the claims raised. The grounds for your protest are insufficient to schedule a hearing and your protest is denied.

Background

- On August 13, 2018 the City of Austin's Purchasing Office (Purchasing) published solicitation IFB CDL2003REBID2 for Beneficial Reuse of Biosolids.
- On August 15, 2018, the City held a Pre-Bid Conference regarding IFB CDL2003REBID2, at which Texas Landfill Management, LLC (TLM) was in attendance.
- On August 22, 2018 Purchasing received a protest from TLM.

TLM Claim – 1

TLM believes 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, thus staff's release to Synagro's lobbyist of TLM's RFP CDL2003REBID response irreconcilably advantages the incumbent vendor and perhaps other respondents.

City Response – 1

There is no requirement that new solicitations be substantially different than previously cancelled solicitations. That said, in this case the previous solicitation was a Request for Proposals (RFP), which is inherently different than the current solicitation which is an Invitation for Bids (IFB). Unlike an RFP, which differentiates offerors based on their proposed approach to provide the services needed by the City, their qualifications and their price, the IFB prescribes the specific services to be performed and only differentiates offerors based on price. Although there may be similarities between the previous solicitations scope and pricing requirements, the competitive process within which these requirements are applied is completely different.

TLM Claim – 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.

City Response – 2

“Local Business Presence” has been removed from the solicitation per Addendum 5, issued August 30, 2018 and included the removal of the Local Business Presence form.

TLM Claim – 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.

City Response – 3

Please see City Response – 2.

TLM Claim – 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.

City Response – 4

The requirements set forth in the solicitation's scope of work are based on the City's needs as determined by the customer department, Austin Water. In accordance with the solicitation's instructions, section 0600 Price Sheet – Category 3 Information Only-Optional Additional Services or Products, offerors may include in their bid any prices for additional related products or services.

Determination

I find there to be no legal or factual grounds to sustain any of the protest's claims. For these reasons the protest is denied. This decision is final.

Thank you for your interest in doing business with the City of Austin.

Sincerely,



James Scarboro
Purchasing Officer

cc: Matthew Duree, Procurement Manager
Shawn Willett, Deputy Procurement Officer