



TEXAS DISPOSAL SYSTEMS

TEXAS DISPOSAL SYSTEMS, INC. • TEXAS DISPOSAL SYSTEMS LANDFILL, INC.

Late Backup

Exhibit 16

#19

P.O. BOX 17126
AUSTIN, TEXAS 78760-7126
512-421-1300
512-243-4123 (FAX)
www.texasdisposal.com

April 10, 2013

City of Austin Purchasing Office
Attn: Dolores Castillo, Senior Buyer
Municipal Building
124 West 8th Street, Room 310
Austin, Texas 78701

**RE: City Council Agenda Item 19, Austin City Council, 4/11/13, Solicitation No. DKC0093
ZWAC Agenda Items 3b and 3c ; Management & Disposal of Class 2 Industrial & Special Wastes**

Ms. Castillo:

This letter contains the initial TDS response to the Council Question and Answer, which includes Bob Gedert's memo and the Chief Sustainability Officer's statement and which was posted today to Councilmember Morrison's question, "Have the Director of ARR and the Sustainability Officer reviewed this contract for management and disposal of waste for Austin Energy? What was the outcome of that review?" It also contains the TDS response to the Recommendation for Council Action very specifically and attachments responding to both the RCA and the posted statement and memo. Please see attached documents.

I am very disappointed that the leaders of the City's staff overseeing the Zero Waste program have reported that Austin Energy's identified waste materials "are not suitable for recycling, composting, or beneficial reuse" and that, "No diversion opportunities were identified" through their review. TDS is very pleased to report a 46.9% diversion from landfill disposal of the 3,364.7 tons of materials generated by Austin Energy and hauled by TDS and Austin Energy to the TDS landfill over the past 49 months. Please see the TDS diversion report and photograph in the documents attached to the RCA, along with an explanation of this diversion.

The Class 2 Non-Hazardous Industrial and Special Waste waste stream shipped under this contract is shipped almost exclusively in roll-off dumpsters and is separate and apart from the Conditionally Exempt Small Quantity Generator waste generated by Austin Energy. While the City can self-classify non-hazardous waste to be managed and disposed as a hazardous waste, this is not required.

Austin Energy has manifested all loads sent to the TDS landfill, composting and recycling facility over the past 49 months and their staff has been diligent in classifying and documenting the waste loads. TDS is also diligent in properly managing this waste stream and has diverted the materials recycled, composted and beneficially reused, as allowed under the bid and contract. I am very surprised to learn that the

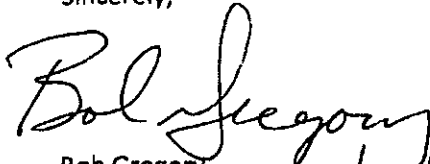
staff is considering classifying these wastes as hazardous. TDS has a long history of protecting the environmental integrity of its landfill. I would be most interested to know whether Austin Energy or Mr. Gedert intends to reclassify this waste as hazardous.

Regarding Mr. Gedert's report that, "The City (through ARR) is coordinating existing City generated solid waste contracts to expire in 2015 to support a consolidated city-wide solid waste material contract," I would like to seek a clarification as to whether that includes the City's intention to cancel the thirty year long term contract the City now has with TDS. If so, ZWAC and Council should know, since the City transports all of the solid waste it currently collects to the TDS landfill, and could ship all of the Austin Energy generated Class 2 Non-Hazardous Industrial and Special Waste under that same contract, as special waste.

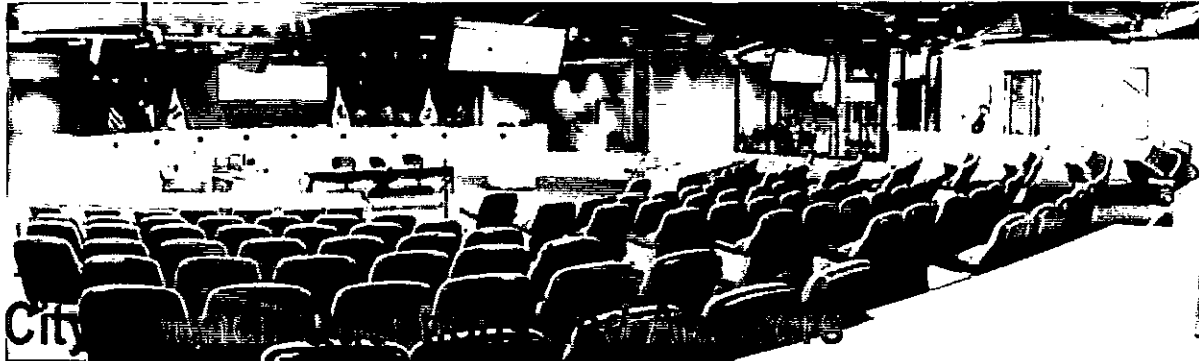
My comments continue on the attached document.

TDS respectfully requests that you share this letter and attachments with City Council members and City Management prior to the Council consideration of Agenda Item 19. Please contact me, if you have any questions.

Sincerely,


Bob Gregory
President and CEO
Texas Disposal Systems, Inc.

by: Adam Gregory



**City Council Questions and Answers for
Thursday, April 11, 2013**

These questions and answers are related to the
Austin City Council meeting that will convene at 10:00 AM on
Thursday, April 11, 2013 at Austin City Hall
301 W. Second Street , Austin, TX



**Mayor Lee Leffingwell
Mayor Pro Tem Sheryl Cole
Council Member Chris Riley, Place 1
Council Member Mike Martinez, Place 2
Council Member Kathie Tovo, Place 3
Council Member Laura Morrison, Place 4
Council Member William Spelman, Place 5**

The City Council Questions and Answers Report was derived from a need to provide City Council Members an opportunity to solicit clarifying information from City Departments as it relates to requests for council action. After a City Council Regular Meeting agenda has been published, Council Members will have the opportunity to ask questions

of departments via the City Manager's Agenda Office. This process continues until the final report is distributed at noon to City Council the Wednesday before the council meeting.

DRAFT REPORTS ARE SUBJECT TO CHANGE WITHOUT NOTICE

QUESTIONS FROM COUNCIL - None at this time

1. Agenda Item #11

- a. QUESTION: a) Does AE currently have an accounting system that is based on the standard accounts promulgated by the Federal Energy Regulatory Commission? If not, what are the advantages to making changes that would comply with this? b) Is Article 5 necessary given that it does not describe a change from current practice? c) Please explain why the January 2014 and October 2014 dates were chosen instead of earlier dates? COUNCIL MEMBER SPELMAN
- b. ANSWER: See attachment.
- c. QUESTION: a) When the resolution came before Council on 2/14, staff included a list of expenditures for the last several years so that Council could review whether any would have triggered a Council vote under a \$100 million threshold. Please republish that information through the Q/A process. b) Does this ordinance provide for expenditures that cumulatively add up to \$100 million to trigger Council approval? c) This item does not yet include a fiscal note. Please list the components that would require the City to incur costs beyond those currently incurred (i.e. contracting with a professional search firm, board member stipends, etc.) and, when available, provide estimates for those costs on an annual basis. d) The original resolution specifies that Council should retain authority over rates. Section 15-13-43 suggests that while Council would retain that authority, it would require a vote of Council to trigger a review of the board's actions regarding rates. Please verify whether that understanding is accurate, i.e. that rate recommendations would not necessarily come to Council for review. COUNCIL MEMBER TOVO
- d. ANSWER: See attachment.

2. Agenda Item #13

- a. QUESTION: In the midyear budget work session there was discussion about the possibility of not spending the full amount requested as the local match for the 9% tax credit projects - depending on what projects gain final state approval. Is this part of the plan for the \$10M? COUNCIL MEMBER SPELMAN
- b. ANSWER: Of the \$7 million reserved for rental assistance, \$4.5 million will

be reserved to assist in leveraging potential successful applications that are awarded tax credits through the Texas Department of Housing and Community Affairs.

3. Agenda Item #19

- a. QUESTION: Have the Director of ARR and the Sustainability Officer reviewed this contract for management and disposal of waste for Austin Energy? What was the outcome of that review? COUNCIL MEMBER MORRISON
- b. ANSWER: See attachment.

4. Agenda Item #37

- a. QUESTION: The Austin Playhouse has requested that Council grant an extension through May. If they can meet that deadline, would there be any money available to assist with their request? COUNCIL MEMBER TOVO
- b. ANSWER: Pending


5. Agenda Item #39


- a. QUESTION: On March 5, City Council received a memo outlining the timeframe form the special events ordinance stakeholder process. Is the current process on schedule? If not, Please provide an updated timeline for the review process. COUNCIL MEMBER TOVO
- b. ANSWER: Pending

6. Agenda Item #45

- a. QUESTION: Please confirm that without legislation such as that currently being considered in the state legislature, a change in utility governance would otherwise require voter approval. COUNCIL MEMBER TOVO
- b. ANSWER: The Law Department will answer by separate memo and be prepared to discuss the issue in the executive session scheduled for April 11, 2013.

END OF REPORT - ATTACHMENTS TO FOLLOW

 *The City of Austin is committed to compliance with the Americans with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request.*

 *For assistance please call 974-2210 OR 974-2445 TDD.*



Council Question and Answer

Related To	Agenda Item # 19	Meeting Date	April 11, 2013
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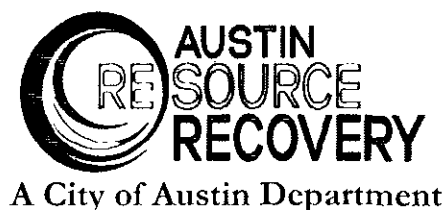
Additional Answer Information

The following statement was received from Chief Sustainability Officer Lucia Athens:

"I have not reviewed the contract. I was not asked to. However, I would defer to ARR regarding any review. I have looked at their comments and they look quite thorough. I support their review.

ARR is the authority on waste disposal issues. Their opinion on waste disposal issues represents the most sound technical advice the City could provide. If there were a broader sustainability issue that ARR was not able to address, I am sure they would consult with me before issuing a recommendation."

The following memo was received from Austin Resource Recovery Director Bob Gedert:



MEMORANDUM

To: Larry Weis, General Manager, Austin Energy
Cheryl Mele, Chief Operating Officer, Austin Energy

CC: Robert D. Goode, Assistant City Manager

From: Bob Gedert, Director
Austin Resource Recovery (ARR)

Subject: Austin Energy Special Waste Hauling/Disposal Contract

Date: April 8, 2013

Re: AE Industrial Class 2, Municipal and Special Waste Disposal

The purpose of this memo is to summarize the Austin Resource Recovery review of the AE disposal contract, as requested by City Council, in regards to any possible waste diversion opportunity, a review of the disposal environmental provisions, and determination of the requirement for ZWAC review.

Type of Waste Stream:

Austin Energy generates non-hazardous Special Wastes that are not suitable for dumpster disposal as general plant trash. These wastes include used treated wood utility poles, soil contaminated with <1500ppm TPH, soil contaminated with mineral oil from transformers with >1500ppm TPH soils (as permitted by TCEQ), demolition debris, Class 2 wastewaters, rust, spent desiccants, unused solid chemical products, no-pcb bushings/capacitors and asbestos.

Diversion Opportunities:

Materials identified above are not suitable for recycling, composting, or beneficial reuse. No diversion opportunities were identified through this review.

Environmental safeguards:

The bid documents and the subsequent contract language includes the appropriate waste documentation (through required manifests) and City's right to perform environmental audits. The designated facility has the proper permits from TCEQ to handle this type of Special Wastes.

Austin Energy, as generator of this waste stream, is properly classified as a Conditionally Exempt Small Quantity Generator (CESQG). The expected quantity and types of wastes covered by this contract is within the range permissible by state and federal law.

Zero Waste Advisory Commission (ZWAC) Review:

The waste stream identified is under the purview of the ZWAC as noted in the Commission's by-laws. This contract is scheduled for ZWAC review and recommendation on April 10, 2013.

Consolidation of city waste-hauling contracts:

The City (through ARR) is coordinating existing City generated solid waste contracts to expire in 2015 to support a consolidated city-wide solid waste material contract. The type of waste stream identified in the AE contract cannot be combined with other City general solid waste (dumpster) contracts, due to its special regulatory characteristics.

The City (through ARR) is coordinating existing City hazardous waste contracts to expire in 2015 to support a consolidated city-wide hazardous waste material contract. It is currently uncertain that the Special Waste generated by AE could be combined in the city-wide Hazardous Waste disposal contract. Further research is required to determine if Special Waste streams could be included in a Hazardous Waste contract.

Recommendation

I recommend no changes to the bid documents and subsequent contract. If the special waste streams identified in this contract can be combined in a City-wide consolidated hazardous waste disposal contract (undetermined at this time), then I recommend an expiration of the base contract term of September 30, 2015.

April 10, 2013

**Austin Energy's Class 2 Non-Hazardous Industrial and Special Waste Disposal IFB
on 4/10/13 ZWAC Agenda and Item 19 on 4/11/13 City Council Agenda**


TDS comments concerning the April 11, 2013 Austin City Council Agenda Item No. 19, and the April 10, 2013 ZWAC Agenda Items 3b and 3c. Please see attached Recommendation for Council Action with numbers marked to correspond to the points numbered below:

- 1) TDS believes that Allied/BFI was not responsive to the Austin Energy Management and Disposal of Class 2 Non-Hazardous Industrial and Special Waste IFB Solicitation No. DKC0093, for the following reasons:
 - Allied does not have the ability to receive the Austin Energy Class 2 and special waste for the full duration of the term of the proposed contract and the three one-year extension options, which staff is requesting ZWAC and Council pre-approve payment for now, and leave the decision as to whether to execute the contract extension options to the City Manager. As required in the bid; "To be eligible for this contract, the Contractor shall, at a minimum, own or operate a landfill permitted to accept the City's waste listed under this task." The Rule 11 Agreement allows Austin's City Manager or his designee to alter, amend or modify the Agreement without Council authorization (see pages 2 and 6 of the Rule 11 Agreement, attached.)
 - The Allied/BFI Sunset Farms Landfill currently has a permit requirement with the TCEQ and a Rule 11 Agreement with the City of Austin requiring the landfill to close to the receipt of waste on or before November 1, 2015. This means Allied would not have an Austin landfill to haul the City's waste into or to receive the City's waste direct hauled by Austin Energy during the final 2.5 years of the contract term the staff seeks approval for payments. Even if the staff allowed BFI to haul the Austin Energy waste to the Waste Management Austin Community Landfill under a subcontract with WMI, that would not address the waste that might be transported by Austin Energy or another contractor on their behalf. We believe the City Council should not pre-approve payments for contract extension periods beyond the required November 1, 2015 landfill closing deadline, and leave it up to the City Manager to decide whether to assist Allied in obtaining the approval from the TCEQ to not close their landfill.
 - Allied submitted a "No Bid" on the line item, and did not bid on one of the bid categories (the only bid item specified to be recycled was scrap wood – from broken pallets, crates, or construction debris), and staff reported to City Council that all items had to have bids for the bidder to be considered responsive. See staff's answer to Councilmember Tovo's question attached.

- Allied apparently intends to meet the City's needs over the final 2.5 years of the staff proposed BFI contract funding period by subcontracting the disposal services to the Waste Management, Inc. (WMI) Austin Community Landfill, even though Allied apparently did not identify WMI or the Austin Community Landfill as a subcontractor in its bid proposal, and the bid specifies that "AE requires the turn-key services of a waste disposal contractor to transport and dispose of Industrial Class 2 and Non-Hazardous Special Wastes generated." The bid also specifies, "The waste management services required by the City are described below and will be awarded to a single contractor."
- 2) Allied stated during the March 7th Council meeting that it has an agreement with Waste Management, Inc. to use its Austin Community Landfill after Allied has to close its landfill and that this subcontract can be used to meet the needs of Austin Energy when Allied closes its landfill. However, Allied apparently did not identify WMI as a subcontractor in its bid, and the bid does not allow WMI to step in as a subcontractor to accept waste hauled directly to their landfill by Austin Energy, nor to allow Allied to haul Austin Energy's waste to a landfill not identified in the bid. See the transcript of this discussion during the March 7, 2013 City Council Agenda Item 26. We believe the City Council should not pre-approve payments for contract extension periods beyond the required November 1, 2015 landfill closing deadline, and leave it up to the City Manager to decide whether to assist Allied in obtaining the approval from the TCEQ to not close the landfill.
 - 3) See the response to 2 above, and see the requirement in the bid; "To be eligible for this contract, the Contractor shall, at a minimum, own or operate a landfill permitted to accept the City's waste listed under this task." The Allied landfill will be closed approximately half way *through the first 12 month contract extension, according to the Rule 11 Agreement.*
 - 4) There was not "Adequate Competition." Two nonresponsive bids were received. TDS inadvertently left out pages 2 and 3 of a three page price quote sheet, and Allied did not bid the one line item specified for recycling, and failed to notify the City that its landfill will not be open to receive the waste beyond November 1, 2015.
 - 5) The staff has revised their Price Analysis justification from, "The pricing offered represents a 16% increase to the last contract awarded in March 2009," when this item went before the EUC and Council last month. Now, staff reports the increase in rates as, "The pricing offered represents a 6% increase to the last contract awarded in March 2009. The increase can be attributed to increased disposal costs from reduced landfill space and PPI increases totaling 7.4% over the last four years for this commodity." TDS assumes this revised price increase explanation is intended to encourage ZWAC and Council to accept the higher rates as reasonable. However, the staff ignores the Allied "Overweight fee maximum per load is 10 tons. Anything over 10 tons will be charged \$.40 per pound." This Allied fee is noted on page 2 of Allied's 3-page price quote sheets under "Other – List any other charges not included in above line items that are necessary for completion of waste mgmt. task. Please specify each

additional", and will apparently apply to all loads, whether hauled to the landfill by Austin Energy or by Allied. This is an \$800.00 per net ton overweight penalty to be imposed by Allied if this bid is approved. Such an overweight fee would have cost Austin Energy an additional \$93,077.60 over the four year life of the existing TDS contract, had the penalty applied to the loads generated over the past four years, or an average of \$22,794 per year. This overweight fee calculation, if added to the staff estimated 16% annual increase in cost would raise the cost difference to approximately 26% higher per year comparing the TDS 2009 rates to the 2013 proposed Allied rates for a new contract. The staff has not reported these potential added costs to ZWAC or Council, even though the "overweight fee" is identified on page two of the Allied bid price sheets. See attached report.

- 6) Staff gives no weight to the fact that Allied did not bid the one very small estimate (200 cu. yds. per year) of materials designated by Austin Energy to be recycled, and that TDS recycled, composted and diverted for reuse significant volumes of Austin Energy's waste over the past four years, and that this volume of waste represents a large portion of the waste generated by the City of Austin and should be considered as a priority for recycling as part of the City's Zero Waste goals. See the TDS report of waste material generated by Austin Energy over the past four years (3,364.7 tons), as well as the TDS estimate of those materials recycled, composted and diverted for reuse at the TDS southeast Travis County landfill, recycling and composting facility (approximately 1,577.1 tons), for a waste diversion rate of 46.9%. Also, see the attached photograph of approximately 10,000 pieces of Austin Energy utility poles diverted from landfill disposal and stored on the TDS facility for use on site in fencing and safety barriers. TDS looks for every opportunity to safely and efficiently recycle, compost and repurpose all Austin Energy materials, as allowed within the contract.

<div style="text-align: center;">  <h2 style="margin: 0;">AGENDA</h2> </div>				
Recommendation for Council Action (Purchasing)				
Austin City Council	Item ID:	22500	Agenda Number	19.
Meeting Date:	April 11, 2013			
Department:	Purchasing			
Subject				
Authorize award and execution of a 24-month requirements service contract with ALLIED WASTE SERVICES # 843, for the management and disposal of industrial Class 2 non-hazardous waste for Austin Energy in an estimated amount not to exceed \$529,640, with three 12-month extension options in an estimated amount not to exceed \$264,820 per extension option, for a total estimated contract amount not to exceed \$1,324,100.				
Amount and Source of Funding				
Funding in the amount of \$132,410 is available in the Fiscal Year 2012-2013 Operating Budget of Austin Energy. Funding for the remaining six months of the original contract period and extension options is contingent upon available funding in future budgets.				
Fiscal Note				
There is no unanticipated fiscal impact. A fiscal note is not required.				
Purchasing Language:	Lowest responsive bid of two bids received.			
Prior Council Action:				
For More Information:	Dolores Castillo, Sr. Buyer/512-322-6466			
Boards and Commission Action:	Not approved by the Electric Utility Commission on a 1-2-2 vote.			
Related Items:				
MBE / WBE:	This contract will be awarded in compliance with City Code Chapter 2-9C (Minority Owned and Women Owned Business Enterprise Procurement Program). No subcontracting opportunities were identified; therefore, no goals were established for this solicitation.			
Additional Backup Information				

①

②

This contract is to provide services for the management and disposal of industrial Class 2 and non-hazardous Special Wastes for Austin Energy (AE). AE manages/occupies several facilities and work sites that generate non-hazardous liquid and solid wastes, generally through routine maintenance activities. Waste includes items such as weathered utility poles, contaminated soil from transformers and construction/demolition debris.

In order to comply with federal, state, and local regulations, AE requires the turn-key services of a waste disposal contractor to transport and dispose of industrial Class 2 and non-hazardous Special Wastes generated.

MBE / WBE Solicited: 1/1

MBE / WBE Bid: 0/0

BID TABULATION

IFB No. DKC0093

Management & Disposal of Class 2 Waste
36 Line Items

Vendor

Allied Waste Services #843
Del Valle, Texas

Total Bid 12 Month Period

\$264,820

Texas Disposal Systems
Austin, Texas

*

*Note: Nonresponsive, did not submit complete bid sheet including signature

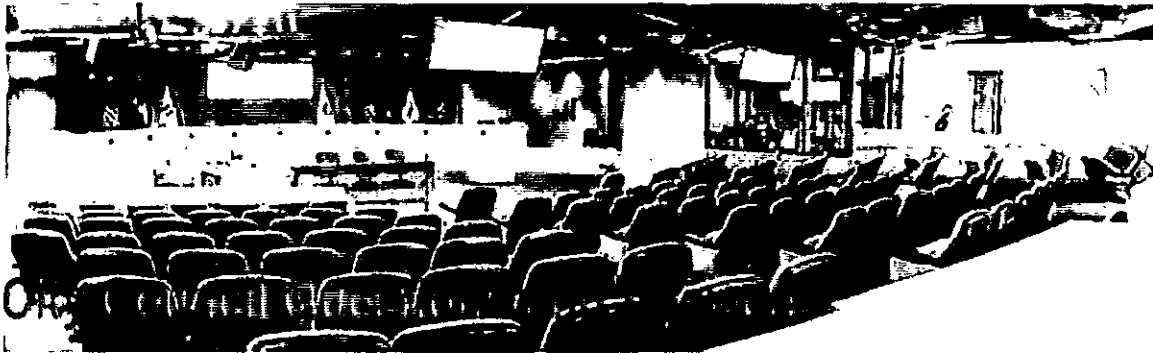
A complete bid tabulation is on file in the Purchasing Office and is on the City of Austin, FASD Purchasing Office website.

PRICE ANALYSIS

- a. Adequate competition.
- b. One hundred thirty-eight notices were sent including one MBE and one WBE. Two bids were received, with no response from the MBE / WBEs.
- c. The pricing offered represents a 6% increase to the last contract awarded in March 2009. The increase can be attributed to increased disposal costs from reduced landfill space and PPI increases totaling 7.4% over the last four years for this commodity.

APPROVAL JUSTIFICATION

- a. Lowest bid received. Allied Waste Service is not the current provider of this service.
- b. The Purchasing office concurs with Austin Energy's recommended award.
- c. Advertised on the Internet.



**City Council Questions and Answers for
Thursday, March 07, 2013**

These questions and answers are related to the
Austin City Council meeting that will convene at 10:00 AM on
Thursday, March 07, 2013 at Austin City Hall
301 W. Second Street , Austin, TX



**Mayor Lee Leffingwell
Mayor Pro Tem Sheryl Cole
Council Member Chris Riley, Place 1
Council Member Mike Martinez, Place 2
Council Member Kathie Tovo, Place 3
Council Member Laura Morrison, Place 4
Council Member William Spelman, Place 5**

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of departments via the City Manager's Agenda Office. This process continues until the final report is distributed at noon to City Council the Wednesday before the council meeting.

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QUESTIONS FROM COUNCIL

1. Agenda Items #2-4

- a. QUESTION: Please indicate total cost of the energy efficiency improvements and percentage AE proposes to reimburse. COUNCIL MEMBER TOVO
- b. ANSWER: For agenda item #2: The total cost of the Austin City Lights project is \$109,025 and the rebate will cover 90% of the cost. For agenda item #3: The total cost of the Hudson Miramont project is \$110,415 and the rebate will cover 90% of the cost. For agenda item #4: The total cost of the Toscana Apartments project is \$135,109.33 and the rebate will cover 90% of the cost. Austin Energy will include this information in future RCAs for multi-family rebates.

2. Agenda Items #2-8

- a. QUESTION: Are any of these properties located outside the city limits? COUNCIL MEMBER MARTINEZ
- b. ANSWER: No, these projects are located within the Austin city limits.

3. Agenda Item #18

- a. QUESTION: Please describe the community outreach that was performed in preparation for the addition to the park, and the process for determining that the community is in favor of the new amenity. When were the elements presented to PARB (2 nature trails and dog park)? COUNCIL MEMBER MORRISON
- b. ANSWER: See Attachment

4. Agenda Item #26

- a. QUESTION: Please provide the bid tabulation that was included in the Electric Utility Commission's back up materials. The bid tabulation indicates that the pricing represents a 16% increase since the last (2009) contract. Did the other bid received by the COA offer lower pricing? How much? Please indicate why the other bid was disqualified. If there were errors in the bid package, was there an attempt by the bidder to make corrections? Can the City elect to re-bid the contract? References to a 2009 settlement agreement

indicate that the Allied Waste facility is scheduled to be closed in November 2015. Is that accurate? If so, why would the contract before the City this week be proposed to include renewals beyond November 2015? COUNCIL MEMBER TOVO

- b. ANSWER: For the bid tabulation, please see attachment. The other bid received from Texas Disposal Systems (TDS) could not be evaluated nor compared to the Allied Bid pricing because it failed to provide pricing for 19 service items of 30 required items (plus 6 optional items) included in the Invitation For Bid (IFB). The Bidders were required to provide pricing for all line items for award of this turn-key waste disposal contract. \$137,273.20 for the 11 line items was proposed by TDS. Bid disqualified because incomplete pricing was provided for the service items required in the solicitation and no signature on the Bid Sheet (nor for the offer proposed.) Per the local government code, purchases over \$50,000 requires us to follow a competitive sealed bidding process with bids publicly opened and read. Yes, they attempted to provide the missing prices after notified by the Purchasing Office that such pricing errors existed in their bid. However, per the terms of the solicitation the completed bid sheet must be submitted with each bid. Technically yes, however in this case the City did receive a responsive bid for this solicitations. Usually rebids are allowed when a significant scope change is required, or as directed by the governing body. Yes, Allied Waste has confirmed this date. The IFB solicitation indicated to the public that we were seeking three annual extension options beyond the 24 month contract term. The extension options are not automatically approved, but rather agreed upon by both parties at the anniversary date. Allied Waste has a current permit for their operations thru November, 2015. The City does not have knowledge at this time whether Allied Waste will seek renewal of their permit to continue operations beyond November 2015.

The Allied bid was not responsive. It did not bid the one category to be recycled, and failed to notify the City that its landfill will not be open to receive waste beyond 11/1/2015 for a contract that can be extended to 2018.

Neither Allied nor TDS submitted bids on all line items on the bid sheet.


TDS did submit a signed cover page. It failed to submit pages 2 & 3 of price quotes.


City's Rule 11 Agreement prohibits Allied/BFI from submitting a permit amendment to allow the landfill to remain open past 11/1/2015; however, the Rule 11 Agreement can be revised without City Council's approval by the City Manager, and the approval of this Austin Energy landfill disposal bid includes the City Council authorization for the City Manager to extend the contract requiring the landfill to remain open approximately 2.5 years beyond the November 1, 2015 currently required Allied/BFI closure date. The City Manager and Allied/BFI could consider that as Council authorization for a permit amendment to remove the landfill closure requirement.

5. Agenda Item #27

- a. QUESTION: Does ISS Facility and Goodwill provide benefits to their employees? If this information is available, what are the benefits? COUNCIL MEMBER MORRISON
- b. ANSWER: See attachment.

END OF REPORT - ATTACHMENTS TO FOLLOW

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 *For assistance please call 974-2210 OR 974-2445 TDD.*

This report documents the amount of the Allied over weight fees for loads in excess of ten net tons, which would have been applied, had the Allied fee been in place from 3/9/09 through 4/3/13

Ticket#	Date	Net load weight in tons per scale ticket					Weight > 10 net tons per scale ticket					
		2009	2010	2011	2012	2013	2009	2010	2011	2012	2013	Total
0694844	20090414	10.20					0.20					
0703573	20090507	13.41					3.41					
0708231	20090520	11.70					1.70					
0710799	20090527	10.76					0.76					
0716620	20090611	10.66					0.66					
0719272	20090618	10.11					0.11					
0737747	20090811	12.94					2.94					
0741446	20090821	10.20					0.20					
0743496	20090827	10.28					0.28					
0748759	20090911	11.06					1.06					
0748760	20090911	10.96					0.96					
0754470	20090930	10.86					0.86					
0759552	20091016	10.78					0.78					
0770627	20091118	10.83					0.82					
0775475	20091204	10.44					0.44					
0784844	20100106		10.01					0.01				
0791252	20100127		10.40					0.40				
0810688	20100326		11.15					1.15				
0815335	20100407		10.02					0.02				
0823171	20100429		11.45					1.45				
0827609	20100511		10.29					0.29				
0833741	20100527		11.93					1.93				
0839066	20100611		11.26					1.26				
0844208	20100625		11.54					1.54				
0857607	20100803		12.80					2.80				
0918075	20110208			10.99					0.99			
0919573	20110214			12.28					2.28			
0923371	20110224			13.28					3.28			
0933084	20110322			11.89					1.89			
0936901	20110401			14.77					4.77			
0950998	20110510			12.12					2.12			
0952349	20110513			15.86					5.86			
0956957	20110526			13.44					3.44			
0967595	20110624			12.26					2.26			
0971986	20110707			13.27					3.27			
0978917	20110727			13.02					3.02			
0985915	20110817			12.39					2.39			
0993605	20110909			12.52					2.52			
1003083	20111007			12.29					2.29			
1008448	20111025			13.42					3.42			
1016206	20111117			13.02					3.02			
1023568	20111213			13.00					3.00			
1057358	20120328				13.28					3.28		
1063177	20120412				11.87					1.87		

This report documents the amount of the Allied over weight fees for loads in excess of ten net tons, which would have been applied, had the Allied fee been in place from 3/9/09 through 4/3/13

Ticket#	Date	Net load weight in tons per scale ticket					Weight > 10 net tons per scale ticket					
		2009	2010	2011	2012	2013	2009	2010	2011	2012	2013	Total
1072846	20120509				12.61					2.61		
1072946	20120509				10.98					0.98		
1080072	20120530				14.53					4.53		
1090230	20120626				13.58					3.58		
1094496	20120709				13.61					3.61		
1097557	20120717				13.39					3.39		
1114202	20120831				11.92					1.92		
1124751	20121002				10.08					0.08		
1136545	20121106				15.48					5.48		
1148557	20121212				11.55					1.55		
1153003	20121227				14.49					4.49		
1164638	20130201					12.77					2.77	
1170914	20130220					10.47					0.47	

Total over weight net tons	15.12	10.84	49.81	37.34	3.24	116.347
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Total over weight pounds	232,694
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Over weight fee per pound proposed by Allied for 2013 through 2018	\$0.40
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Total over weight fees, which would have applied had the Allied bid been in place	<u>\$93,077.60</u>
---	--------------------

Average over weight fees per year, which would have applied had the Allied bid been in place	\$22,794.51
--	-------------

Material Hauled by TDS to the TDS Landfill from 3/9/09 through 4/3/13

Material Description	# of Scale Tickets							# of Tons							% Recycled / Reused
	2009	2010	2011	2012	2013	Total		2009	2010	2011	2012	2013	Total	Recycled / Reused	
BRUSH BY THE TON TO TOP			2	4		6				4.5	7.0		11.5	10.8	94.0%
CAPACITORS	6	2	6	3		17		37.5	12.8	43.7	23.3		117.4	23.3	19.9%
CONTAMINATED SOIL	17	15	18	15	3	68		178.1	152.0	225.0	183.7	32.9	771.6	0	0.0%
DIVERTED METAL	1					1		1.9					1.9	1.9	100.0%
FILTER CAKE	30		1			31		187.3		1.9			189.2	0	0.0%
PLANT TRASH	15	21	36	22	3	97		46.9	63.0	72.6	64.8	9.3	256.6	0	0.0%
SOIL IN 55 GAL DRUMS	1	1	7	2	1	12		0.0	0.0	12.4	0.0	0.0	12.4	0	0.0%
UNCOMPACTED TONNAGE	2	1	2	1	1	7		18.7	1.8	4.6	0.8	7.2	33.1	0	0.0%
UTILITY POLES	73	69	48	50	13	253		612.1	525.1	338.7	367.9	82.5	1926.2	1541.0	80.0%
Sub Total	145	109	120	97	21	492		1082.5	754.7	703.4	647.5	131.9	3319.9	1577.1	47.5%

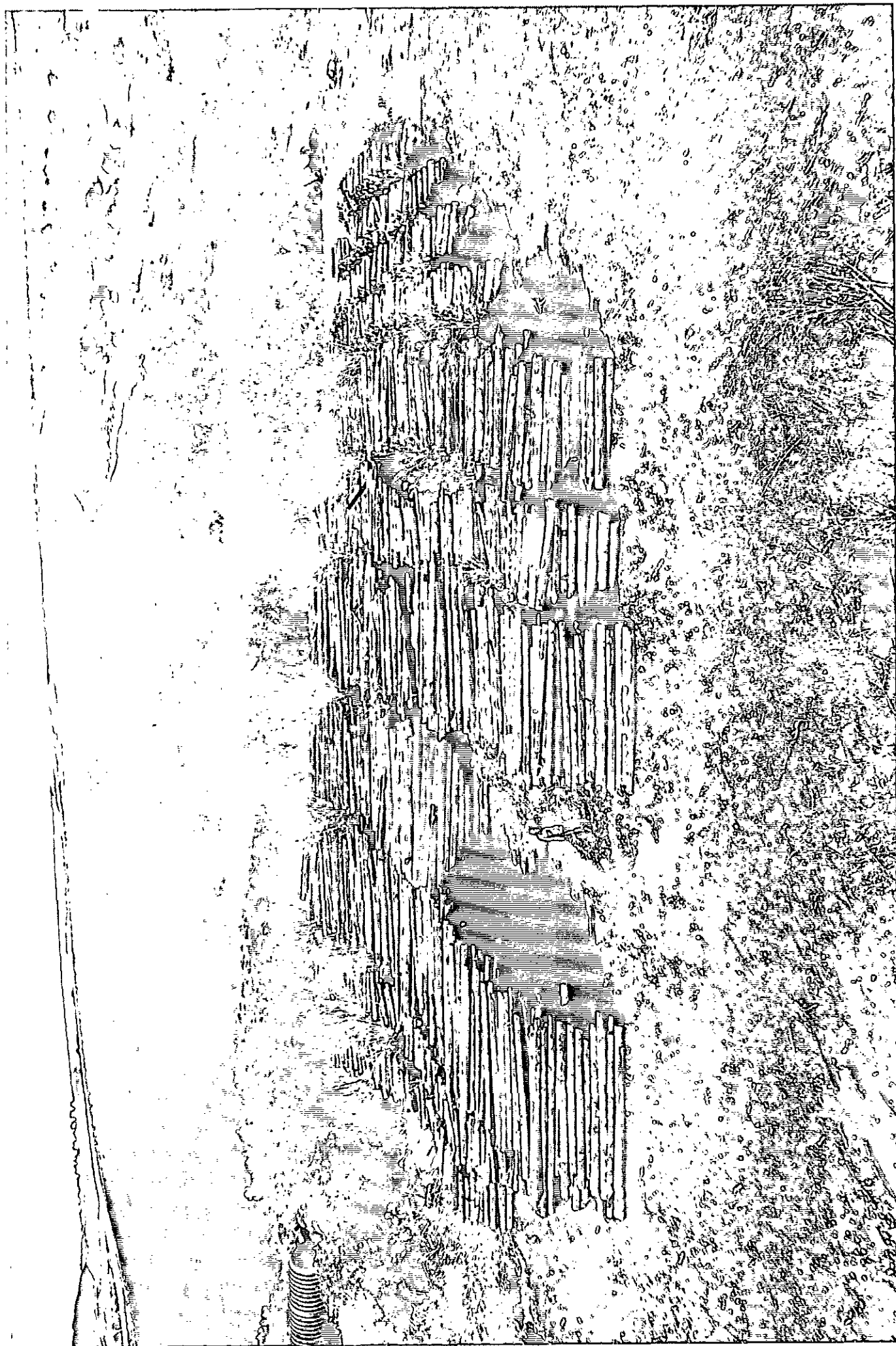
Material Hauled by AE to the TDS Landfill from 3/9/09 through 4/3/13

Material Description	# of Scale Tickets							# of Tons							% Recycled / Reused
	2009	2010	2011	2012	2013	Total		2009	2010	2011	2012	2013	Total	Recycled / Reused	
CAPACITORS	1					1		0.7					0.7	0	0.0%
CONTAMINATED SOIL	3			3		6		23.8			20.3		44.1	0	0.0%
UNCOMPACTED TONNAGE	1					1							0.0	0	0.0%
Sub Total	5	0	0	3	0	8		24.5	0.0	0.0	20.3	0.0	44.8	0.0	0.0%

Material Hauled by TDS & Austin Energy to the TDS Landfill from 3/9/09 through 4/3/13

Material Description	# of Scale Tickets							# of Tons							% Recycled / Reused
	2009	2010	2011	2012	2013	Total		2009	2010	2011	2012	2013	Total	Recycled / Reused	
Grand Total	150	109	120	100	21	500		1107.0	754.7	703.4	667.8	131.9	3364.7	1577.1	46.9%

Note: No liquid wastes have been disposed of through this contract during its four year term.





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TELECOMPUTER COVER SHEET

October 31, 2008

PLEASE DELIVER THE FOLLOWING PAGES:

<u>Recipient</u>	<u>Company</u>	<u>Fax No.</u>
Steve Shepherd Susan White	TCEQ	512-239-0606
Christina Mann	OPIC	512-239-6377
Kevin Morse	Travis County	512-854-4808
Holly Noelke	City of Austin	512-974-6490
Bob Renbarger J.D. Head	TJFA, L.P.	512-477-5267
Jim Blackburn Mary Carter	Northeast Neighbors Coalition	713-524-5165
Paul M. Terrill, III	Giles Holdings, L.P.	512-474-9888
Stephen P. Webb	Pioneer Farms	512-472-3183

Client No.: 1635-03

From: Paul Gosselink

No. of Pages: 20 + cover sheet

Comments: SOAH Docket No. 582-08-2178; TCEQ Docket No. 2007-1774-MSW
In re Permit Amendment Application of BFI Waste Systems of North America, LLC
MSW Permit No. 1447A

Part I of II

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS ATTORNEY PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. THE REVIEW, DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION TO ANYONE OTHER THAN THE INTENDED ADDRESSEE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL US AS SOON AS POSSIBLE AT (512) 322-5800.

Lloyd Gosselink Rochelle & Townsend, P.C.



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October 31, 2008

Judge William E. Newchurch
State Office of Administrative Hearings
300 W. 15th Street, Suite 504
Austin, Texas 78701

Re: SOAH Docket No. 582-08-2178; TCEQ Docket No. 2007-1774-MSW
Permit Amendment Application of BFI Waste Systems of North America, LLC
MSW Permit No. 1447A; Rule 11 Agreement

Dear Judge Newchurch:

Enclosed for filing please find the Rule 11 Agreement by and between the City of Austin, BFI Waste Systems of North America, LLC, and Giles Holdings, LP.

By copy of this letter we are providing copies of the Rule 11 Agreement and all attachments to all parties of record in this case.

Respectfully submitted,


Paul Gosselink

Enclosures

cc: See attached Certificate of Service
Gary McCuiston
Brad Dugas

October 3, 2008
Page 2

Certificate of Service

I hereby certify that a true and correct copy of the foregoing document was served on the following counsel/parties of record by certified mail (return receipt requested), regular U.S. mail, facsimile transmission and/or hand delivery on October 31, 2008:

FOR THE CHIEF CLERK:

LaDonna Castañuela
Texas Commission on Environmental Quality
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Environmental Law Division, MC-173
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COALITION AND INDIVIDUALS:

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Assistant Travis County Attorney
Travis County Attorney's Office
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Austin, Texas 78767
Tel: (512) 472-9990
Fax: (512) 472-3183



Paul G. Gosselink

SOAH Docket No. 582-08-2178
TCEQ Docket Number 2007-1774-MSW

IN THE MATTER OF THE
APPLICATION OF BFI WASTE
SYSTEMS OF NORTH AMERICA, INC.
PROPOSED SOLID WASTE PERMIT
AMENDMENT No. 1447A

§
§
§
§
§

BEFORE THE STATE
OFFICE OF ADMINISTRATIVE
HEARINGS

RULE 11 AGREEMENT

Pursuant to Rule 11 of the Texas Rules of Civil Procedure, the undersigned counsel agree as follows:

1. The City of Austin ("City"), BFI Waste Systems of North America, LLC ("BFI") and Giles Holdings, L.P. ("Giles") have entered into a binding Agreement Regarding Operations and Closure of the Sunset Farms Landfills ("Agreement") (copy attached as Exhibit A).
2. BFI, Giles and the City desire for the TCEQ to consider the Agreement in this contested case.
3. BFI, Giles and the City desire and request that the proposal for decision and any permit amendment issued by the TCEQ in this contested case contain the provisions set out in the Agreement as Special Conditions in the permit.
4. The City participation in the contested case hearing will be limited to testimony and evidence in support of the terms of this Rule 11 Agreement and the Agreement.

Agreed on this date, October 31, 2008.



Paul Gosselink

Texas State Bar No. 0822280

Attorney for BFI Waste Systems of North America, LLC



Paul Terrell

Texas State Bar No. 06785094

Attorney for Giles Holdings, LP



Holly Noelle

Texas State Bar No. 04651000

Attorney for City of Austin

Page 2

Certificate of Service

I hereby certify that a true and correct copy of the foregoing document was served on the following counsel/parties of record by certified mail (return receipt requested), regular U.S. mail, facsimile transmission and/or hand delivery on October 31, 2008:

FOR THE CHIEF CLERK:

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Texas Commission on Environmental Quality
Public Interest Counsel, MC-103
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Fax: (512) 239-6377

FOR THE EXECUTIVE DIRECTOR:

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Paul G. Gosselink

AGREEMENT REGARDING OPERATIONS AND CLOSURE OF THE SUNSET FARMS LANDFILL

This Agreement ("Agreement") is made by and between BFI Waste Systems of North America, LLC ("BFI"), Giles Holdings, L.P. ("Giles"), and the City of Austin ("Austin" or "City") a home rule municipality located in Travis County Texas, in connection with BFI's application to expand the Sunset Farms Landfill ("Landfill") located at 9912 Giles Road in Travis County, Texas.

I. RECITALS

Whereas, BFI applied to the Texas Commission on Environmental Quality (TCEQ) for a vertical expansion to the Sunset Farms Landfill (TCEQ MSW Draft Permit No. 1447A);

Whereas, BFI's application to expand the Landfill has been referred to the State Office of Administrative Hearings (SOAH) for a contested case hearing, SOAH Docket No. 582-08-2178;

Whereas, Austin obtained party status in SOAH Docket No. 582-08-2178 with the stated goals of ensuring discontinuance of waste acceptance at the Landfill by November 1, 2015 and requiring improved enforceable operating standards as long as the Landfill remains open;

Whereas, the area surrounding BFI has become urbanized through the years subsequent to the initial permitting of the Landfill;

Whereas, landfill operations in close proximity to residential neighborhoods present unique problems requiring specialized solutions;

Whereas, a portion of the property on which the Landfill is located is owned by Giles and the remaining property on which the landfill is located is owned by BFI;

Whereas, BFI is of the opinion that it has a valid exemption from the City's site development plan permitting requirements;

Whereas, the City is of the opinion that BFI must obtain administrative site plan approval under Austin City Code Chapter 25-5, Article 2;

Whereas, whether and the extent to which BFI can vertically expand the Landfill and whether Austin can prevent or restrict the expansion is uncertain; and

Whereas BFI and Austin have agreed to resolve their disputes regarding closure and operations of the Landfill.

NOW THEREFORE and in consideration of the mutual covenants and agreements to be performed as set out below, City, BFI and Giles agree as follows:

II. ACKNOWLEDGEMENTS, REPRESENTATIONS, AND WARRANTIES

- A. BFI and Giles and Austin acknowledge that they understand the purpose and intent of this agreement.
- B. BFI and Giles and Austin represent and warrant that they have the full right and authority to execute this agreement.

III. DEFINITIONS

For the purposes of this Agreement:

- A. Side slope means the exterior edges of fill areas or sidewalls of detention ponds which generally will have a slope steeper than 10%.
- B. Top deck means the top portion of the landfill which generally will have a slope flatter than 10%.
- C. Adequate vegetation growth means 85% surface area coverage in vegetation at least 1" tall.
- D. Seeding events means seeding in compliance with City of Austin Environmental Criteria Manual (ECM) Section 1.4.7 A (Exhibit 1) except as otherwise noted.
- E. Amended landfill permit means proposed TCEQ draft permit 1447A for the Sunset Farms Landfill.
- F. Property means the property on which the Landfill operates as described in the amended landfill permit application.

IV. TERMS

- A. BFI agrees to cease accepting waste at the Landfill and agrees to restrict the property on which the landfill operates from accepting waste after November 1, 2015 and to further restrict the property on which the landfill currently operates from use for transfer station operations.
- B. Giles agrees to restrict the property on which the Landfill operates from accepting waste after November 1, 2015 and to further restrict the property on which the landfill currently operates from use for transfer station operations.

C. This Agreement is understood by the parties to be a written contract under which the Parties are granting certain concessions and providing services to one another. This Agreement shall be binding upon and inure to the benefit of each and all of the Parties hereto and their affiliates, successors and assigns and shall be a covenant and restriction running with the land that constitutes the Landfill site and adjacent land owned by BFI and Giles as follows:

Parcel 1: Approximately 54.13 acres of land of the LUCAS MUNOS SURVEY, ABSTRACT NO. 55, in Travis County, Texas and being more particularly described by metes and bounds in Document No. 2005198209 of the Travis County Real Property Records, said Document attached as Exhibit "A" hereto.

Parcel 2: Approximately 172.531 acre tract of land out of the LUCAS MUNOS SURVEY No. 55, Abstract 513, being a portion of a 176.10 acre tract of land conveyed to Mobley Chemicals, Inc., by warranty deed, dated January 22, 1982, recorded in volume 7671, page 101, of the deed records of Travis County, Texas; said 172.531 acres being more particularly described by metes and bounds in Exhibit "B" attached hereto.

Parcel 3: Approximately 122.711 acre tract of land out of the LUCAS MUNOS SURVEY No. 55, Abstract 513, being a portion of a 73.20 acre tract of land conveyed to Mobley Chemicals, Inc., by warranty deed, dated January 22, 1982, recorded in volume 7671, page 117 and a portion of a 102.87 acre tract of land conveyed to Mobley Chemicals, Inc., by warranty deed, dated January 22, 1982, recorded in volume 7671, page 109, both of the deed records of Travis County, Texas; said 122.711 acres being more particularly described by metes and bounds in Exhibit "C" attached hereto.

Giles and BFI represent that no other person or entity other than themselves currently possesses any interest in such land that would allow them to dispose of waste or operate a transfer station at the Landfill and agree that such covenant and restriction shall bind all future holders of any interests in such land. BFI and Giles will execute and deliver to Austin a document memorializing the restrictive covenant and the City of Austin may record the restrictive covenant in the Travis County Real Property Records. BFI and Giles agree that any sale, assignment, or transfer of the Landfill permit shall be made expressly subject to the terms of this Agreement.

D. BFI will comply with the following terms related to drainage, erosion and revegetation:

1. BFI agrees to place intermediate cover and implement seeding events, on all side slope disturbed areas on which activity has not recommenced within 60 days except BFI is under no obligation to seed such areas during the months of July

and August. These seeded areas shall be irrigated in accordance with the requirements of Exhibit 1.

2. BFI agrees to place intermediate cover and implement seeding events on the top deck of the landfill in all disturbed areas on which activity has not recommenced within 120 days except for that area immediately up gradient to the five proposed or constructed drainage down chutes on intermediate cover areas as shown on attached Exhibit 2. Those up gradient areas shall be immediately vegetated upon construction of each down chute with a filter strip of buffalo grass sod that extends at least 100 feet out from each down chute inlet and is wide enough to filter the run off to be directed to each down chute (See Exhibit 2 for width dimensions). The buffalo grass filter strip shall be maintained until final cover is placed. In addition, a silt fence or mulch berm shall be placed on the top deck in front of the inlet of each down chute and at the end of each constructed down chute (See Exhibit 2 for locations). These silt fences or mulch berms shall remain in place and be maintained until the areas contributing runoff to these down chutes achieve adequate vegetation growth.
3. The initial seeding event for all disturbed areas will be accomplished using hydro-mulch seeding application procedures per Exhibit 1.
4. Seeding of the disturbed areas will be of a seasonally appropriate mix. Currently the seed mix is bermuda/millet for warm weather and rye for cold weather. When cold weather seed is used the seeded area shall be reseeded within 60 days of the onset of sufficiently warm weather to support the warm weather mix. The reseeded area shall be irrigated until adequate vegetation growth is achieved.
5. Seeding for the final cover shall include a seasonally appropriate 609-S (native seeds) mix as defined in the City of Austin Standard Specifications Manual on approximately 15% of the surface area of the eastern and northern slopes of the landfill and for the remainder of the site a seasonally appropriate mix.
6. Perimeter sediment/erosion control devices such as silt fences, hay bales or other systems acceptable to the City shall be in place prior to the establishment of any soil stock piles on site. For soil stock piles which have slope lengths greater than 20 feet, mid-slope temporary stabilization controls such as seeding, tarping or placement of silt fences or mulch berms shall be implemented within fourteen days of the initial establishment of the soil stock pile and shall be maintained in good working condition until the stockpile is removed.
7. BFI shall install and maintain silt fences or mulch berms within 14 days of completion of intermediate cover at the base of all side slope and top deck intermediate cover areas until adequate vegetation growth is achieved.
8. Stormwater runoff from the landfill area designated as Drainage Area 2 shall be routed through the existing detention pond, or the proposed water

quality/detention pond, when the waste fill in Drainage Area 2 has reached the final grades proposed in the landfill expansion plan.

9. BFI will ensure that the side slopes of the existing detention pond and the side slopes of the proposed water quality/detention pond in the northeast portion of the landfill shall be adequately stabilized through proper grading and maintenance and by implementing/applying vegetation on the side slopes of the ponds within thirty days of completion of construction of the pond. BFI further agrees to inspect the sedimentation ponds/basins every three months and after every half-inch rainfall event and to clean the ponds/basins by removing the accumulated sediment once the sediment has reached 25% of the respective pond capacity.
10. BFI shall amend its Storm Water Pollution Prevention Plan (SWPPP) for the Sunset Farms Landfill within 90 days of the effective date of this Agreement so as to incorporate the specific practices and procedures described in this Agreement. The SWPPP will be submitted to the City for review and concurrence.
11. BFI agrees to begin operating the Sunset Farms Landfill pursuant to the terms of this Agreement and the amended SWPPP within 60 days after the SWPPP has been amended and the City's concurrence has been achieved.

E. BFI agrees that it shall not accept liquid waste that has not passed the TCEQ's paint filter test and shall not construct or operate a liquid waste stabilization/solidification basin at the Sunset Farms Landfill.

F. BFI agrees to prohibit commercial waste hauling vehicles from utilizing Blue Goose Road as ingress or egress to the Sunset Farms Landfill except for those few vehicles which service businesses and residences in that area. Specifically, BFI shall progressively discipline any of its own drivers, up to and including termination, which ignore this prohibition. BFI shall also incorporate into its future and/or renewal contracts with other commercial waste haulers that the haulers will not be allowed to dispose of their waste loads at the Sunset Farms Landfill if they utilize Blue Goose Road for ingress or egress more than one time.

G. BFI will request that the Administrative Law Judge issue a proposed permit containing special provisions incorporating the terms of paragraphs D. 1 through 9 and E. and F. as set out above.

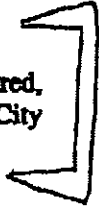
H. BFI will request a site plan permit from the City for the Landfill vertical expansion, and will file a site plan permit application with Austin within 60 days of execution of this Agreement. The City will process this site plan application as a "D" site plan application under Austin City Code Chapter 25-5, Article 2, and will not unreasonably withhold approval of the site plan if all technical requirements of the City are satisfied.

J. As long as BFI and Giles are in substantial compliance with this Agreement, Austin will limit its participation in the contested case hearing regarding the landfill expansion to testimony and matters in support of the terms of this Agreement.

V. TERM, TERMINATION

- A. This Agreement shall be effective from and after the date of execution.
- B. If any party defaults in the performance of any of the terms or conditions of this Agreement, the defaulting party shall have 10 days after receipt of written notice of the default within which to cure the default. If such default is not cured within the 10 days, then the offended party shall have the right without further notice to terminate this Agreement or seek enforcement of the Agreement in court including specific performance of the terms of the Agreement and attorneys fees.
- C. The parties agree that monetary damages would be inadequate compensation if any party defaults in the performance of any of the terms or conditions of this Agreement, therefore specific performance should be required.

VI. MISCELLANEOUS

- A. Severability. If any section, subsection, sentence, clause, or phrase of this Agreement is for any reason held to be unconstitutional, void, or invalid, the validity of the remaining portions of the Agreement shall not be affected thereby. It is the intent of the parties signing this Agreement that no portion of it, or provision or regulation contained in it shall become inoperative or fail by reason of unconstitutionality or invalidity of any other section, subsection, sentence, clause, phrase, provision, or regulation of this Agreement.
- B. Force Majeure. No party shall be liable for any delay, failure or default in performing under this Agreement if such delay, failure or default is caused by conditions beyond its control including – but not limited to Acts of God, government restrictions, wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.
- C. Law and Venue. This Agreement shall be governed by the laws of the State of Texas. The obligations under this Agreement are performable in Travis County, Texas. It is expressly understood that any lawsuit or litigation arising out of or relating to this Agreement will take place in Travis County, Texas.
- D. Alteration, Amendment, or Modification. This Agreement may not be altered, amended, or modified except in writing, approved by BFI and Giles and the City Manager of the City of Austin or his designee.
- 

E. Entire Agreement. This Agreement constitutes the entire agreement between Austin and BFI and Giles. No other agreement, statement or promise relating to the subject matter of this Agreement which is not contained in this Agreement is valid or binding.

F. Notice. Notices to either party shall be in writing, and may be either hand delivered or sent by certified or registered mail, postage paid, return receipt requested. If sent to the parties at the addresses designated herein, notice shall be deemed effective upon receipt in the case of hand delivery and three days after deposit in the U.S. Mail in case of mailing. The address of the City of Austin for all purposes shall be:

CITY:
City of Austin
Solid Waste Services
P.O. Box 1088
Austin, Texas 78767

The address for BFI and for Giles for all purposes under this Agreement and for all notices hereunder shall be:

BFI:
2575 IH 35 South, Suite 103
San Marcos, TX. 78666

Giles:

Steve Mobley
2205 Westover Road
Austin, Texas 78703

Ron Habitzreiter
1208 West Avenue
Austin, Texas 78701

F. Giles joins this Agreement for the reason that it owns fee simple title to land on which the Landfill is located and leases that land to BFI for operation of the Landfill and benefits from the mutual covenants and agreements herein. Giles hereby consents to BFI and Austin entering into, complying with and enforcing the terms of this Agreement and agrees to take no action that would be inconsistent with or impede implementation of and compliance with this Agreement by any Party.

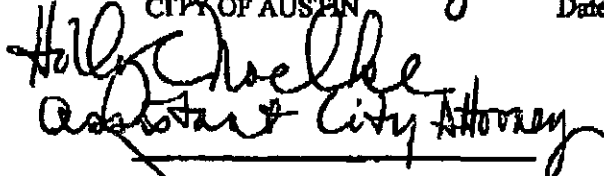
IN WITNESS WHEREOF, the authorized representative of Austin, Giles and BFI, by the signature of their authorized representatives below, have caused this Agreement to be executed in duplicate originals, effective as of the latest of the three dates entered below.

~~BFI WASTE SYSTEMS OF
NORTH AMERICA, LLC~~

Date: _____


Assistant City Manager
CITY OF AUSTIN

Date: Oct. 31, 2008


Holly Choe
Assistant City Attorney

~~GILES HOLDINGS, L.P.
Formerly Known as Mobley
Chemicals, Inc.~~

Date: _____

10/31/2008 17:50 IFAX IncomingFax@fbhh.com
10/31/08 17:45 FAX 5124720532

Lloyd Gosselink

* Ikon

014/021
014/021

OCT-31-2008 FRI 01:23 PM dunoon disposal-midland FAX NO. 14325630544
10/31/08 19:53 FAX 5124720532 Lloyd Gosselink

P. 01
0000

IN WITNESS WHEREOF, the authorized representative of Austin, Giles and
HFI, by the signature of their authorized representatives below, have caused this
Agreement to be executed in duplicate originals, effective as of the latest of the three
dates entered below.

BFI WASTE SYSTEMS OF
NORTH AMERICA, LLC

CITY OF AUSTIN

 Paul J. Giles, Manager Vice President

GILES HOLDINGS, L.P.
Formerly Known as Mobley Chemicals, Inc.

10/31/2008 17:50 IFAX IncomingFax@fbhh.com
10/31/08 17:45 FAX 5124720832

Lloyd Gosselink

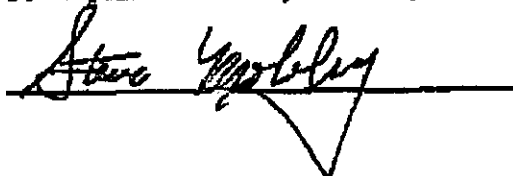
+ Ikon

015/021
015/021

PAGE 20: RECD AT 10/31/2008 17:45 FAX 5124720832

015/021

GILES HOLDINGS, L.P.
Formerly Known as Mobley Chemicals, Inc.

A handwritten signature in cursive script, appearing to read "Steve Mobley", is written over a horizontal line. The signature is bold and fluid, with a large, sweeping loop at the end.

6

10/31/2008 17:50 IFAX IncosingFax@fbhh.com
10/31/08 17:45 FAX 5124720532

Lloyd Gosselink

+ Ikon

016/021
016/021

Exhibit A

Approximately 54.13 acres of land of the LUCAS MUNOS SURVEY, ABSTRACT NO. 55, in Travis County, Texas and being more particularly described by metes and bounds in Document No. 2005198209 of the Travis County Real Property Records, said Document attached as Exhibit "A" hereto.

100
3/930
2116 1114 / 12
NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER

**FOLLOWING RECORDATION,
RETURN TO:**



140 2085198208
B PCS

BFI WASTE SYSTEMS OF NORTH AMERICA, INC.
c/o Allied Waste Industries, Inc.
15880 N. Greenway-Hayden Loop, Suite 100
Scottsdale, AZ 85260
Attn: Steven M. Helm, Vice-President - Legal

SPECIAL WARRANTY DEED

Date: August 17, 2004

Grantor: **Giles Holdings, L.P.**

Grantor's Mailing Address (including county):
c/o Steve Mobley
2205 Westover Road
Austin, Travis County, Texas 78703

Grantee: **BFI WASTE SYSTEMS OF NORTH AMERICA, INC.**

Grantee's Mailing Address:
c/o Allied Waste Industries, Inc.
15880 N. Greenway-Hayden Loop, Suite 100
Scottsdale, AZ 85260

I, Dana DeBorja, County Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears in record in my office. Witness my hand and seal of office on Aug 30, 2004.
Dana DeBorja, County Clerk
By Deputy:
Michael P. Gonzales
Michael P. Gonzales

Consideration:

The Grantor acknowledges the receipt of \$10.00 and other good and valuable consideration paid to Grantor by Grantee, for which no lien, express or implied is retained.

Property (including any improvements):

APPROXIMATELY 54.13 acres of land out of the LUCAS MUNOS SURVEY, ABSTRACT NO. 55, in Travis County, Texas and being more particularly described by metes and bounds in Exhibit "A" attached hereto, SAVE AND EXCEPT that

portion of the subject property lying within that certain 1.606 acre tract of land awarded to the City of Austin in Eminent Domain proceedings, recorded in Document No. 2003143218, Official Public Records of Travis County, Texas.

Reservations From and Exceptions to Conveyance and Warranty:

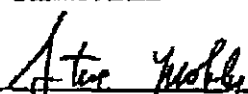
Subject to taxes and assessments not yet delinquent, reservations in patents and all easements, rights of way, liens, covenants, conditions, restrictions, obligations and liabilities as may appear of record and such state of facts as would be disclosed by a proper inspection or accurate TLTA survey of the Property

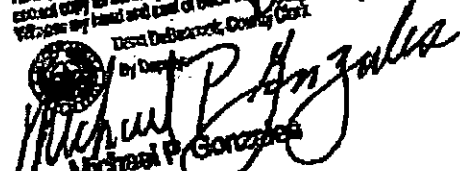
Grantee is accepting and taking the Property in its current condition, "AS IS".

Grantor, for the consideration set forth herein and subject to the reservations from and exceptions to conveyance and warranty, grants, sells, and conveys to Grantee the above referenced property, together all the rights and appurtenances thereto in any wise belonging, to have and hold it to Grantee, Grantee's successors, or assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators, and successors to warrant and forever defend said property to Grantee and Grantee's successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, when the claim is by, through, or under Grantor, except as to the reservations from and exceptions to conveyance and warranty set forth herein. When the context requires, singular nouns and pronouns include the plural.

EXECUTED this 17 day of AUGUST, 2004.

GILES HOLDINGS, L.P.
by: Mobley Management Company,
General Partner


Steve Mobley, Vice President

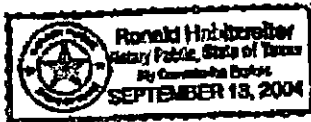
I, Debra Delbecq, County Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office on Aug 30, 2005
Debra Delbecq, County Clerk
by Debra

Michael P. Gonzalez

ACKNOWLEDGMENT

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared Steve Mobley, the Vice-President of Mobley Management Company in its capacity as General Partner of Gites Holdings, L.P., a Texas limited partnership, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity stated.

Given under my hand and seal of office on this the 17 day of AUGUST, 2004.




Notary Public, State of Texas

I, Dana Delamater, County Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office.



By Deputy:


Michael P. Gonzales

EXHIBIT "A" TWO PAGES

54.13 Acres
Lutes Munos Survey No. 55, A-513
Travis County, Texas

FN 2945 (TWH)
May 14, 2003
SAM, Inc. Job No. 23147-01

SAID 54.13 ACRE TRACT OF LAND AS SHOWN ON SURVEYING AND MAPPING, INC. DRAWING NUMBER 23147-01.DWG AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a 1/2-inch iron rod found in the southwest Right-of-Way (ROW) line of Blue Goose Road, a variable width ROW for which no deed information was found, for the northwest corner of said 55.10 acre tract;

THENCE with the southwest ROW line of said Blue Goose Road, the northeast lines of said 55.10 acre tract, and the northeast lines of the tract described herein, the following two (2) courses and distances:

1. S 63° 16' 26" E, a distance of 532.82 feet to a 1/2-inch iron rod found, and
2. S 63° 01' 29" E, a distance of 2574.44 feet to a 1/2-inch iron rod with a plastic cap marked "SAM, INC" set in the proposed northwest ROW line of Giles Road, a variable width ROW, described in a Right of Entry and Possession Agreement with the City of Austin as recorded in Document No. 3000069038 of the Official Public Records of Travis County Texas;

THENCE leaving the northeast line of said 55.10 acre tract, and crossing said 55.10 acre tract with the proposed northwest ROW line of said Giles Road, being the southeast line of the tract described herein, the following six (6) courses and distances:

1. S 26° 54' 06" W, a distance of 20.00 feet to a 1/2-inch iron rod with a plastic cap found at the beginning of a non-tangent curve to the right, from which a 1/2-inch iron rod found in the southeast ROW line of said Giles Road bears S 61° 54' 17" E, a distance of 179.98 feet.
2. with the arc of said curve to the right, passing at a distance of 17.14 feet a 1/2-inch iron rod found for the northeast corner of a proposed slope easement described in said Right of Entry and Possession Agreement, in all a total distance of 40.00 feet, through a central angle of 91° 40' 42", having a radius of 25.00 feet, and a long chord which bears S 17° 38' 12" E, a distance of 35.87 feet to a 1/2-inch iron rod with a plastic cap found for the end of said curve to the left.
3. S 27° 57' 12" W, a distance of 250.98 feet to a 1/2-inch iron rod with a plastic cap found.
4. S 26° 51' 02" W, a distance of 224.98 feet to a 1/2-inch iron rod with a plastic cap marked "SAM INC" set.
5. S 27° 52' 16" W, a distance of 356.71 feet to a 1/2-inch iron rod with a plastic cap marked "SAM, INC" set, from which rod a 1/2-inch iron rod found for the west corner of said proposed slope easement bears with the west line of said easement, N 61° 56' 34" W, a distance of 16.04 feet.
6. S 27° 59' 39" W, a distance of 203.63 feet to a 1/2-inch iron rod with a plastic cap marked "SAM, INC" set in the south line of said 55.10 acre tract, from which a 1/2-inch iron rod found for a point of intersection in the northwest ROW line of said Giles Road bears with said ROW line, S 26° 52' 08" W, a distance of 28.68 feet.

I, Deane DeBeauvoir, County Clerk, Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office this 30th day of May, 2005.
Deane DeBeauvoir, County Clerk
By Deane: *Michael P. Gonzalez*
Michael P. Gonzalez

54.13 Acres
Lucas Mimos Survey No. 55, A-513
Travis County, Texas

FN 2945 (TWH)
May 14, 2003
SAM, Inc. Job No. Z1147-01

THENCE with the west and south lines of said 55.10 acre tract and the tract described herein, being the remaining lines of a called 102.87 acre tract described in a deed as recorded in Volume 7671, Page 109 of the Deed Records of Travis County, Texas, and a called 176.10 acre tract of land described in a deed as recorded in Volume 7671, Page 101 of the Deed Records of Travis County, Texas, the following six (6) courses and distances:

1. N 62° 45' 22" W, a distance of 224.16 feet to an X chiseled in the top of a headwall,
2. N 27° 49' 51" E, a distance of 1215.92 feet to a 1/2-inch iron rod found,
3. N 85° 43' 02" W, a distance of 1282.31 feet to a 1/2-inch iron rod found,
4. N 63° 03' 14" W, a distance of 1080.00 feet to a calculated point in the margin of a spoils pile,
5. N 27° 35' 24" E, a distance of 260.00 feet to a 1/2-inch iron rod found,
6. N 17° 29' 12" W, a distance of 894.12 feet to the POINT OF BEGINNING, and containing 54.13 acres of land, more or less.

Bearing Basis: Bearings are based on the Texas State Coordinate System, NAD 83(86), Central Zone.

THE STATE OF TEXAS

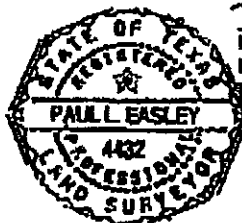
KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF TRAVIS

That I, Paul L. Easley, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and belief and that the property described herein was determined by a survey made on the ground during May, 2003 under my direction and supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas this the 14th day of May 2003 A.D.

SURVEYING AND MAPPING, Inc.
4029 Capital Of Texas Hwy., So. Suite 125
Austin, Texas 78704



[Signature]
Paul L. Easley
Registered Professional Land Surveyor
No. 4432 - State of Texas

I, Dana DeBeauvoir, County Clerk, Travis County, Texas, do hereby certify this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office.



by Deputy:

[Signature]
Michael P. Gonzalez

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

[Signature]

2003 Oct 24 04:41 PM 2005198209

WILLIAMS \$32.00

DANA DEBEAUVOUR COUNTY CLERK
TRAVIS COUNTY TEXAS

April 10, 2013

**Austin Energy Class 2 Non-Hazardous Industrial Waste and Special Waste
Management and Disposal Bid Chronology and TDS Comments
Solicitation No. IFB 1100 DKC0093**

Topic	Dates	Approx. Time	TDS Comments
Publish Date/Time	11/28/12		Date Notice for Invitation for Bid (IFB) was sent out.
Bid Opening #1 Bid Due – 2pm Bid Opening Time - 2:15pm	12/19/12	1:15pm	Ray Bryant (of TDS) arrived at the City of Austin's Purchasing office on the third floor with the TDS sealed bid packet 45 minutes early.
		1:15pm	Purchasing info (City of Austin Purchasing Department email) sent an email to Eric Hise (of TDS) revising the Closing Date/Time from 12/19/12 at 2:00 pm to 1/9/2013 at 2:00 pm – (Attached – Exhibit 1)
		1:50pm	Republic rep arrives at the City of Austin's Purchasing office.
		1:55pm	Ray went up to the desk of the Purchasing office to turn in the TDS bid. An Allied/BFI rep was present at the desk.
		2:10pm	The clerk (a representative of the Purchasing Dept) informed both Ray and the Allied/BFI rep that there would be a new closing date. She called someone internally to confirm this and, upon receiving confirmation, informed both reps that the closing date had indeed changed. The lady at the desk said the reason for the revision was they didn't get as many bids as they wanted.
		2:15pm	Ray left and the Allied/BFI rep was still in the Purchasing office. Ray did not see the Allied/BFI rep leave a bid package at the Purchasing office.
Bid Opening #2 Bid Due by – 2pm Bid Opening Time - 2:15pm	01/09/13	1:30pm	Ray Bryant arrived at the City of Austin's Purchasing office on the third floor with the TDS sealed bid packet 30 minutes early.
		1:45pm	Purchasing info sent an email to Eric Hise revising the Closing Date/Time from 1/09/13 at 2:00 pm to 1/16/2013 at 2:00 pm (Attached – Exhibit 2)
		1:55pm	Ray went up to the desk at the Purchasing office and turned in the TDS bid. There was no Allied/BFI rep present while Ray was there. Ray then waited for the bid opening which was scheduled for 2:15.
		2:10pm	The person at the desk in the Purchasing Department said there would be another revision of the due date for the IFB. The reason for the revision was they didn't receive as many bids as they wanted. Ray was informed by the Purchasing clerk that he could leave the bid packet there since the bid opening had already been moved twice. He was informed by the Purchasing clerk that he could view

			the opening of the bids on 1/16/13 via internet at www.austintexas.gov/department/bid-opening-webinars .
		2:15pm	Ray left the Purchasing Office
Bid Opening #3 Bid Due by – 2pm Bid Opening Time - 2:15pm	01/16/13	Between 2:00-2:15pm	Ray went on the internet at the website provided on the IFB to participate in the webinar for the opening of the bid. He was unable to connect to the webinar.
		2:15 pm	Ray called Dolores Castillo (the designated buyer for the IFB) to ask about the problem with the webinar connection and the inability to see the results of the bid opening. He was unable to make contact.
		2:20-3:40 pm	Ray called Dolores Castillo numerous times and was still unable to make contact.
		3:45pm	Ray called Dolores Castillo and she informed him that the technical difficulty was on the City's end and that the webinar was not available. She said she was not able to make the connection from the city to the website. The video of the bid opening remains unavailable.
Webinar Difficulties	01/18/13	3:49pm	Dolores Castillo emailed Ray informing him that the final calculations had not yet been completed. She stated that her coworker would forward these on 1/22/13. Within this email, Dolores also apologized for the technical difficulties the city experienced during the webinar on 01/16/13. (Attached – Exhibit 3)
	01/22-23/13		TDS did not receive any correspondence from the Purchasing Department, as had been promised.
Bid Calculations	01/24/13	11:16am	Bid Calculations were emailed to Ray and the Republic representative (janstey@republicservices.com) for the first time. (Attached – Exhibit 4)
Missing Pricing	01/25/13	11:15am	Ray received a call from Dolores Castillo (Purchasing contact) informing Ray that some of the pricing pages were missing.
		12:36pm	Ray emailed Dolores Castillo all three pricing sheets, two of which Ray had inadvertently left out of the TDS bid submittal. (Attached – Exhibit 5)
Electric Utility Commission Meeting	02/25/13	4:49pm	Ray emailed Dolores Castillo, informing her that TDS saw that the Austin Energy bid was on that evening's Electric Utility Commission agenda. Ray informed Dolores that TDS representatives would attend the Electric Utility Commission meeting and request that this item be pulled from the Consent Agenda for discussion.
		5:05pm	Dolores Castillo called Ray Bryant back and left a

			message for him to call her.
		5:45pm	Rick Fraumann & Ray Bryant arrived at the Electric Utility Commission meeting, scheduled to start at 6pm.
		6:15pm	The Electric Utility Commission Austin Energy bid (Item # 15) was pulled for discussion. Rick and Ray both spoke during Citizens Comments to Commission Members about Solicitation No. IFB 1100 DKC0093. (Attached EUC Meeting related item transcript – Exhibit 6)
Conversation with Purchasing Buyer	02/26/13	9:30am	Ray returned Dolores' call. She asked, "Are you guys going to the City Council meeting that is scheduled on 03/07/13?" Ray informed her that TDS representatives were definitely going to attend.
	03/01/13	3:48pm	<p>Dolores Castillo called Ray Bryant and said that she is aware that TDS will attend the March 7th Austin Council meeting. She also informed Ray that she secured the document that outlines the Allied/BFI Sunset Farms Landfill closure on November 1, 2015 (The Rule 11 Agreement). She had spoken with Allied about this. She said that Allied responded that they would figure something out.</p> <p>Dolores went on to apologize for not sending Ray the attached document informing TDS of the incomplete bid submittal until now. She said she thought she had emailed it earlier, but couldn't find confirmation that she had actually sent it to TDS. She said that she had mailed a hard copy of the bid rejection letter, but it was returned back to the city (as undelivered).</p>
Incomplete bid letter	03/01/13	3:55pm	<p>Dolores emailed the incomplete bid submittal letter to Ray and apologized for not sending him the February 14, 2013 notification until now (March 1). At this time, she attached the February 14, 2013 notification stating that the bid was incomplete. (Attached – Exhibit 7)</p> <p>Although the City's letter indicates otherwise, the bid Cover Sheet with required signature had been included with the TDS bid package. (Attached – Exhibit 8)</p>
Conversation with Purchasing Buyer	03/06/13	9:10am	Ray called and spoke with Dolores and she informed him that she did read the bids aloud at the bid opening on January 16th. She also went on to say that after she emailed the bid tabulations to both Ray and Allied/BFI on January 24th, the bid tabulations were posted on the city's website a week later. She stated, however, that she wasn't sure of the exact date that it was available on the website. Ray asked where he could find more specific guidelines about the IFB. She said she'd email them

			to him.
TDS written response to Dolores Castillo	03/6/2013	3:02pm	TDS sent Dolores Castillo a written response via email to the IFB incomplete bid submittal. TDS also enclosed a Council/Staff Q and A posting, and a signed copy of the remaining two rate sheets that were inadvertently omitted from the bid submittal. (Attached – Exhibit 9)
	03/06/2013	5:31pm	Dolores Castillo emailed Ray the following documents: 0100 – Standard Purchase Definitions 0200 – Solicitation Instructions 0300 - Standard Purchase Terms & Conditions
Austin City Council Meeting Recommendation for Council Action (RCA) Agenda Item 26	3/7/2013		Austin City Council Discussion and action postponing the item until April 11 th , to allow time for consideration and comment from the Zero Waste Advisory Commission (and Mr. Gedert). (Attached – Council Agenda Item 26 discussion transcript – Exhibit 10)
Amendment #4 – 60-day Holdover	03/07/13	1:48pm	Dolores Castillo emailed Ray Bryant an executed Amendment #4 for a 60-day holdover of the existing contract. (Attached – Exhibit 11) (Note: The contract allows for an additional 60 days of Holdover, total of 120 days, if needed to allow the time to rebid the contract.)
Request for a complete bid packet for Allied Waste Services # 843	04/02/13	1:22pm	Ray emailed Dolores asking her to email him the complete bid packet for Allied Waste Services. (Attached – Exhibit 12)
TDS written request for a contract renewal/extension	4/5/13	1:54pm	TDS sent Dolores Castillo an email request for an extension of the 2009 contract for an identical term of one year and three one-year extension options, as allowed in Supplemental Purchase Provisions, Term of Contract, Subsection 6C of the existing TDS Contract No. MA1100NA090000114. (Attached – Exhibit 13.) See pages from existing TDS contract which allows the city staff to extend the term of the contract under Term of Contract Subsection 6C, as requested by TDS. Staff relied on Subsection 6B for the implementation of its holdover period. (Attached – Exhibit 14.)
	4/5/13	5:23pm	Dolores Castillo responded by email to TDS email request by addressing Term of Contract subsection 6A and 6B (and apparently ignoring the existence of 6C) in the contract and stating that she cannot consider the offer. (Attached – Exhibits 14 and 15.)
TDS written response to Dolores Castillo, regarding the 4/10/13 posting of staff response to	4/10/13		TDS sent Dolores Castillo an email responding to the statement of the City's Chief Sustainability officer's statement and to Bob Gedert's memo to Austin Energy officials as posted on the City's website

Councilmember request for a response from ARR Director Bob Gedert and the Chief Sustainability Officer, and the RCA for Council's 4/11/13 Agenda Item 19			responding to Councilmember Morrison's question regarding Item No. 19 on Council's 4/11/13 Agenda. TDS also attached a copy of the TDS comments to the RCA, the Council / staff Q and A posting, overweight fee calculation, TDS waste diversion report and photograph, as well as a copy of the Rule 11 Agreement. (Attached – Exhibit 16)

Exhibit 1

Ray Bryant

Subject: FW: City of Austin Solicitation Revision Notice - IFB 1100 DKC0093
Attachments: IFB_1100_DKC0093_ADD_1_v1.doc

From: Eric Hise
Sent: Wednesday, December 19, 2012 1:18 PM
To: Ray Bryant
Cc: Lisa Oney
Subject: Fwd: City of Austin Solicitation Revision Notice - IFB 1100 DKC0093

FYI...

Begin forwarded message:

From: <purchinfo@austintexas.gov>
Date: December 19, 2012, 1:15:01 PM CST
To: <ehise@texasdisposal.com>
Subject: City of Austin Solicitation Revision Notice - IFB 1100 DKC0093

**City of Austin
Solicitation Revision Notice
12/19/2012 1:15 PM**

Type: INVITATION FOR BIDS
Solicitation No: IFB 1100 DKC0093
Classification: Non-Professional Services
Description: Management & Disposal of Class 2 Industrial & Special Waste
Publish Date/Time: 11/28/2012 1:50 PM
Closing Date/Time: 1/9/2013 2:00 PM

This message is to notify you that a revision to the referenced solicitation has occurred. You have been notified because you are subscribed to this solicitation. [Click here](#) to see the solicitation in its current form, or to unsubscribe to this solicitation and stop receiving notifications about it.

If you have questions about finding solicitation information, please contact the City of Austin Purchasing Office at PurchInfo@austintexas.gov or call (512)974-2500.

Summary of Changes:

Revision No. 1

Revision Reasons:

Bid/Response Due Date/Time - extended, Addendum - added, Bid/Response Open Date/Time - extended

Attachments Affected:

ADD_1

City Ordinance 20111110-52 regarding Anti-Lobbying and Procurement is effective as of December 1, 2011. For review of the City Ordinance please [click here](#).



**INVITATION FOR BID
PURCHASING OFFICE
CITY OF AUSTIN**

IFB DKC0093 ADDENDUM NO. 1 DATE OF ADDENDUM: December 19, 2012

This addendum is to incorporate a change to the following solicitation document:

1.0 Change and extend Bid Due Date and Time to read:

BID DUE PRIOR TO: 2:00 pm ON JANUARY 9, 2013

BID OPENING TIME & DATE: 2:15 PM ON JANUARY 9, 2013

All other terms and conditions remain the same.

BY THE SIGNATURE affixed below, this Addendum is hereby incorporated and made a part of the above-referenced Solicitation.

APPROVED BY: *Dolores Castillo*

Dolores Castillo, Sr. Buyer
Purchasing Office

ACKNOWLEDGED BY:

PROPOSER

AUTHORIZED SIGNATURE

DATE

RETURN ONE (1) COPY OF THIS ADDENDUM TO PURCHASING OFFICE, CITY OF AUSTIN, WITH YOUR SEALED PROPOSAL. FAILURE TO DO SO MAY CONSTITUTE GROUNDS FOR REJECTION OF YOUR OFFER.

Ray Bryant

Subject: FW: City of Austin Solicitation Revision Notice - IFB 1100 DKC0093 Rev 2

From: Ray Bryant

Sent: Wednesday, January 09, 2013 2:28 PM

To: Eric Hise

Subject: Re: City of Austin Solicitation Revision Notice - IFB 1100 DKC0093 Rev 2

While I was there, I signed the addendum and turned it in with the Packet.

Ray Bryant

Municipal/HOA House Acct. Supervisor

Texas Disposal System

512-487-2716

Sent from my iPad

On Jan 9, 2013, at 1:50 PM, "Eric Hise" <ehise@texasdisposal.com> wrote:

Did we turn in a bid today?

Eric Hise

Texas Disposal Systems

www.texasdisposal.com

Office: 512-421-1372

[!\[\]\(19d44b37fb4fa155bf9d60c77a3d3cb2_img.jpg\)](#) [!\[\]\(32b0d4c179ff868011656ab6c9e92913_img.jpg\)](#) [!\[\]\(0af066940f31e2a4f15c10824101a8fe_img.jpg\)](#)

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Ray Bryant

Texas Disposal Systems

www.texasdisposal.com

Office: 512-421-7646



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Begin forwarded message:

From: <purchinfo@austintexas.gov>

Date: January 9, 2013, 1:45:12 PM CST

To: <ehise@texasdisposal.com>

**Subject: City of Austin Solicitation Revision Notice - IFB 1100 DKC0093 Rev
2**

**City of Austin
Solicitation Revision Notice
1/9/2013 1:45 PM**

Type: INVITATION FOR BIDS
Solicitation No: IFB 1100 DKC0093
Classification: Non-Professional Services
Description: Management & Disposal of Class 2 Industrial & Special Waste
Publish Date/Time: 11/28/2012 1:50 PM
Closing Date/Time: 1/16/2013 2:00 PM

This message is to notify you that a revision to the referenced solicitation has occurred. You have been notified because you are subscribed to this solicitation. [Click here](#) to see the solicitation in its current form, or to unsubscribe to this solicitation and stop receiving notifications about it.

If you have questions about finding solicitation information, please contact the City of Austin Purchasing Office at PurchInfo@austintexas.gov or call (512)974-2500.

Summary of Changes:

Revision No. 2

Revision Reasons:

Bid/Response Due Date/Time - extended, Addendum - added, Bid/Response Open Date/Time - extended

Attachments Affected:

ADD_2

City Ordinance 20111110-52 regarding Anti-Lobbying and Procurement is effective as of December 1, 2011. For review of the City Ordinance please [click here](#).

Ray Bryant

Exhibit 3

From: Castillo, Dolores <Dolores.Castillo@austinenergy.com>
Sent: Friday, January 18, 2013 3:49 PM
To: Ray Bryant
Cc: Guerrero, Gabriel
Subject: Pending bid tab completion for IFB DKC0093

Hello Mr. Bryant

I will be out of the office returning on Thursday, January 24th. The bid tab for the subject solicitation should be completed on Tuesday. I've asked my co-work, Mr. Guerrero, to forward that to you at his earliest opportunity. Thank you for your patience. I apologize again for the technical difficulties we experienced during the webinar on Wednesday.
Thank you

Dolores Castillo

Senior Buyer

City of Austin

Purchasing Office

P.O. Box 1088

Austin, TX 78767

Office: 512-322-6466

Fax: 512-322-6490

dolores.castillo@austinenergy.com

Manager: Shawn Willett shawn.willett@austinenergy.com 512-505-7351

For information about contracts and payments, please visit Austin Finance on line at:
<http://www.ci.austin.tx.us/financeonline/finance/index.cfm>



Please consider the environment before printing this e-mail or attachments.

Exhibit 4

Ray Bryant

From: Castillo, Dolores <Dolores.Castillo@austinenergy.com>
Sent: Thursday, January 24, 2013 11:16 AM
To: Ray Bryant; janstey@republicservices.com
Cc: Eldred, Jim; Sanchez, Paul
Subject: Bid Tabulation for IFB DKC0093

Thank you.

Dolores Castillo

Senior Buyer

City of Austin

Purchasing Office

P.O. Box 1088

Austin, TX 78767

Office: 512-322-6466

Fax: 512-322-6490

dolores.castillo@austinenergy.com

Manager: Shawn Willett shawn.willett@austinenergy.com 512-505-7351

For information about contracts and payments, please visit Austin Finance on line at:
<http://www.ci.austin.tx.us/financeonline/finance/index.cfm>



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<<

IFBDKC0093 - Bid Tabulations.pdf (67.9KB)

(67.9KB)

>>

The information contained in this bid tabulation is for information only and does not constitute actual award/execution of a contract.

BID TABULATION CITY OF AUSTIN

BID NO. IFBDKC0093
RX NO.
DATE: 1/9/2013
BUYER: DOLORES CASTILLO

Special Instructions: Be advised that exceptions taken to any portion of the solicitations may jeopardize acceptance of the bid.

TASK 1: CLASS 2 SPECIAL WASTE AND MUNICIPAL WASTE MANAGEMENT SERVICES

Allied Waste Services #843									
ITEM NO.	ITEM DESCRIPTION	CONTAINER	ANNUAL EST. QTY.	UNIT	TREATMENT	POTENTIAL TSDR(%)	UNIT PRICE	STATE FEE (if applicable)	TOTAL PRICE
1DISPOSAL									
1	Weathered & Non-weathered Utility Poles (cut to fit roll-off)	Roll-off	6,240	Cu Yd	Grind & Reuse in disposal processes of Landfill	Sunset Farms	\$18.00	included	\$112,320.00
2	Scrap Wood (from broken pallets, crates, or construction debris)	Roll-off	200	Cu Yd	Recycle	No Bid	No Bid	No Bid	No Bid
3	Asbestos, friable, bulk		40	Cu Yd	Landfill	Sunset Farms	\$25.00	included	\$1,000.00
4	Asbestos, non friable bulk		40	Cu Yd	Landfill	Sunset Farms	\$25.00	included	\$1,000.00
5	Solids - Bulk contaminated soil		600	Cu Yd	Landfill	Sunset Farms	\$25.00	included	\$15,000.00
6	Solids - drained capacitors and oil switches		180	Cu Yd	Landfill	Sunset Farms	\$25.00	included	\$4,500.00
7	Solids - loose bulk plant trash and constr debris		1,530	Cu Yd	Landfill	Sunset Farms	\$17.00	included	\$26,010.00
8	Solids - Drum	55 G Drum	80	EA	Landfill	Sunset Farms	\$50.00	included	\$4,000.00
9	Solids - Drum	30 G Drum	5	EA	Landfill	Sunset Farms	\$50.00	included	\$250.00
10	Solids - Drum	20 G Drum	5	EA	Landfill	Sunset Farms	\$50.00	included	\$250.00
11	Solids - Drum	8 G Drum	5	EA	Landfill	Sunset Farms	\$50.00	included	\$250.00
12	Liquids - Bulk	Tanker	25,000	Gallons	Solidification AND Landfill	Tessman Road	\$0.50	included	\$12,500.00
13	Liquids - Drum	55 G Drum	30	EA	Solidification AND Landfill	Tessman Road	\$60.00	included	\$1,800.00
14	Liquids - Drum	30 G Drum	4	EA	Solidification AND Landfill	Tessman Road	\$60.00	included	\$240.00

15	Liquids - Drum	20 G Drum	4	EA	Solidification AND Landfill	Tessman Road	\$60.00	included	\$240.00
16	Liquids - Drum	8 G Drum	4	EA	Solidification AND Landfill	Tessman Road	\$60.00	included	\$240.00
17	Sludge - Bulk	Vac Box	6	each 3000 gal	Solidification AND Landfill	Tessman Road	\$1,500.00	included	\$9,000.00
18	Sludge - Drum	55 G Drum	10	EA	Solidification AND Landfill	Tessman Road	\$60.00	included	\$600.00
19	Sludge - Drum	30 G Drum	2	EA	Solidification AND Landfill	Tessman Road	\$60.00	included	\$120.00
20	Sludge - Drum	20 G Drum	2	EA	Solidification AND Landfill	Tessman Road	\$60.00	included	\$120.00
21	Sludge - Drum	8 G Drum	2	EA	Solidification AND Landfill	Tessman Road	\$60.00	included	\$120.00
TRANSPORTATION									
1	20 Yd3 Roll-off Delivery Rate	N/A	18	EA	N/A	N/A	\$150.00	N/A	\$2,700.00
2	20 Yd3 Roll-Off Rental Rate	N/A	300	Days	N/A	N/A	\$3.00	N/A	\$900.00
3	20 Yd3 Roll-Off Haul Rate	N/A	6	EA	N/A	N/A	\$280.00	N/A	\$1,680.00
4	30 Yd3 Roll-Off Delivery Rate	N/A	6	EA	N/A	N/A	\$150.00	N/A	\$900.00
5	30 Yd3 Roll-Off Rental Rate	N/A	1095	Days	N/A	N/A	\$3.00	N/A	\$3,285.00
6	30 Yd3 Roll-Off Haul Rate	N/A	220	EA	N/A	N/A	\$280.00	N/A	\$61,600.00
7	40 Yd3 Roll-Off Delivery Rate	N/A	2	EA	N/A	N/A	\$150.00	N/A	\$300.00
8	40 Yd3 Roll-Off Rental Rate	N/A	365	Days	N/A	N/A	\$3.00	N/A	\$1,095.00
9	40 Yd3 Roll-Off Haul Rate	N/A	10	EA	N/A	N/A	\$280.00	N/A	\$2,800.00
OTHER - List any other charges not included in above line items that are necessary for completion of waste mgmt task. Please specify each additional									
1	Over weight fee	Maximum per load is 10 tons. Anything over 10 tons will be charged \$.40 per pound.							
2									
3									
4									
5									
6									
TOTAL PRICE FOR TASK 1									\$264,820.00

Texas Disposal Systems, Inc.

ITEM NO.	ITEM DESCRIPTION	CONTAINER	ANNUAL EST. QTY.	UNIT	TREATMENT	POTENTIAL TSDR(g)	UNIT PRICE	STATE FEE (if applicable)	TOTAL PRICE
DISPOSAL									
1	Weathered & Non-weathered Utility Poles (cut to	Roll-off	6,240	Cu Yd	Grind & Reuse in disposal		\$10.00		\$62,400.00
2	Scrap Wood (from broken pallets, crates, or	Roll-off	200	Cu Yd	Recycle		\$1.00		\$200.00
3	Asbestos, friable, bulk		40	Cu Yd	Landfill		\$36.00		\$1,440.00
4	Asbestos, non-friable bulk		40	Cu Yd	Landfill		\$27.00		\$1,080.00
5	Solids - Bulk contaminated soil		600	Cu Yd	Landfill		\$54.40		\$32,640.00
6	Solids - drained capacitors and oil switches		180	Cu Yd	Landfill		\$54.40		\$9,792.00
7	Solids - loose bulk plant trash and constr debris		1,530	Cu Yd	Landfill		\$17.90		\$27,387.00
8	Solids - Drum	55 G Drum	80	EA	Landfill		\$25.10		\$2,008.00
9	Solids - Drum	30 G Drum	5	EA	Landfill		\$25.10		\$125.50
10	Solids - Drum	20 G Drum	5	EA	Landfill		\$25.10		\$125.50
11	Solids - Drum	8 G Drum	5	EA	Landfill		\$15.04		\$75.20
12	Liquids - Bulk	Tanker	25,000	Gallons	Solidification AND Landfill		\$0.00		\$0.00
13	Liquids - Drum	55 G Drum	30	EA	Solidification AND Landfill		\$0.00		\$0.00
14	Liquids - Drum	30 G Drum	4	EA	Solidification AND Landfill		\$0.00		\$0.00
15	Liquids - Drum	20 G Drum	4	EA	Solidification AND Landfill		\$0.00		\$0.00
16	Liquids - Drum	8 G Drum	4	EA	Solidification AND Landfill		\$0.00		\$0.00
17	Sludge - Bulk	Vac Box	6	each	Solidification AND Landfill		\$0.00		\$0.00
18	Sludge - Drum	55 G Drum	10	EA	Solidification AND Landfill		\$0.00		\$0.00
19	Sludge - Drum	30 G Drum	2	EA	Solidification AND Landfill		\$0.00		\$0.00
20	Sludge - Drum	20 G Drum	2	EA	Solidification AND Landfill		\$0.00		\$0.00
21	Sludge - Drum	8 G Drum	2	EA	Solidification AND Landfill		\$0.00		\$0.00
TRANSPORTATION									
1	20 Yd3 Roll-off Delivery Rate	N/A	18	EA	N/A		\$0.00		
2	20 Yd3 Roll-Off Rental Rate	N/A	300	Days	N/A		\$0.00		
3	20 Yd3 Roll-Off Haul Rate	N/A	6	EA	N/A		\$0.00		
4	30 Yd3 Roll-Off Delivery Rate	N/A	6	EA	N/A		\$0.00		
5	30 Yd3 Roll-Off Rental Rate	N/A	1095	Days	N/A		\$0.00		
6	30 Yd3 Roll-Off Haul Rate	N/A	220	EA	N/A		\$0.00		
7	40 Yd3 Roll-Off Delivery Rate	N/A	2	EA	N/A		\$0.00		
8	40 Yd3 Roll-Off Rental Rate	N/A	365	Days	N/A		\$0.00		
9	40 Yd3 Roll-Off Haul Rate	N/A	10	EA	N/A		\$0.00		
OTHER - List any other charges not included in above line items that are necessary for completion of waste mgmt task. Please specify each additional									
1									
2									

[illegible]

Prepared By: Selina Carrizales
Approved By: Dolores Castillo

Exhibit 5

Ray Bryant

From: Ray Bryant
Sent: Friday, January 25, 2013 12:36 PM
To: dolores.castillo@austinenergy.com
Subject: FW: Austin Energy Class 2 Waste IFB
Attachments: IFB_1100_DKC0093_0600_RATES ONLY.xlsx; ATT00001.htm

Hello Dolores,

You indicated that the "Transportation" section did not have pricing in our bid. I am not sure what happen but somehow it got left out. I have attached the pricing that you should have received. Will this total pricing be considered. Thanks!

Ray Bryant
Texas Disposal Systems
512-487-2716

From: Ray Bryant
Sent: Friday, January 25, 2013 11:46 AM
To: Ray Bryant
Subject: Fwd: Austin Energy Class 2 Waste IFB

Ray Bryant
Municipal/HOA House Acct. Supervisor
Texas Disposal System
512-487-2716

Sent from my iPad

Ray Bryant
Texas Disposal Systems
www.texasdisposal.com
Office: 512-421-7646



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IFB DKC0093
BID SHEET DESCRIPTION OF TASK

TASK 1: CLASS 2 SPECIAL WASTE AND MUNICIPAL WASTE MANAGEMENT SERVICES

ITEM DESCRIPTION	CONTAINER	ANNUAL EST. QTY	UNIT	TREATMENT	POTENTIAL TSD(FG)	UNIT PRICE	STATE FEE (if applicable)	TOTAL PRICE
1. DISPOSAL								
1. Weathered & Non-weathered Utility Poles (cut to fit roll-off)	Roll-off	6240	Cu Yd	Grind & Reuse in disposal processes or Landfill		\$10.00		\$62,400.00
2. Scrap Wood (from broken pallets, crates, or construction debris)	Roll-off	200	Cu Yd	Recycle		\$1.00		\$200.00
3. Asbestos, friable, bulk		40	Cu Yd	Landfill		\$36.00		\$1,440.00
4. Asbestos, non-friable bulk		40	Cu Yd	Landfill		\$27.00		\$1,080.00
5. Solids - Bulk contaminated soil		600	Cu Yd	Landfill		\$54.40		\$32,640.00
6. Solids - drained capacitors and oil switches		180	Cu Yd	Landfill		\$54.40		\$9,792.00
7. Solids - loose bulk plant trash and constr debris		1530	Cu Yd	Landfill		\$17.90		\$27,387.00
8. Solids - Drum	55 G Drum	80	Each	Landfill		\$25.10		\$2,008.00
9. Solids - Drum	30 G Drum	5	Each	Landfill		\$25.10		\$125.50
10. Solids - Drum	20 G Drum	5	Each	Landfill		\$25.10		\$125.50
11. Solids - Drum	8 G Drum	5	Each	Landfill		\$15.04		\$75.20
12. Liquids - Bulk	Tanker	25000	Gallons	Solidification AND Landfill				
13. Liquids - Drum	55 G Drum	30	Each	Solidification AND Landfill				
14. Liquids - Drum	30 G Drum	4	Each	Solidification AND Landfill				
15. Liquids - Drum	20 G Drum	4	Each	Solidification AND Landfill				
16. Liquids - Drum	8 G Drum	4	Each	Solidification AND Landfill				

IFB DKC0093
BID SHEET DESCRIPTION OF TASK

TASK 1: CLASS 2 SPECIAL WASTE AND MUNICIPAL WASTE MANAGEMENT SERVICES

ITEM DESCRIPTION	CONTAINER	ANNUAL EST. QTY	UNIT	TREATMENT	POTENTIAL TSDR(e)	UNIT PRICE	STATE FEE(e) applicable	TOTAL PRICE
17. Sludge - Bulk	Vac Box	6	each 3000 gal	Solidification AND Landfill				
18. Sludge - Drum	55 G Drum	10	Each	Solidification AND Landfill				
19. Sludge - Drum	30 G Drum	2	Each	Solidification AND Landfill				
20. Sludge - Drum	20 G Drum	2	Each	Solidification AND Landfill				
21. Sludge - Drum	8 G Drum	2	Each	Solidification AND Landfill				
TRANSPORTATION								
1. 20 yd ³ Roll-Off Delivery Rate	N/A	18	Each	N/A	N/A	\$163.00		\$2,934.00
2. 20 yd ³ Roll-Off Rental Rate	N/A	300	Days	N/A	N/A	\$2.00		\$600.00
3. 20 yd ³ Roll-Off Haul Rate	N/A	6	Each	N/A	N/A	\$253.00		\$1,518.00
4. 30 yd ³ Roll-Off Delivery Rate	N/A	6	Each	N/A	N/A	\$163.00		\$978.00
5. 30 yd ³ Roll-Off Rental Rate	N/A	1095	Days	N/A	N/A	\$2.00		\$2,190.00
6. 30 yd ³ Roll-Off Haul Rate	N/A	220	Each	N/A	N/A	\$253.00		\$55,660.00
4. 40 yd ³ Roll-Off Delivery Rate	N/A	2	Each	N/A	N/A	\$163.00		\$326.00
8. 40 yd ³ Roll-Off Rental Rate	N/A	365	Days	N/A	N/A	\$2.00		\$730.00
9. 40 yd ³ Roll-Off Haul Rate	N/A	10	Each	N/A	N/A	\$253.00		\$2,530.00
OTHER - List any other charges not included in above line items that are necessary for completion of waste management task. Please specify each additional								
1. AE-owned box haul & return w/ daytime time restrictions						\$342.00		

TASK 1: CLASS 2 SPECIAL WASTE AND MUNICIPAL WASTE MANAGEMENT SERVICES									
ITEM DESCRIPTION	CONTAINER	ANNUAL EST. QTY	UNIT	TREATMENT	POTENTIAL TSDf(s)	UNIT PRICE	STATE FEE/(\$ applicable)	TOTAL PRICE	
2. All-owned box haul & return w/ no time restrictions						\$288.00			
3. No Haul/Relocate/Dry Run						\$163.00			
4. Permanent Roll-off Box Delivery						\$0.00			
5. 20/30/40 yd ³ Roll-Off Haul w/ no time restrictions						\$213.00			
6.									
TOTAL PRICE FOR TASK 1							\$204,739.20		
Company Name _____									
Signature _____									

Electric Utility Commission – Feb. 25, 2013 – Item 15

Attending: Bernle Bernfeld, Chair; Karen Hadden, Vice Chair; Shudde Fath; Linda Shaw; Cheryl Mele; Rosemary Ledesma; Phillip Schmandt

Citizen Communication:

[Rick Fraumann and Ray Bryant]

Bernfeld: First order of new business, on consent items, if I could just get who wants to pull what. Excuse me, I'm sorry. The winds, I guess I need help, trying to get out of here quickly. Sorry. Citizen communication - I know we have one gentleman. Is it just the one? Okay, so Rick Fraumann, if you can ... did I get it right? Fraumann. Do I didn't get it right, sorry, even after practicing it, sorry.

Fraumann: Thank you, commissioners, so much for ... Do I need to turn this on?

Bernfeld: No, just lean into it.

Fraumann: Sorry. Thank you very much for allowing me to come and speak with you. I will be very brief. I was coming to talk to you about an item that's on the consent agenda. I believe it's number 15. My name is Rick Fraumann. I'm with Texas Disposal Systems. And I was requesting that you pull that item from the consent agenda for discussion, and I will tell you the purposes. We currently provide the service for that. We did turn in a response to your IFB. It was our fault, we didn't complete it properly. We signed it in 10 places, but we missed one and we missed a sheet. It was a clerical error. The error was completely our fault, and not related to Austin Energy at all. But I did notice in your packet it said that there were two respondents and that your prices were going up \$16,000 a year. We are here to say, I'm not sure if we are included in that two, or if there are two others, we would be the third. I don't know, but because the price is going up so much, our desire was to bid on it and though our fault, we were not considered responsive. I did want you to know that there are other bidders, at least us, that are interested in that, should you choose to rebid that, and I would encourage you hopefully to....

Bernfeld: Okay, I just want to point out it's a 16% increase, not 16,000.

Fraumann: I'm sorry. Did I say it wrong? Sixteen percent, yes sir.

Bernfeld: Question to Austin Energy, because this is not typical of what we normally work with. When you've got contracts and folks responding, if their packet is missing something, is it normal procedure to pick up the phone and say "we're missing page 15" or missing ...

Mele: That's a question for purchasing and Rosemary Ledesma is here and she can respond to that for you.

Bernfeld: Okay, well obviously, let's just address it and get it out of the way. Thank you.

1 Ledesma: Hi. I'm Rosemary Ledesma, Purchasing Manager. On solicitations, when we get those
2 in, the bidders actually have one opportunity to provide complete responses, and in this particular case,
3 there were several items in the bid sheet and pages 2 and 3 meant that there were multiple items that
4 we didn't receive pricing for, so virtually, we can't complete an evaluation if we are missing some
5 pricing. We can't compare an evaluation from TDS to the other firm that we received a bid, so we just
6 deemed them non-responsive because they do get the one opportunity, according to policy.

7 Fraumann: We completely understand that.

8 Bernfeld: Just to re-clarify here, and then we'll address the rest of 15 in order here. You say you
9 are the current provider?

10 Fraumann: Yes, sir. Yes, sir, we are.

11 Bernfeld: Alright, I think we can address the rest of this when we get to the item, and thank you.

12 Fraumann: And the only other thing I wanted to mention on that – in your RFP, it does state that, or
13 in the IFB, I should say, that the respondent has to have a landfill – let me read it so I can quote it to you
14 properly – to be eligible for this contract, the contractor shall, at a minimum, own or operate a landfill
15 permitted to accept the City's waste listed under this task as part of the requirement. The company that
16 you chose, should you choose to go down that road, certainly can do that; however, in a Rule 11, I
17 believe it is, with the City, they will be closing on November 1st, 2015. It is a two year contract, which
18 they certainly could do, but any subsequent extensions, according to my interpretation of the IFB, they
19 would not be able to perform. So I would ask that you look at the possibility of rebidding it. If you
20 choose not to do that, I think you might want to clean up your language of the time frame based on the
21 capabilities of all the respondents.

22 Bernfeld: Thank you. Any other questions?

23 Fath: How long you communicated with the bidding department after the deadline had
24 closed or when?

25 Fraumann: We had discussions with Delores Castillo. Ray Bryant is here and he can probably
26 answer specifically because he had the discussions back and forth about the two pages that the lady said
27 were missing and the signature accompanying it.

28 Bernfeld: And that was before the deadline?

29 Bryant: Yes. Ray Bryant, Texas Disposal Systems. Thank you. Yes, I spoke with Dolores
30 immediately, and what I was asking her at first, before dealing with have you made the decision, and she
31 said no, we haven't, and then finally she said "Well, you've got some things missing." I said, "What are
32 they?" and she told me there was a page that was missing on the pricing, so I said, "I'll get those to you.
33 I apologize." And she said "Let me get back with you." And I called her back and she says, "We won't be
34 able to accept it."

1 Fath: And that was ...

2 Bryant: I said "I can get those to you right now" and she said "We won't be able to accept it."

3 Fath: And was that before or after the deadline when we wouldn't be able to accept it?

4 Bryant: I don't know because the deadline kept moving, as you know. It was due, I think in
5 December, and they moved it a month. It kept moving. I found out that it was moved the day I was
6 sitting in the office in Austin that it was moved twice, and it kept moving, so, that's when I found out it
7 had been moved another month. I think it was twice that it was moved, and I didn't find out until they
8 said... and they sent it out after I was there, so I'm not sure where it failed, to be honest with you. I just
9 know that she and I did talk about it and I was willing to send the additional information in at that
10 moment after it was brought to my attention.

11 Shaw: I have one question. I understand, if I'm reading the materials correctly, that one of the
12 reasons that the price went up as it is was because of limited space at the facility. If it was Texas
13 Disposal Systems, would you guys also have a limitation?

14 Fraumann: We have 25 years of life left at our facility.

15 Fath: Is this company related to that old one out north somewhere that has a pile real high
16 and they're under an agreement to shut it down by ...?

17 Bryant: No.

18 Fath: That's not it?

19 Fraumann: You're talking about our company?

20 Fath: No, the

21 (Unknown female): Allied Waste Services.

22 Fath: Allied Waste. Are they related to – that waste management company that's out north
23 or northeast somewhere, that has a real tall pile and they've agreed to shut it down by 2016 or
24 something?

25 Fraumann: I hate to speak on behalf of anyone else's company but the facts are that they've agreed
26 to close their facility, with the city – I think you guys worked out an understanding – on November 1st,
27 2015.

28 Fath: This company?

29 Bernfeld: Yea, that's whose company is

30 Fraumann: The company that you are recommending to go with.

1 Bernfeld: Yea, the sole bidder, they are going to be shutting it down so they wouldn't be available
2 for renewal, which is one of his points.

3 Shaw: And is it the same as BFI, I think that's the question?

4 Fraumann: It used to be called BFI, then they had a couple of couple of buy-outs. Also known as
5 Allied Waste – and I think it's Republic Services at this point, but it's the same facility. I'm not going to
6 say anything about the facility because I don't know.

7 Bernfeld: We probably need to direct the rest to Austin Energy if there are any questions.

8 Fraumann: That's something you could look at with someone else.

9 Bernfeld: Alright. Thank you. Appreciate it.

10 Fraumann: Thank you so much for your time, I appreciate it.

11

12 * * * * *

13

14 **EUC MEETING – ITEM 15 DISCUSSION:**

15 Bernfeld: Thank you. I guess we'll move to item 15. And, I'm trying to remember who had the
16 main question ...

17 Hadden: I've got some questions.

18 Bernfeld: Okay. You have the floor, madam vice chair. Who will answer 15?

19 Mele: I will do my best to answer 15 for you tonight.

20 Hadden: Ok – well, I'm a little concerned about this one, because it seems to me that if an
21 application, or response, comes in with a bid, that if there was a page, or two pages, missing out of the
22 whole packet, that the first thing that would happen is that there would be a phone call saying "you
23 missed a couple pages" and I don't think this is right. When we had – it sounds like the company
24 actually called in to submit additional pages.

25 Schmandt: It's the incumbent. It's not like they're strangers.

26 Hadden: So, I do have concerns about this because it sounds like the proposed awardee is going
27 to be potentially more expensive due to having limited availability. To me, it seems like this is time to
28 rebid. I would just like some feedback from you. I'm just going to compare this to something. I
29 frequently, as a citizen, attend meetings of the State's Compact Commission. I see these commissioners
30 bend over backwards to help people get their applications in, make sure they're complete, they have

1 staff work on that. It just seems to me that you don't turn away a major bid until you make sure it's
2 complete. Mistakes happen.

3 Ledesma: Ok, so this is Rosemary Ledesma, Purchasing Manager. I just want to explain a little bit
4 about the process that a buyer does when they receive bids for them. First of all, the buyers do not get
5 any information on the bids. In order to be fair and impartial, we have an administrative group at
6 corporate purchasing who actually collects the bids and at the time that they are actually due to close,
7 that's the time that those bids are released to the buyer. So, they don't know ahead of time who all has
8 submitted complete packages or not until after it's closed. So, after closing, when they review those
9 bids, if there's something incomplete, or they might need clarification to the bids, then they will, if
10 clarification is needed, they will contact the vendors and let them know, okay, and in this case more
11 than likely what Delores did do – she was the buyer for this particular project – she would have
12 contacted them, possibly over the phone, and said "I'm missing these pages," or she may have sent an
13 email, I'm missing these pages from the bid sheet and I want you to confirm that you didn't submit
14 these or did you? Just to try to get some verification from the vendor that maybe they did make an
15 error or did we overlook something in the package that was provided to us. And, in this case, when she
16 did contact the vendor, they did confirm that there were some missing pages. But this was after the bid
17 closing. So, in the process when a vendor does make errors or have mistakes in their bid, it's really not
18 fair, so the purchasing office kind of looks at everyone that gets ready and takes the time to prepare
19 these bids, and it's not really fair to the other vendors that did complete their packages properly to
20 allow someone else to come in and provide pricing. So, there is policy in the office that once the bid is
21 closed, if the vendors do not provide pricing, they're not allowed to provide pricing after the bids have
22 been closed.

23 Schmandt: Were they missing pricing or missing nine percent of the signatures on the forms?

24 Ledesma: They were missing a signature on the form that was required - the bid sheet - and in
25 addition, there were several line items. I would probably have to say about 50 to 60% of the line items
26 that were needed, I believe there's 21 total, we didn't receive pricing for.

27 Bernfeld: Has there been any thought of putting – understanding, of course, if they're going to be
28 detail-oriented in the work, we want them to be detail-oriented on the submission of the package, but
29 we're all human. So, it just seems that the city is taking the chance of losing an opportunity at having a
30 more cost-effective approach by just not – maybe making a phone call a week ahead of the close -
31 having a pre-review. It doesn't seem as if you're getting 75 bids in on everything you're bidding out. So,
32 since there are fewer remaining bidders, it would seem that it would be a practical thing to do.

33 Ledesma: And, just to reconfirm, the process is pretty clear in a fairness fashion, where the buyer
34 doesn't want to be accused of helping one bidder over another, so they're actually not receiving any of
35 the information until after they have closed and the bids are received.

36 Bernfeld: You know I guess – and again, I don't want to - just out of a sense of fairness to the rate
37 payer, alright, it's one thing to help by guiding a bid. I mean that would be completely wrong, and
38 completely outside the bounds of ethics, but just picking up the phone and saying, you know, "Bob,

1 think you missed a page," just so you have a complete one to evaluate properly, would seem to then
2 give more opportunities to have a more effective selection of bids.

3 Ledesma: Right. And our process doesn't allow for that because the buyers don't get the packages.
4 They go to the administrative section.

5 Bernfeld: Right – it would have to be on their side.

6 Ledesma: And this is a formal solicitation which remains sealed. The bids are sealed according to
7 the law and are not opened until the bid closing is available.

8 Hadden: So, I'm confused. So, this call went through. So what was the purpose of the call then?

9 Ledesma: Just to get confirmation from the firm that there was - the information was not
10 submitted to the city.

11 Schmandt: Why would you bother to get confirmation if it's a sealed bid, and what you have is
12 what you get and no one can do anything about it and that's that?

13 Ledesma: In some instances, maybe the pricing was provided in a different section and the buyer
14 overlooked it and maybe after the vendor confirmed, 'Well this is the section that I placed my pricing in,'
15 so that the buyer may go back and look and, oh, maybe it was an oversight or maybe it wasn't. If it
16 wasn't an oversight, then we follow through with the non-responsive notice to the firm.

17 Schmandt: Got it.

18 Hadden: And, were there only two bids on this one?

19 Ledesma: Yes, ma'am.

20 Hadden: I'm really concerned because there could very well be a significant price difference here.
21 I really want to strongly recommend that you rebid this one. I think it would be a normal thing to not
22 only pick up the phone, but say "hey, send that right over." And it sounds like, from earlier testimony,
23 that they were ready to send it over immediately, and that it was an oversight. So, I mean, things do
24 happen down that line and it just doesn't seem like we can make a good economic decision here until
25 we have the full picture.

26 Schmandt: Realistically, we don't get to direct that but what realistically we could do is vote against
27 recommending it and then have the city council act or not act as it sees fit on that particular matter. I
28 think that's functionally the best that we can do.

29 Fath: I think we could vote not to approve it and to recommend that it be rebid – recommend
30 that it be rebid – because here are my reasons though. The bidder has two years of space and Texas
31 Disposal has 25 years of space. And, Texas Disposal is our current provider for this contract. And, I
32 mean, I wouldn't say that to the council, but I think that it would be legitimate for us not to approve it
33 and to recommend that it be rebid, put out for rebids, that would be rebids from everybody.

1 Bernfeld: Why don't we, unless there is other discussion ...

2 Shaw: Wouldn't the bidder who submitted a complete bid now have their prices out there in the open,
3 so that whoever rebids, ...

4 Fath: Well, they might rebid differently. I mean, you know, rebid - they can bid anything.

5 Mele: Well, I think Linda's hit on one of the key points that Rosemary was eluding to, is that
6 we want a fair process when we're doing bids and we record those bid offerings as they're opened. So,
7 anybody has access to find out what everybody bid, immediately upon opening. And so, if we, you
8 know, they could get that information, and we could call for clarification and then say, 'Oh, we forgot
9 page two" and could send that in and be just slightly under the other bidders. So, Commissioner Shaw
10 *has hit on really one of the key processes when Rosemary says fair, that's what she means, is those bids*
11 are read into the public record, and so it's difficult to go back and say "Can I help you put together a
12 complete package?" and they can already have found out what everybody else bid. What I would like to
13 do, let me just tell you, is that I am not as familiar with this as I perhaps should be and Rosemary has
14 indicated that we did have difficulty in getting bids at all, and so there are two concerns I have- the same
15 as you - are we getting a fair price? I am not aware of the issue that was brought forward of the two
16 years. I don't think that's represented in the RCA here. That is certainly something to look at. But the
17 other thing is that *when we're dealing with hazardous waste, we can only keep a certain amount of it on*
18 time at a sight and so I also need to get with my staff to make sure I understand how urgent ...

19 Hadden: This is non-hazardous.

20 Mele: Non-hazardous. So I need to find out how urgent it is that we get this contract in place
21 and determine whether we do have some flexibility on rebidding this but hearing from Rosemary that
22 we had to extend it several times, not for clarification on Austin's Energy's part, but because we weren't
23 getting bids, is what I understand.

24 Fath: When is this supposed to go to Council?

25 Mele: It's scheduled for March 7th.

26 Fath: That's the next meeting?

27 Mele: Uh huh. *So again, I need to find out from my staff how urgent it is that this gets*
28 processed. You've raised some good questions. You know, I think that Rosemary is correct, we can't
29 just ask and allow people to come in afterwards and fix their bids and to fix the things that they
30 overlooked and we had difficulty getting these bids for some reason. I need to find out why, and
31 Delores and my staff need to kind of brief Rosemary and I on exactly why that is.

32 Schmandt: Do the bidding criteria need to include the longevity of the available destination dump
33 site?

1 Mele: Those are details that I don't have and again, I didn't see that referenced unless I missed
2 It here.

3 Fath: Well, this is a two year contract and they say they have two years.

4 Schmandt: That means they're responsible after they close their facility for finding a home for it.

5 Mele: Exactly.

6 Schmandt: It's their problem.

7 Mele: They would have to have another qualified facility available.

8 Schmandt: That's not what you pay for.

9 Fath: Well, their contract is over in two years, isn't it?

10 Mele: It's a 24 month, but it has renewal options. And, so there is Industrial Class II Waste and
11 Non-Hazardous. And so I just need to understand what the limitations are and what's driving staff to
12 bring it forward.

13 Bernfeld: I just want to clarify one point. I would, of course, not have anybody chasing after
14 pricing, you know, because you're right, that opens up a whole Pandora's Box. It was more of a missing
15 signature on a non-priced page or a missing page that again, didn't have anything to do with pricing,
16 that just made the package less complete. But, obviously it's a web.

17 Mele: In general, the price of disposal has not gone down, it's generally gone up, right? So, I'm
18 not surprised there's some increase. You know, is that a legitimate amount or not, we just need to go
19 back and review it. And if it needs to move forward, then we probably need to move on.

20 Fath: It's gone up 16%?

21 Hadden: So, one more question. So Allied Waste Services bid \$264,820, and so can anybody tell
22 us what was bid since all of the bids are now open?

23 Mele: There were only two bidders. One was incomplete, and one was Allied Waste Services.

24 Mele: And we don't know what their bid would be because they did not submit to us the full
25 number of line items that we asked for.

26 Hadden: My understanding was that these pages were in the middle and that there's a total
27 number. I don't know if these guys could clarify that are here.

28 Bernfeld: We need to direct this to Austin Energy.

29 Ledesma: I've got some notations specifically on what was missing. There were 36 line items total
30 on the bid. And page two was missing items 17 to 21, that's the disposal, and for the transportation
31 items, we received about ten items proposed and we didn't get all the line items offered for

1 transportation either, so it's somewhere around 50 to 60% of the items that were missed and we didn't
2 get pricing for them.

3 Fath: But, those missing prices would have been on the missing pages, or not?

4 Ledesma: Correct.

5 Hadden: But there was a final bid number?

6 Bernfeld: No, there wouldn't have been.

7 Ledesma: There were three pages on the bid sheet and each had separate line items of required
8 pricing.

9 Hadden: OK – I hear what you're saying.

10 Bernfeld: Alright, so we'll get back and separate these out at the appropriate time. Are there any
11 other questions or comments on Item 15? Thank you.

12

13 * * * *

14

15 **EUC MEETING – VOTE ON ITEM 15 (NOTE: The vote on Item 15 was posted under Item 16 on the**
16 **City's website):**

17 Bernfeld: Item number 15. Someone wish to make a motion on this, specific, or do you want me
18 to just do the same?

19 Fath: Karen, you want to make a motion?

20 Hadden: Think we can vote?

21 Bernfeld: Okay, alright then, I'll put out a motion to accept Item 15 awarding the contract with
22 Allied Waste Services. All those in favor say "Aye" Second, I'm sorry, Second?

23 Shaw: I'll second.

24 Fath: I'll make a substitute motion, which I think takes priority, doesn't it?

25 Schmandt: When you say it, it does, Shudde.

26 Fath: Is that right, Toye?

27 Toye Goodson-Collins: Yeah.

1 Fath: I move that we recommend to the Council that they put this contract first, that they
2 consult with Austin Energy to see what the timeframe is for the need and if time permits, that they put
3 this contract out for rebid.

4 (Silence)

5 Bernfeld: So, you want to....

6 Fath: Nobody second?

7 Bernfeld: Well, I think we were trying to make sure you were clear.

8 Fath: Yea, I'm through – period.

9 Bernfeld: Can you repeat that?

10 Fath: That we recommend that the Council consult with Austin Energy to see what the
11 timeframe is for needing this new contract, and if time permits, that the EUC recommends that they put
12 the contract out for rebid.

13 Bernfeld: We have a motion on the table. Do we have a second?

14 Hadden: I'll second it.

15 Bernfeld: Any discussion?

16 (Silence)

17 Bernfeld: My only remark would be that, obviously, the ones that got the complete package in
18 would feel it was unfair because they got everything in and had the bid. This almost sounds like a side
19 issue that needs to be dealt with with the City.

20 Fath: Well, it's 1.3 million dollars.

21 Bernfeld: Any discussion?

22 Hadden: I would also be....

23 Bernfeld: Alright.

24 Schmandt: What's the vote?

25 Bernfeld: If there's no other discussion, let's have a vote. All those in favor ...

26 Hadden: This is the vote on Shudde's motion?

27 Bernfeld: On Shudde's substitute motion.

28 Fath: I'll vote Aye.

1 Bernfeld: All those in favor say "Aye." There's one Aye.

2 Hadden: (raises hand)

3 Bernfeld: Two Aye's (to Hadden)?

4 Fath: Two Aye's.

5 Bernfeld: Two Aye's, any Nay's?

6 Shaw: (raises hand)

7 Bernfeld: One Nay. Abstentions?

8 Schmandt: I'm abstaining.

9 Bernfeld: Two abstentions.

10 Fath: Two abstentions?

11 Bernfeld: Yeah.

12 Hadden: So, does that put it back to voting on the item itself?

13 Bernfeld: Yeah, it would.

14 Fath: No, that substitute motion becomes the motion, doesn't it?

15 Bernfeld: The substitute wasn't accepted though, so it goes back to the original.

16 Toye Goodson-Collins: It failed, so it goes back to the original.

17 Fath: Oh, that was to accept my motion.

18 Bernfeld: Yes ma'am.

19 Fath: I'm sorry. I'll wake up. Go ahead.

20 Bernfeld: Good try though.

21 Schmandt: According to Roberts and the remedies, these things happen.

22 Bernfeld: We'll go back to the original motion then. A motion is on the table to accept Item 15 to
23 award the contract to Allied Waste Services. Any second to that motion?

24 Shaw: I'll second that motion.

25 Bernfeld: Second to that motion. Any additional discussion on that motion?

26 (Silence)

1 Bernfeld: All those in favor, say "Aye."
2 Shaw: Aye.
3 Bernfeld: All those oppose, Nay.
4 Fath: Nay
5 Hadden: Nay
6 Bernfeld: Two nays. All those abstain?
7 Schmandt: Abstain.
8 Bernfeld: (raises hand) Two abstentions. Okay.
9 Fath: So, it's what?
10 Hadden: What does that leave us?
11 Shaw: One – two – two. One for, two abstentions, two against.
12 Fath: One – two – two.
13 Bernfeld: Okay then.
14 Hadden: Does that pass?
15 Shaw: Nope.
16 Bernfeld: Alright. Don't mind us, we'll (end of recording on the City website).
17

Ray Bryant

From: Castillo, Dolores <Dolores.Castillo@austinenergy.com>
Sent: Friday, March 01, 2013 3:56 PM
To: Ray Bryant
Subject: Emailing: DQLTR IFBDKC0093 TDS
Attachments: DQLTR IFBDKC0093 TDS.docx

<<DQLTR IFBDKC0093 TDS.docx>> Ray

As we discussed earlier, I cannot find a receipt where I sent this letter. My deepest apologies. I understand that you will be present at the Council Review meeting on March 7th when Council reviews the submitted Request for Council Action Items.

The message is ready to be sent with the following file or link
attachments:

DQLTR IFBDKC0093 TDS

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.



February 14, 2013

Attn: Ray Bryant

SENT VIA EMAIL

TEAS DISPOSAL SYSTEMS, INC.

Subject: Solicitation Number Invitation for Bid DKC0093, Project Description:
Management & Disposal of Class 2 Industrial & Special Waste

Dear Mr. Bryant:

Thank you for speaking with me earlier on your submittal for the subject solicitation. This letter confirms our discussion of your incomplete bid submittal to the referenced solicitation which has been deemed non-responsive for the following reasons:

1. **Bid submittal is incomplete due to the following required documentation not provided –**
 - **Cover Sheet with required signature**
 - **Section 0600, Bid Sheet, pages 2 and 3 were not included in your response. Specifically, page 3 requires your signature and company information.**

If you require further discussion for the rejection, please contact me no later than end of business on Thursday, February 21, 2012 at (512) 322-6466 or email: dolores.Castillo@austinenergy.com.

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

Sincerely,

Dolores Castillo
Senior Buyer

CITY OF AUSTIN, TEXAS
Purchasing Office
INVITATION FOR BID (IFB)
Offer Sheet

SOLICITATION NO: DKC0093 **COMMODITY/SERVICE DESCRIPTION:** Management & Disposal of Class 2 Industrial & Special Wastes

DATE ISSUED: November 28, 2012

REQUISITION NO.: RQM 1100 12100100007 **PRE-BID CONFERENCE TIME AND DATE:** N/A

COMMODITY CODE: 98871 **LOCATION:** N/A

FOR CONTRACTUAL AND TECHNICAL ISSUES CONTACT:

BID DUE PRIOR TO: 2:00 PM on December 19, 2012

COMPLIANCE PLAN DUE PRIOR TO: N/A

Dolores Castillo

Senior Buyer

Phone: (512) 322-8466

BID OPENING TIME AND DATE: 2:15 PM on December 19, 2012

LOCATION: MUNICIPAL BUILDING, 124 W 8th STREET
 RM 310, AUSTIN, TEXAS 78701

LIVE BID OPENING ONLINE:

For information on how to attend the Bid Opening online, please select this link:

<http://www.austintexas.gov/department/bld-opening-webinars>

When submitting a sealed Offer and/or Compliance Plan, use the proper address for the type of service desired, as shown below.


P.O. Address for US Mail	Street Address for Hand Delivery or Courier Service
City of Austin	City of Austin, Purchasing Office
Purchasing Office	Municipal Building
P.O. Box 1088	124 W 8 th Street, Rm 310
Austin, Texas 78767-8845	Austin, Texas 78701
	Reception Phone: (512) 974-2500

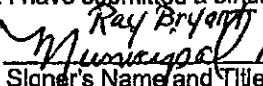
Offers (Including Compliance Plans) that are not submitted in a sealed envelope or container will not be considered.

SUBMIT 1 ORIGINAL AND 2 SIGNED COPIES OF OFFER & 1 ELECTRONIC COPY

OFFER SUBMITTED BY

By the signature below, I certify that I have submitted a binding offer.


 Signature of Person Authorized to Sign Offer


 Signer's Name and Title: (please print or type) **Ray Bryant, Municipal Asst. Supervisor**

FEDERAL TAX ID NO. 75-1579711

Date: 12-19-12

Company Name: Texas Disposal Systems, Inc.

Address: P.O. Box 17126

Email Address: rbryant@texadisposal.com

City, State, Zip Code: Austin, TX 78760

Phone No. (512) 421-1300

Fax No. (512) 421-1325

Table of Contents

SECTION NO.	TITLE	PAGES
0100, 0200, 0300	See http://www.austintexas.gov/financeonline/vendor_connection/index.cfm#STANDARDBIDDOCUMENTS *	*
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0815	LIVING WAGES AND BENEFITS CONTRACTOR CERTIFICATION	1
0820	LIVING WAGES AND BENEFITS EMPLOYEE CERTIFICATION	1
0825	WORK PLACE CONDITIONS AFFIDAVIT	N/A
0830	BUY AMERICAN ACT CERTIFICATE	N/A
0835	NONRESIDENT BIDDER PROVISIONS	1
0900	NO GOALS UTILIZATION PLAN	2
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All other Sections may be viewed at: http://www.austintexas.gov/financeonline/vendor_connection/index.cfm

RETURN THE FOLLOWING DOCUMENTS WITH YOUR OFFER**

- Cover Page Offer Sheet
- Section 0600 Bid Sheet(s)
- Section 0605 Local Business Presence Identification Form
- Section 0700 Reference Sheet
- Sections 0800 - 0835 Certifications and Affidavits (return all applicable Sections)
- Section 0900 No Goals Utilization Plan

**** See also Section 0200, Solicitation Instructions, Section 0400, Supplemental Purchase Provisions, and Section 0500, Scope of Work/Specification, for additional documents that must be submitted with the Offer.**

The Vendor agrees, if this Offer is accepted within 120 calendar days after the Due Date, to fully comply in strict accordance with the Solicitation, specifications and provisions attached thereto for the amounts shown on the accompanying Offer.

*** INCORPORATION OF DOCUMENTS.** Section 0100, Standard Purchase Definitions; Section 0200, Standard Solicitation Instructions; and Section 0300, Standard Purchase Terms and Conditions are hereby incorporated into this Solicitation by reference, with the same force and effect as if they were incorporated in full text. The full text versions of these Sections are available, on the Internet at the following online address: http://www.austintexas.gov/financeonline/vendor_connection/index.cfm#STANDARDBIDDOCUMENTS

If you do not have access to the Internet, you may obtain a copy of these Sections from the City of Austin Purchasing Office at the address or phone number indicated on page 1 of this Offer Sheet. Please have the Solicitation number available so that the staff can select the proper documents. These documents can be mailed, expressed mailed, or faxed to you.

It is the policy of the City of Austin to involve certified Minority Owned Business Enterprises (MBEs) and Woman Owned Business Enterprises (WBEs) in City contracting. MBE and WBE goals for this Solicitation are contained in Section 0900.

All Contractors and Subcontractors should be registered to do business with the City prior to submitting a response to a City Solicitation. In the case of Joint Ventures, each individual business in the joint venture should be registered with the City prior to submitting a response to a City solicitation. If the Joint Venture is awarded a contract, the Joint Venture must register to do business with the City. Prime Contractors are responsible for ensuring that their Subcontractors are registered. Registration can be done through the City's on-line vendor registration system. Log onto http://www.austintexas.gov/financeonline/vendor_connection/index.cfm and follow the directions.

Exhibit 9

Bob Gregory

From: Bob Gregory (bgregory@texasdisposal.com)
Sent: Wednesday, March 06, 2013 3:02 PM
To: 'Dolores.Castillo@austinenergy.com'
Cc: Rick Fraumann (rfraumann@texasdisposal.com); Ray Bryant; Gary Newton (gnewton@texasdisposal.com); Whellan, Michael (MWhellan@gdhm.com); JimHemphill (JHemphill@gdhm.com); Adam Gregory (agregory@texasdisposal.com)
Subject: Agenda Item 26, Austin City Council, 3/7/13, Solicitation No. DKC0093, Management & Disposal of Class 2 Industrial & Special Wastes
Attachments: 3-6-13 Letter Request to Delores Castillo COA Sr Buyer Re City Council 3-7-13 Agenda Item 26 bid solicitation mgt & disposal of class 2 waste.pdf

Please see attached letter.



TEXAS DISPOSAL SYSTEMS

TEXAS DISPOSAL SYSTEMS, INC. • TEXAS DISPOSAL SYSTEMS LANDFILL, INC.

P.O. BOX 17126
AUSTIN, TEXAS 78760-7126
512-421-1300
512-243-4123 (FAX)
www.texasdisposal.com

March 6, 2013

City of Austin Purchasing Office
Attn: Dolores Castillo, Senior Buyer
Municipal Building
124 West 8th Street, Room 310
Austin, Texas 78701

**RE: Agenda Item 26, Austin City Council, 3/7/13, Solicitation No. DKC0093
Management & Disposal of Class 2 Industrial & Special Wastes**

Ms. Castillo:

This letter contains a request and an offer to address the unusual circumstances which exist concerning the above referenced bid solicitation and the staff recommendation in the March 7, 2013 Austin City Council Agenda Item 26. It is also responsive to the "Answer" submitted this morning to Council members' question on Agenda Item 26 posted today on the City's website (included at the end of this letter).

While it is true that Texas Disposal Systems, Inc. (TDS) did fail to submit pages 2 and 3 of the three page set of price sheets contained in this lengthy bid, it is also true that this leaves the City with only one apparently responsive bid from Allied Waste Services #843 (a/k/a BFI), which is approximately 16% higher than the current contract rates, and approximately 17% to 19% higher than the rates TDS prepared for this bid and sent to you immediately upon being notified that our bid lacked these two pages. As you know, TDS had already submitted all the rest of the bid pages with ten TDS bidder signatures, along with the first page of the price listings; but we did, in fact, inadvertently fail to submit pages two and three of a three page price listing within a detailed bid response. This clerical error was solely the fault of TDS. Nevertheless, we are puzzled why the city staff chose to deem the TDS bid non-responsive, rather than to rebid the contract, request to extend the existing TDS contract, or to notify TDS of its oversight and allow TDS to forward the City the two missing pages. Please see the bid sheets included at the end of this letter, which were prepared for this bid prior to our January 9, 2013 bid submittal. As you know, only the first page was included in our original bid.

We also question why staff would be comfortable with one responsive bid when there are four Type I MSW landfills in the Austin area (one is in Williamson County), and the one responsive bid is from a landfill operator which must close its Austin landfill on or before November 1, 2015, due to a Rule 11

Agreement negotiated by city staff. This two year contract has three 1-year extension options extending to March 2018, well beyond the date Allied's landfill is now scheduled to be closed.

We urge you, therefore, to join TDS in supporting a recommendation to City Council for either:

1. a 60 day extension of the existing contract with TDS, to allow time for the contract to be rebid;
2. a two year extension of the existing contract, with three 1-year extension options with the same terms that currently exist in the March 9, 2009 TDS contract the City has now; or
3. the deletion of the three 1-year extension options from the two year contract proposed by staff for Allied/BFI; to remove the potential circumstance of the city staff extending the contract and thereby requiring BFI to fulfill a contract extension to provide a local operating landfill beyond the date which the city staff had previously negotiated as a mandatory facility closure deadline. This could give Allied (and city staff) the basis to state that the City was requiring Allied to ignore the Rule 11 Agreement the City now has with BFI.

If the contract is rebid, I urge you to incorporate the City's recycling priorities. TDS has held this contract since March 9, 2009, and I believe has done an exemplary job of properly managing the City's waste, and in recycling and repurposing as much of the uncontaminated waste materials as possible. Clean wood waste is shredded and composted, uncontaminated metals are baled and recycled, and useable sections of discarded utility poles are diverted from landfill disposal for use on site for fencing, landscaping and enclosures. These volumes of materials, which TDS has diverted from the landfill, are significant. The proposed contract had only one category requiring the waste to be recycled, and Allied "No Bid" that line item. TDS, of course, did bid that line item for scrap wood to be recycled.

TDS commits to not raise its individual and total bid prices above those submitted before and after the bid opening in this process, if the City decides to rebid the contract. TDS also commits to renew its existing contract at the same rates, if requested. Had TDS been responsive to the bid and had included the two missing pages, TDS would have clearly presented the most favorable contract pricing, and the City would have had at least one bidder capable of receiving Austin Energy's Class 2 Industrial Special Waste at a local landfill through the three annual extension options following the two year initial term of the contract. The Electric Utility Commission (EUC) has expressed a concern regarding staff's proposal. The EUC, by a 1-2-2 vote at its February 25th meeting, refused to support a recommendation to City Council to award the contract to Allied.

In a letter dated February 14, 2013, which we received on March 1, 2013, you stated that the TDS "bid submittal is incomplete due to the following required documentation not provided – Cover sheet with required signature, Section 0600, bid sheet page 2 and 3 were not included in your response. Specifically page 3 requires your company signature and company information." At the end of this letter, you will find the bid sheets with the appropriate signatures. TDS sent the pages of price quotes to you on January 25, 2013, immediately after we became aware of the oversight and after your conversation with

Ray Bryant, who had delivered and signed the Cover Page (Offer Sheet) to the IFB. In reference to your statement that the cover sheet was not signed, page two of the IFB section titled "Return the following documents with your offer" states that the Cover Page is the Offer Sheet, which is the first page of the IFB response. TDS did sign and turn in this page, along with nine other signatures in the bid, prior to the bid opening.

The backup agenda packet states that the new contract with Allied would increase the City's cost by 16% compared to the existing TDS contract. I assume this does not include a calculation of the potential \$.40 per pound (\$800.00/ton) penalty for all volumes in excess of Allied's 10 ton per load maximum weight. It is also uncertain whether Allied will honor its prices for waste designated for its Austin Sunset Farms, if they have to be hauled to its San Antonio Tessman Road Landfill after October of 2015. Additionally, since TDS did turn in rates for line items 1-11 (section 0600) in our initial IFB response, we believe a comparison of those rates is appropriate. When a calculation is performed to compare the rates bid under the IFB, which were opened on January 16, 2013 (rates quoted on page one of the three pages of rates), the comparison shows that Allied's gross charges to the City would not only be higher than the existing TDS contract rates, but also would be approximately 19% higher than the rates bid on line items 1-11 (section 0600).

The proposed contract terms, including the initial two year term and three 1-year contract extension options, allow for a total contract period of five years beginning March 9, 2013, and expiring March 8, 2018. The city staff does not have to come back to City Council for any additional approval of any contract extension. These proposed contract terms, if fully exercised, exceed the Rule 11 Agreement negotiated between City staff and BFI Waste Systems of North America, LLC and Giles Holdings, L.P. (effectively, Allied Waste Services) to close their Sunset Farms Landfill on or before November 1, 2015. Exercising the first contract extension with Allied would obligate Allied to provide landfill services in Austin in conflict with the City's Rule 11 Agreement and their amended TCEQ permit, or will place the City in a position to have to rebid this contract after only two years. Under the Purchase Specifications for this IFB, the document states in section 2.B that "to be eligible for this contract, the Contractor shall, at a minimum, own or operate a landfill permitted to accept the City's waste listed under this task." This city staff ignored the City Council's unanimous vote to oppose the expansion of the Austin Sunset Farms Allied landfill once, when staff negotiated the Rule 11 Agreement. City staff could ignore the Rule 11 Agreement and extend the contract past the landfill closure deadline, if the City Council authorizes this contract with the three 1-year contract extension options. Given the enclosed staff answer to questions from Council member Tovo today, it appears that staff may not be committed to the enforcement of the City's Rule 11 Agreement. If so, this is precisely why Council should either rebid this contract and/or remove the three 1-year contract extension options.

TDS respectfully requests you share this information (including a copy of this letter) with City Council members prior to the vote March 7, 2013 on Agenda Item 26. Please contact me, if you have any questions or need any confirmation related to this letter.

Sincerely,



Bob Gregory

President and CEO

Texas Disposal Systems, Inc.



**City Council Questions and Answers for
Thursday, March 07, 2013**

These questions and answers are related to the
Austin City Council meeting that will convene at 10:00 AM on
Thursday, March 07, 2013 at Austin City Hall
301 W. Second Street, Austin, TX



**Mayor Lee Leffingwell
Mayor Pro Tem Sheryl Cole
Council Member Chris Riley, Place 1
Council Member Mike Martinez, Place 2
Council Member Kathie Tovo, Place 3
Council Member Laura Morrison, Place 4
Council Member William Spelman, Place 5**

The City Council Questions and Answers Report was derived from a need to provide City Council Members an opportunity to solicit clarifying information from City Departments as it relates to requests for council action. After a City Council Regular Meeting agenda has been published, Council Members will have the opportunity to ask questions

of departments via the City Manager's Agenda Office. This process continues until the final report is distributed at noon to City Council the Wednesday before the council meeting.

DRAFT REPORTS ARE SUBJECT TO CHANGE WITHOUT NOTICE

QUESTIONS FROM COUNCIL

1. Agenda Items #2-4

- a. QUESTION: Please indicate total cost of the energy efficiency improvements and percentage AE proposes to reimburse. COUNCIL MEMBER TOVO
- b. ANSWER: For agenda item #2: The total cost of the Austin City Lights project is \$109,025 and the rebate will cover 90% of the cost. For agenda item #3: The total cost of the Hudson Miramont project is \$110,415 and the rebate will cover 90% of the cost. For agenda item #4: The total cost of the Toscana Apartments project is \$135,109.33 and the rebate will cover 90% of the cost. Austin Energy will include this information in future RCAs for multi-family rebates.

2. Agenda Items #2-8

- a. QUESTION: Are any of these properties located outside the city limits? COUNCIL MEMBER MARTINEZ
- b. ANSWER: No, these projects are located within the Austin city limits.

3. Agenda Item #18

- a. QUESTION: Please describe the community outreach that was performed in preparation for the addition to the park, and the process for determining that the community is in favor of the new amenity. When were the elements presented to PARB (2 nature trails and dog park)? COUNCIL MEMBER MORRISON
- b. ANSWER: See Attachment

4. Agenda Item #26

- a. QUESTION: Please provide the bid tabulation that was included in the Electric Utility Commission's back up materials. The bid tabulation indicates that the pricing represents a 16% increase since the last (2009) contract. Did the other bid received by the COA offer lower pricing? How much? Please indicate why the other bid was disqualified. If there were errors in the bid package, was there an attempt by the bidder to make corrections? Can the City elect to re-bid the contract? References to a 2009 settlement agreement


indicate that the Allied Waste facility is scheduled to be closed in November 2015. Is that accurate? If so, why would the contract before the City this week be proposed to include renewals beyond November 2015? COUNCIL MEMBER TOVO


- b. ANSWER: For the bid tabulation, please see attachment. The other bid received from Texas Disposal Systems (TDS) could not be evaluated nor compared to the Allied Bid pricing because it failed to provide pricing for 19 service items of 30 required items (plus 6 optional items) included in the Invitation For Bid (IFB). The Bidders were required to provide pricing for all line items for award of this turn-key waste disposal contract. \$137,273.20 for the 11 line items was proposed by TDS. Bid disqualified because incomplete pricing was provided for the service items required in the solicitation and no signature on the Bid Sheet nor for the offer proposed. Per the local government code, purchases over \$50,000 requires us to follow a competitive sealed bidding process with bids publicly opened and read. Yes, they attempted to provide the missing prices after notified by the Purchasing Office that such pricing errors existed in their bid. However, per the terms of the solicitation the completed bid sheet must be submitted with each bid. Technically yes, however in this case the City did receive a responsive bid for this solicitations. Usually rebids are allowed when a significant scope change is required, or as directed by the governing body. Yes, Allied Waste has confirmed this date. The IFB solicitation indicated to the public that we were seeking three annual extension options beyond the 24 month contract term. The extension options are not automatically approved, but rather agreed upon by both parties at the anniversary date. Allied Waste has a current permit for their operations thru November, 2015. The City does not have knowledge at this time whether Allied Waste will seek renewal of their permit to continue operations beyond November 2015.

5. Agenda Item #27

- a. QUESTION: Does ISS Facility and Goodwill provide benefits to their employees? If this information is available, what are the benefits? COUNCIL MEMBER MORRISON
- b. ANSWER: See attachment.

END OF REPORT - ATTACHMENTS TO FOLLOW

 *The City of Austin is committed to compliance with the Americans with Disabilities Act. Reasonable modifications and equal access to communications will be provided upon request.*

 *For assistance please call 974-2210 OR 974-2445 TDD.*

IFB DKC0093
BID SHEET DESCRIPTION OF TASK

TASK 1: CLASS 2 SPECIAL WASTE AND MUNICIPAL WASTE MANAGEMENT SERVICES									
	ITEM DESCRIPTION	CONTAINER	ANNUAL EST. QTY	UNIT	TREATMENT	POTENTIAL TSDR(s)	UNIT PRICE	STATE FEE (if applicable)	TOTAL PRICE
1. DISPOSAL									
1.	Weathered & Non-weathered Utility Poles (cut to fit roll-off)	Roll-off	6240	Cu Yd	Grind & Reuse in disposal processes or Landfill		\$10.00		\$62,400.00
2.	Scrap Wood (from broken pallets, crates, or construction debris)	Roll-off	200	Cu Yd	Recycle		\$1.00		\$200.00
3.	Asbestos, friable, bulk		40	Cu Yd	Landfill		\$36.00		\$1,440.00
4.	Asbestos, non-friable bulk		40	Cu Yd	Landfill		\$27.00		\$1,080.00
5.	Solids - Bulk contaminated soil		600	Cu Yd	Landfill		\$54.40		\$32,640.00
6.	Solids - drained capacitors and oil switches		180	Cu Yd	Landfill		\$54.40		\$9,792.00
7.	Solids - loose bulk plant trash and constr debris		1530	Cu Yd	Landfill		\$17.90		\$27,387.00
8.	Solids - Drum	55 G Drum	80	Each	Landfill		\$25.10		\$2,008.00
9.	Solids - Drum	30 G Drum	5	Each	Landfill		\$25.10		\$125.50
10.	Solids - Drum	20 G Drum	5	Each	Landfill		\$25.10		\$125.50
11.	Solids - Drum	8 G Drum	5	Each	Landfill		\$15.04		\$75.20
12.	Liquids - Bulk	Tanker	25000	Gallons	Solidification AND Landfill				
13.	Liquids - Drum	55 G Drum	30	Each	Solidification AND Landfill				
14.	Liquids - Drum	30 G Drum	4	Each	Solidification AND Landfill				
15.	Liquids - Drum	20 G Drum	4	Each	Solidification AND Landfill				
16.	Liquids - Drum	8 G Drum	4	Each	Solidification AND Landfill				

IFB DKC0093
BID SHEET DESCRIPTION OF TASK

TASK 1: CLASS 2 SPECIAL WASTE AND MUNICIPAL WASTE MANAGEMENT SERVICES									
	ITEM DESCRIPTION	CONTAINER	ANNUAL EST. QTY	UNIT	TREATMENT	POTENTIAL TSD(%)	UNIT PRICE	STATE FEE(If applicable)	TOTAL PRICE
17.	Sludge - Bulk	Vac Box	6	each 3000 gal	Solidification AND Landfill				
18.	Sludge - Drum	55 G Drum	10	Each	Solidification AND Landfill				
19.	Sludge - Drum	30 G Drum	2	Each	Solidification AND Landfill				
20.	Sludge - Drum	20 G Drum	2	Each	Solidification AND Landfill				
21.	Sludge - Drum	8 G Drum	2	Each	Solidification AND Landfill				
	TRANSPORTATION								
1.	20 yd ³ Roll-Off Delivery Rate	N/A	18	Each	N/A	N/A	\$163.00		\$2,934.00
2.	20 yd ³ Roll-Off Rental Rate	N/A	300	Days	N/A	N/A	\$2.00		\$600.00
3.	20 yd ³ Roll-Off Haul Rate	N/A	6	Each	N/A	N/A	\$253.00		\$1,518.00
4.	30 yd ³ Roll-Off Delivery Rate	N/A	6	Each	N/A	N/A	\$163.00		\$978.00
5.	30 yd ³ Roll-Off Rental Rate	N/A	1095	Days	N/A	N/A	\$2.00		\$2,190.00
6.	30 yd ³ Roll-Off Haul Rate	N/A	220	Each	N/A	N/A	\$253.00		\$55,660.00
7.	40 yd ³ Roll-Off Delivery Rate	N/A	2	Each	N/A	N/A	\$163.00		\$326.00
8.	40 yd ³ Roll-Off Rental Rate	N/A	365	Days	N/A	N/A	\$2.00		\$730.00
9.	40 yd ³ Roll-Off Haul Rate	N/A	10	Each	N/A	N/A	\$253.00		\$2,530.00
	OTHER - List any other charges not included in above line items that are necessary for completion of waste management task. Please specify each additional								
1.	AE-owned box haul & return w/ daytime time restrictions						\$342.00		

IFB DKC0093
BID SHEET DESCRIPTION OF TASK

TASK 1: CLASS 2 SPECIAL WASTE AND MUNICIPAL WASTE MANAGEMENT SERVICES									
	ITEM DESCRIPTION	CONTAINER	ANNUAL EST. QTY	UNIT	TREATMENT	POTENTIAL TSDR(6)	UNIT PRICE	STATE FEE(if applicable)	TOTAL PRICE
2.	AE-owned box haul & return w/ no time restrictions						\$288.00		
3.	No Haul/Relocate/Dry Run						\$163.00		
4.	Permanent Roll-off Box Delivery						\$0.00		
5.	20/30/40 yd ³ Roll-Off Haul w/ no time restrictions						\$213.00		
6.									
	TOTAL PRICE FOR TASK 1							\$204,739.20	
	Company Name <i>Texas Disposal Systems, Inc</i>								
	Signature <i>R Bryant</i>								

1 March 7, 2013

2 **Transcript of March 7, 2013 Austin City Council Meeting – Agenda Item 26 Discussion -**
3 **Solicitation No. DKC0093 – Management & Disposal of Class 2 Industrial & Special Wastes**

4
5 Mayor Lee Leffingwell: Item No. 26. I believe we have speakers on that. Yes, we do. Councilmember
6 Tovo pulled it. We want to hear from speakers first. Michael Whellan. Donating time to Michael is
7 Ryan Hobbs. Alright, so Mr. Whellan you have up to six minutes.

8 Michael Whellan: Thank you. I hope it won't take that long. Michael Whellan, on behalf of TDS, to
9 request that the contract for management and disposal of Austin Energy Class 2 Industrial and Special
10 Waste be rebid, or at a minimum, that the three 1-year contract extension options be deleted, if the two
11 year contract is, in fact, awarded to BFI, and you will see why that violates the Rule 11 Agreement to
12 close the BFI landfill in a moment. As you know, several questions have been raised by the bid that was
13 accepted by staff, which is at least 16% higher than the current cost of services and has no recycling
14 component. There was a "no bid" on the recycling component by BFI. In fact, the Electric Utility
15 Commission voted against recommending the award of the contract to Allied. TDS has sent a letter to
16 the City of Austin Purchasing Office contact person outlining what occurred, why it occurred, and the
17 TDS recommendations. This letter should have been forwarded to you; however, with ... I see
18 Purchasing Department is here, and with Purchasing Department's permission, I would like to hand the
19 letter to the clerk ... Mr. Johnson's permission, can I hand the letter to the clerk, Mr. Johnson? Or,
20 you've already circulated it? Is that a yes? Ok, he said go ahead? Ok. (Mike hands copies to clerk.) The
21 letter is for the public record and I believe it was circulated to Purchasing yesterday. Specifically, TDS
22 inadvertently failed to submit pages two and three of a three page price listing within the deleted bid
23 response. TDS signed the bid itself ten times but one signature was not included because it was on one
24 of the two missing pages. The clerical error was solely the fault of TDS. Instead of alerting TDS to the
25 clerical mistake, which I recognize is not the staff's responsibility, the staff decided to go with a more
26 expensive option at greater taxpayer expense. This baffles me. Today, Council can provide the guidance
27 the staff needs to allow for the rebid to occur so that Austin Energy rate payers and tax payers will get
28 the service at a 16% lower cost than what is being currently proposed by staff and secure the pricing for
29 a full five years. Moreover, if staff's proposal to accept the Allied or BFI bid were adopted, with the
30 three 1-year extensions, the waste loads could potentially continue going to a landfill that, by Rule 11
31 Agreement, is supposed to be closed on or before November 1, 2015. I think all of you all have the Rule
32 11 Agreement but I will be happy to hand out more copies of that well, but it's clear to me that that is
33 the policy and intent of Council, and if Council decides to not direct staff to rebid the contract, we would
34 ask at a minimum that Council not accept the contract as proposed with the three 1-year extensions,
35 which would extend, or potentially give staff direction to extend, the contract beyond November 1,
36 2015, when the landfill is supposed to be closed. Of course, a third option exists which would be for the
37 Council to simply extend the existing contract with TDS and provide three 1-year extension options
38 under the TDS 2009 contract. TDS is prepared and publicly stay prepared to accept the same terms and
39 to continue operation under the 2009 prices for the extended period. Because of an inadvertent TDS

1 clerical error, please do not allow a bid to be accepted that costs 16% more than the current contract
2 and provides that both Allied and BFI and the staff a Council authorization to extend the contract
3 beyond the agreed closure date of the BFI landfill. The Council retains the ability to rectify the situation
4 in a fair and open bid process that would yield a savings with recycling, with the recycling component, to
5 the City of Austin. We ask that a 60 day extension of the current contract be initiated so that there can
6 be a rebid process, or that the three 1-year contract extensions on the BFI contract that's being
7 recommended by staff, be removed from the contract award. Thank you for your time. If you have any
8 questions, I'm happy to answer them.

9 Mayor Lee Leffingwell: Thank you. Councilmember Tovo has a question.

10 Councilmember Kathie Tovo: You said this at the beginning of your talk, but I wanted to just be sure I
11 heard it. Did you say that the application was missing two of the three pages?

12 Michael Whellan: Yeah.

13 Kathie Tovo: I see.

14 Michael Whellan: Three of the bid sheets, the price sheets, if you look at the letter that was circulated,
15 on the very back of that letter, there are three pages, and the first page was in there, the second two
16 pages were not.

17 Kathie Tovo: I see, and so that was also one of the reasons we had asked the question of what that bid
18 was and I guess they, the staff had said they weren't able to compile it, and that information they were
19 missing was on the two sheets.

20 Michael Whellan: Correct. The bid, it turns out, when you look at the overall pricing, actually comes in
21 lower than the 2009 prices, and we'd be prepared to honor that as well.

22 Kathie Tovo: Ok, thank you very much.

23 Mayor Lee Leffingwell: Any others? Thank you. Adam Gregory. He doesn't need any more time, I don't
24 think, do you, Mr. Whellan? Alright. Phillip Gibbs. Phillip Gibbs. Are you declining? Is Phillip Gibbs
25 here? Ok. John Ensley? And, you have three minutes.

26 John Ensley: Good Morning, John Ensley, Allied Waste. Just here to let you know that I'm available for
27 any questions that you might have regarding this contract.

28 Mayor Lee Leffingwell: Okay. Any questions? Councilmember Tovo.

29 Kathie Tovo: Sir, is it accurate that your contract does not include a recycling portion component?

30 John Ensley: There is a small component that we "no bid." I believe it was 200 yards estimated annually
31 for wood recycling. It is something that we can provide, but at the time the bid was due, we did not
32 have a sufficient outlet for that material.

1 Kathie Tovo: Okay, and that would be an additional cost, then, in addition to the cost you have already
2 provided as part of your bid?

3 John Ensley: Correct.

4 Kathie Tovo: Okay, thank you.

5 Mayor Lee Leffingwell: Those are all the speakers that we have. If there are no more questions.
6 Councilmember Tovo?

7 Kathie Tovo: I have some questions for staff on this item.

8 Yolanda Miller: Yolanda Miller, Deputy Purchasing Officer.

9 Kathie Tovo: Thank you. I appreciate the answers that you gave through the Q & A process. I have just
10 a few follow up questions. Is there an additional cost to the City of Austin for transferring the services
11 from its current contract to Allied Waste? Would we expect there to be start-up costs or any other costs
12 associated with that?

13 Yolanda Miller: No, there shouldn't be.

14 Kathie Tovo: Do you have a sense of how the City would handle the recycling component that the
15 current bidder has not, or the proposed contractee has not, is not able to provide?

16 Yolanda Miller: That amount was estimated at 200 cubic yards that they would need, and it's a very
17 small dollar amount for that amount, so we don't anticipate that being a problem. We'll just handle it
18 separately.

19 Kathie Tovo: But it would be an additional cost. Do you have any estimate of what that additional cost
20 might be?

21 Yolanda Miller: Approximately \$200 is what we thought the cost would be for that particular item. In
22 terms of not staff cost, but in terms of the line item. That was the estimated amount.

23 Kathie Tovo: So, I guess I do want to zero in though on the fact that the contract would extend, does
24 extend, the proposed contract that's before us today extends beyond the time where the Allied Waste
25 was proposed to close. Can you ... I know in the Q & A, the answer back was that well, that's what was
26 originally in the RFP, but once it was clear that the staff were going to recommend this particular
27 provider, and you were made aware of the service, of the settlement agreement, why wasn't the
28 recommendation shifted so that it at least accorded with the proposed closure time?

29 Yolanda Miller: Well, at the time, we had no knowledge that Allied could not get either a waiver or
30 could provide other means to finish out the contract, so because we did not have any knowledge or
31 that, any direct knowledge of that, we decided to keep the contract as is.

32 Kathie Tovo: Okay, so the increase that's contemplated here is 16%, from the 2009, and the current
33 contract. What would be an expected rate of increase, I mean, that seems quite high as an increase?

1 Yolanda Miller: That information is, we had, even for one of the largest line items, some of the increase
2 from Texas Disposal, for the largest line item, amounted to 25%, so even though Allied is at an overall
3 16% from their bid in '09, they actually came down almost 50% in their bid amount, so we expected
4 there to be some increase over the four years, which we determined, through looking at producers'
5 price indexes and the index that we used, that that was an acceptable level of increase.

6 Kathie Tovo: So, in other words, you anticipated there would be some kind of increase from the 2009
7 contract and 16%, you think, is in the ball park of what is reasonable?

8 Yolanda Miller: Yes, yes we do.

9 Kathie Tovo: I didn't follow you in terms of the major line items from Texas Disposal Systems. Are you
10 talking about the bid package they submitted that was not complete or are you talking about their
11 2009...

12 Yolanda Miller: That is correct, just to try to compare the two.

13 Kathie Tovo: So in comparing the two, you are saying that the line item was 25% greater than it was in
14 2009 or was it 25% more than Allied Waste?

15 Yolanda Miller: No, it's 25% more than what their 2009 was bid was.

16 Kathie Tovo: I see. Do you think that it is accurate what Mr. Whellan said that the overall price may
17 have ended up being lower than 2009 if all the other pages had been included?

18 Yolanda Miller: We looked at some of the line items and we tried to compare it from the 2009 and
19 going forward and all of them had, some of the line items were higher, some of them were lower,
20 overall there may have been a small increase, but we didn't, we looked at the fact that it was a
21 responsive bid, and that the items and the prices they bid were in line with what we thought they
22 should be.

23 Kathie Tovo: I see, and I know councilmember Spelman had asked this follow up question about what,
24 you know, what really are our options here today? Is one of them to reopen the process so that we can
25 be sure as a council that we are embarking on the very most fiscally responsible option, is that an option
26 for us here today to rebid it?

27 Yolanda Miller: Well, as directed by council, of course, council can vote up or down, any
28 recommendations that we made, in terms of us, in following local government code, we do have a
29 responsive bid, it was a fair and open process, the bidder that we deemed non-responsive did not
30 submit all the requirements of the bid, so.

31 Kathie Tovo: Right, and you address some of the concerns. I guess I am really interested in what would
32 be some of the other implications if we did choose to reopen that process?

33 Yolanda Miller: Well, the responsive bidder's prices are exposed and one of the consequences could be
34 that they decide not to bid, because their bid has been exposed, and they were responsive. They

1 submitted all the paperwork, did everything as we requested them to do, and so that would be a
2 consequence, or other people may see that this might be where responsive bids aren't accepted and so
3 they may decide not to bid either.

4 Kathie Tovo: Yea, I'm gonna ... I think other councilmembers have questions.

5 Mayor Leffingwell: Councilmember Martinez.

6 Mike Martinez: I guess I'm I just want to follow up on councilmember Tovo's question to the law
7 department. What's pending before us today is either acceptance or rejection of the item.
8 Councilmember Tovo asked the question of can we direct staff to rebid it. And I think my question is, if
9 we simply reject the item, doesn't that automatically put staff in the position of having to go out and
10 rebid because we need this service to take place? We wouldn't necessarily need to give that direction?

11 Karen Kennard: Correct. Under the bidding statute, you accept or you reject what's been brought
12 forward, and if we continue to need the service, we'll go back out for another bid, so there is not
13 necessarily a need to direct that specific action take place.

14 Mayor Lee Leffingwell: Councilmember Morrison.

15 Laura Morrison: Thank you. I want to go back to the issue about the closure of the landfill in 2015. I am
16 a little befuddled about, you said that you weren't aware that our staff, as they were evaluating the
17 proposals, you weren't aware that that was actually a constraint on the landfill?

18 Yolanda Miller: In the initial beginning, yes, that is correct.

19 Laura Morrison: And so, what kind of, and the recommendation is for a contract beyond that date, so
20 what, in your view, is going to be done with the hazardous waste if the landfill is closed?

21 Yolanda Miller: Well, we have received some confirmation since then; in fact, it was yesterday, that
22 they have already created a subcontract with another provider to handle any additional landfill
23 requirements past their date when they are going to close.

24 Laura Morrison: And that is not a problem, where the contract allows subcontracting?

25 Yolanda Miller: It does.

26 Laura Morrison: And who is that subcontractor and where is their landfill facility?

27 Yolanda Miller: I need to look for that information.

28 Laura Morrison: Okay, and then I guess one last question, involves this went to the EUC because ... and I
29 understand why it went there, did you all contemplate taking it to ZWAC, the Zero Waste Advisory
30 Committee?

31 Yolanda Miller: Not at this time.

1 Laura Morrison: Okay, and did you coordinate at all with our Resource Recovery Department?

2 Yolanda Miller: We have been in touch with the Resource Recovery Department, but no, it was not
3 specifically coordinated from Purchasing.

4 Laura Morrison: Okay, and I wonder if Mr. Gedert is here.

5 Mayor Lee Leffingwell: There he is.

6 Laura Morrison: Great.

7 Mr. Gedert: Yes, Bob Gedert, Austin Resource Recovery Director.

8 Councilmember Morrison: Thank you for being here. I guess I have a question. I am mainly, I'm very
9 concerned about the issue of the landfill closing and then where will it go, and you know landfills are
10 something of great concern that we have worked a lot on here, and do you have any insights into what
11 other landfills there are? Have you been, are you familiar with the subcontract that they are talking
12 about?

13 Bob Gedert: Yea, unfortunately I have not been involved in this process. This is an Austin Energy
14 project and I have not been involved; however, there are other landfills available that Republic could
15 contract with. It would require a contractual requirement because it's a city contract.

16 Laura Morrison: Okay, and then last question - do you have any comments on this proposal and this
17 approach and how it may or may not integrate with our Zero Waste plan?

18 Bob Gedert: Yes, couple of points, just observations, and I would note, with apologies to Austin Energy,
19 that this is their project, not mine, but the coordination of waste contracts has not been through my
20 department. Each department manages their own contracts and it was an issue of whether this has
21 gone thru ZWAC review. That has not been past practice. However, we did have a ZWAC discussion last
22 night on this topic. And it is the desire of ZWAC, as well as myself, that waste disposal contracts go
23 through our review. And that has not been past practice and therefore not deployed in this situation.

24 Laura Morrison: Okay. It does strike me as making a lot of sense because just the global Zero Waste
25 perspective on these kinds of projects would certainly be helpful I think. Thank you.

26 Mayor Lee Leffingwell: Mayor Pro-Tem Cole.

27 Sheryl Cole: Bob, I have a couple of questions for you along the same lines. Because we have not had
28 the practice of Austin Energy hazardous waste contracts going through ZWAC, I am assuming ... do you
29 have any idea of what type of volume we are talking about there?

30 Bob Gedert: I do not know the particulars of this contract. I have not been involved so it would be hard
31 for me to answer.

32 Sheryl Cole: But you definitely agree that there is an impact on our Zero Waste policy?

1 Bob Gedert: Yes.

2 Sheryl Cole: And the ZWAC board agrees with that also?

3 Bob Gedert: Yes.

4 Sheryl Cole: And the fact that you all also have an extensive knowledge about the impact that it would
5 have on other landfills in the city.

6 Bob Gedert: There are other landfill resources I am unfamiliar with the material type that's being
7 contracted here and there is a hazardous materials aspect to this contract and I simply have not
8 reviewed over the contract or the bid proposal to really answer any questions on where the material
9 could be delivered.

10 Sheryl Cole: Let me ask the attorney, if we have this item before us today but would like to have it go to
11 ZWAC before we make a consideration, is that an option under the current posting?

12 Karen Kennard: I think you can always postpone an item and then give direction related to that item
13 and Mr. Gedert probably knows the jurisdiction of ZWAC under our code better than I do as to whether
14 or not this item fits under their jurisdiction.

15 Sheryl Cole: And Mr. Gedert, you agree this item would fit under their jurisdiction?

16 Bob Gedert: Yes, we just reviewed over the by-laws of the ZWAC commission and this would be a
17 considered item under their by-laws.

18 Sheryl Cole: Mayor, I will go ahead and make the motion that we postpone this item and send it to
19 ZWAC on their next available meeting date.

20 Mayor Lee Leffingwell: Motion to, by Mayor Pro Tem Cole, to postpone Item 26 to March 21st - that's
21 their next meeting. Is there a second? Second by councilmember Tovo. Any discussion?
22 Councilmember Spelman.

23 Bill Spelman: The question is on the table - we might as well answer it. Mr. Ensley, who is your
24 subcontractor that is going to take your waste away?

25 John Ensley: We have an executed contract with the Austin Community Landfill, Waste Management,
26 through October 31, 2020.

27 Bill Spelman: Okay, so where is that landfill located? Remind us.

28 John Ensley: Right next to our landfill, Northeast Austin, 9900 Giles Road, is the physical address.

29 Bill Spellman: Okay, that is what used to be called the WMI Landfill, is that right?

30 John Ensley: Correct?

1 Bill Spelman: Got it, ok. So we know where it's going to go and they are able to take the waste that we
2 have in mind.

3 John Ensley: Yes, they are a Type 1 that can take the exact same materials that we can at Sunset Farms.

4 Bill Spelman: Terrific, thank you, sir. I have a question for the woman from Purchasing. I'm sorry
5 ma'am, I have forgotten your name.

6 Bill Spelman: I'm sorry, I've forgotten your name.

7 Yolanda Miller: Yolanda Miller.

8 Bill Spelman: Yolanda, help me walk through the process by which we verify that a bid is responsive or
9 not responsive. How does that work?

10 Yolanda Miller: When the bid is opened, it's publically opened, first of all, the bids come in and they are
11 held by a clerk in the purchasing office until such time that the bid has closed. – uh, when the bid ...

12 Bill Spelman: So the bids come in sometimes over days?

13 Yolanda Miller: Oh yes.

14 Bill Spelman: And they're all put in a box someplace, figuratively speaking.

15 Yolanda Miller: A locked, a locked place.

16 Bill Spelman: A locked place, okay.

17 Bill Spelman: And why are they put in a locked place?

18 Yolanda Miller: Because, per government code, the bids must be untampered, and they must be sealed
19 and opened in a public fashion after close.

20 Bill Spelman: Okay. When was closing for this particular bid – do you remember?

21 Yolanda Miller: Uh – gosh – it was several weeks ago.

22 Bill Spelman: Do you remember what time of day it was?

23 Yolanda Miller: Usually they open at 2:00 o'clock.

24 Bill Spelman: Okay, that's what I'm used to hearing, is 2:00 o'clock. Okay, let's say it's 2:00 o'clock,
25 what happens next?

26 Yolanda Miller: After then, the bids are then delivered to a buyer that - that different buyers – ok, I was
27 just told it was 2 p.m. and it was on December 19th.

28 Bill Spelman: So, December 19th, 2 p.m. somebody opens up all these envelopes.

1 Yolanda Miller: Opens up the bid, and it is a public reading of the bids. It's also – you can stream in and
2 see it on the website. At that time -

3 Bill Spelman: On the website, what it is, somebody actually reads what the bid says.

4 Yolanda Miller: Correct - correct. So all the bids are – um – all the prices are read publicly, and then the
5 bids are all then given to a clerk who records all the amounts that are part of each person's bid – each
6 respondent's bids. At that time, the buyer will verify all the numbers and also go through the bids to
7 make sure they are complete. Then the department will usually review the recommendation made by
8 the buyer and then there is any discussion on if there are any exceptions taken to the bid.

9 Bill Spelman: Tell me about exceptions.

10 Yolanda Miller: Sometimes exceptions are in terms and conditions. This particular bid is an invitation for
11 bid and we cannot take any exceptions to any of our terms in an IFB. In an IFB, it must be where all your
12 materials are submitted, all your pricing is there, and all the terms that the city has provided for are
13 taken.

14 Bill Spelman: I see there were mandatory items and voluntary items on this particular IFB –

15 Yolanda Miller: Correct.

16 Bill Spelman: Am I right?

17 Yolanda Miller: Correct.

18 Bill Spelman: And all the mandatory items are to be addressed. You have to have a bid for all of the
19 issues – all of the items in the mandatory section.

20 Yolanda Miller: Correct – and they're listed in our terms.

21 Bill Spelman: And we're looking for a per unit price for each of those things, is that right?

22 Miller: Correct.

23 Bill Spelman: I'm sorry. I interrupted you – go ahead.

24 Yolanda Miller: At that time, we make a recommendation, and that recommendation is then taken to
25 the department for their approval, and then after that, then we create a request– well, we go to Any
26 Boards and Commissions and we submit our recommendation along with any justification to the Boards
27 and Commissions. At that point, the RCA is created, and then it's submitted for Council consideration.

28 Bill Spelman: At what point in this particular IFB did it become clear that there was only one responsive
29 bid? You had two envelopes.

30 Yolanda Miller: When it was opened.

1 Bill Spelman: Okay. So you have two envelopes, you open them both, and it's clear you've got per unit
2 prices for all the mandatory items and all the other stuff it takes for a responsive bid for Allied, but you
3 don't have all that stuff for TDS.

4 Yolanda Miller: Correct.

5 Bill Spelman: What happened then?

6 Miller: At that point, it's my understanding that a buyer then contacted TDS, just to, I guess, confirm
7 that they did not find all the pieces to the bid.

8 Bill Spelman: Right. Is that standard procedure – we always do that?

9 Yolanda Miller: Sometimes. It's not always, but sometimes they are out of place. And, I think in this
10 particular case, the buyer just wanted to make sure they did their due diligence in insuring they didn't
11 miss something.

12 Bill Spelman: Sure.

13 Yolanda Miller: And it was confirmed ...

14 Bill Spelman: In case it was stuck in there someplace and they just didn't find it – yea, okay, go ahead –
15 it was confirmed that...

16 Yolanda Miller: That they left it out. And, having pricing left out is a reason to make the bid non-
17 responsive.

18 Bill Spelman: I would imagine so. That's our whole criteria for an IFB, is who has the lowest price. At
19 what point did the buyer call somebody at TDS and inform them that some stuff seemed to be missing?

20 Yolanda Miller: They did it very early – I think they did it very early on, but I don't know exactly the date.

21 Bill Spelman: Oh, so it was not on the same day the bids were opened?

22 Miller: I don't think so. I don't know. To be honest, I don't know. I would have to find out for you.

23 Bill Spelman: OK. Has anything like this happened before?

24 Yolanda Miller: Oh, yes.

25 Bill Spelman: Yeah? The bid gets submitted and somebody leaves a page out or doesn't sign something,
26 or something like that happens?

27 Yolanda Miller: Unfortunately, it does happen.

28 Bill Spelman: Yeah. What's our usual procedure when that happens?

29 Yolanda Miller: I just, what I described.

1 Bill Spelman: If it's not responsive, sometimes you call to make sure that it's really not there – if it's not
2 there, it's not a responsive bid, it's thrown out?

3 Yolanda Miller: Correct – correct.

4 Bill Spelman: And, I asked the question and I presume you or Byron or somebody else answered it, if we
5 were to say - set aside this entire IFB – and presumably go back and do it again, then you're concerned
6 that the issue was that Allied or other bidders in a similar position may be less likely to respond to our
7 requests in the future because they know that we may just throw it out if we don't like the result?

8 Yolanda Miller: That is our feeling, yes, that is correct.

9 Bill Spelman: Have we any empirical, have we any good reason for believing that that's actually going to
10 be true? Has this ever happened before and somebody said "Look, I'm not going to bid on your stuff
11 because you don't play fair?"

12 Yolanda Miller: Not that – I don't recall since I've been here at the City of Austin that happening, but I
13 do recall that there being issues with other things that people decide that they're not going to bid our
14 work.

15 Bill Spelman: Okay.

16 Yolanda Miller: So, but I have experience that certainly a responsive bid being thrown out is – could be -
17 a consequence that they decide not to bid again, because their numbers are already exposed.

18 Bill Spelman: Yeah, certainly on this particular solicitation, they're compromised. Um, I did the math.
19 The - it seems to me the difference between what the 2009 – uh, this set of items for 2009 and this set
20 of items in the Allied bid is at 16% - it's a 16% increase over the 2009 price, is that right?

21 Yolanda Miller: You mean from TDS to what Allied bid?

22 Bill Spelman: The price established in 2009 by TDS, who is our current contractor for these items.

23 Yolanda Miller: Correct.

24 Bill Spelman: And if we accepted the Allied bid, the price would go up 16% over the 2009 TDS price, is
25 that correct?

26 Yolanda Miller: Oh, correct. That is correct.

27 Bill Spelman: OK – and my, my estimate of that is the per-year cost Allied is proposing is \$260,000,
28 about.

29 Yolanda Miller: Correct.

30 Bill Spelman: And that 16% would be about a \$40,000 increase. Is that about right?

31 Yolanda Miller: Uh-huh.

1 Bill Spelman: So, we're talking about \$40,000 per year difference – if, uh, over the current price we're
2 paying?

3 Yolanda Miller: Approximately, yes.

4 Bill Spelman: Okay. Thank you, ma'am. I appreciate your help.

5 Yolanda Miller: You're welcome.

6 Bill Spelman: Mayor, I'd love to save \$40,000, the same as everybody else, but it seems to me the
7 integrity of our bid process is worth a lot more to us than \$40,000 a year, so I'm going to vote NO on this
8 motion.

9 Mayor Lee Leffingwell: I have a question for Austin Energy. Could you talk to us a little bit about the
10 potential impact of postponement or denial or ...?

11 Cheryl Mele: Um – I think you're – this is Cheryl Mele, Deputy General Manager at Austin Energy. I don't
12 think there's an issue with postponing if you want to postpone to March 21st. What we would need is to
13 understand is that a postponement, to get further information and details and to have some knowledge
14 of what we would be providing in that interim period.

15 Mayor Lee Leffingwell: Okay. So I've got another question. And, I think this is an attorney question.
16 Uh, Councilmember Spelman just mentioned maintaining the integrity of the process. What does this do
17 to the proposed bid process now that we've already had this discussion and how does sending it to
18 ZWAC affect that?

19 Jacquelyn Kellam: Good morning, Jacquelyn Kellam, Assistant City Attorney. I'm not sure I can speak to
20 sending it to the Commission but I would like to highlight, again, I concur with the Purchasing
21 Department, there are some issues regarding the factors, the integrity of the process and all. With that
22 said, your City Attorney correctly stated the law, the Council always has the discretion to reject any and
23 all bids. That's the legal general rule.

24 Mayor Lee Leffingwell: But is there also a No Contact process in effect? Is that lifted now, or how does
25 that work:

26 Jacquelyn Kellam: I'll have to defer to Byron on that.

27 Byron Johnson: Byron Johnson, Purchasing Officer. It is correct that the anti-lobbying process, if you
28 reject all the bids and you are going to solicit again, then the anti-lobbying ordinance carries through for
29 that subsequent bid and maintains in effect during that time period until Council then takes the action
30 on the subsequent re-bid of the item.

31 Mayor Lee Leffingwell: So there is no adverse effect on the No Contact process from a legal perspective
32 by sending it to ZWAC?

1 Karen Kennard: No, because there is an exception that you can discuss any of those items in a public
2 meeting and that would be a public meeting.

3 Mayor Lee Leffingwell: Okay. Councilmember Riley.

4 Councilman Riley: Just a question about timing. According to the City's website, the next meeting of
5 the Zero Waste Advisory Commission will be on April 10. They usually meet on the second Wednesday
6 but this month is different, because for reasons we all know. So the next meeting after that, the next
7 Council meeting after that will be April 11, so I assume that Mayor Pro-tem would want to, might be
8 interested in, in modifying the motion to postpone until April 11.

9 Sheryl Cole: Yes, I would definitely be interested and I want to clarify with that, that the motion would
10 be to go to ZWAC to get their input on the hazardous waste information that is there and that we are
11 not trying to violate the zero contact rules or run into any ethical violations, but I would definitely want
12 to modify the motion to be to April 11 so that we could get ZWAC's input.

13 Mayor Lee Leffingwell: Friendly amendment by councilmember Riley to change the date, to postpone
14 the date until April 11, with the additional direction from the motion-maker that it go to the ZWAC
15 commission prior to coming back to us on April 11. Councilmember Riley...

16 Chris Riley: And then just one more question...

17 Mayor Lee Leffingwell: Excuse me is that accepted by the...

18 Councilmember Riley: And then just one more question for the Austin Energy. I just want to make sure
19 that that additional delay doesn't pose problems in terms of the expiration of the current contract?

20 Byron Johnson: If I may, Byron Johnson again in Purchasing, we have already worked with Austin
21 Energy. What we will do is there is dollars still available on the current contract. We would have to
22 extend the time period. We have already talked to TDS, and as Mr. Whellan has just said, they are
23 willing to go forward with it at the same rate for that time period, so we can do an amendment that
24 would be an administrative amendment just to add more time but no dollars to that one, so if it gets
25 further than that, we would then have to look whether they have enough money, and whether we
26 would have to do an emergency contract at that point, but we have enough we should be able to do for
27 at least the next 30 days.

28 Chris Riley: Okay, great, thanks.

29 Mayor Lee Leffingwell: Councilmember Tovo.

30 Kathie Tovo: I just have a couple of quick follow-up questions. Mr. Johnson, can you tell us when the
31 current contract expires?

32 Byron Johnson: Their current contract expires tomorrow.

1 Kathie Tovo: Tomorrow, okay, so this got to us at the very last minute, but you have the ability to
2 extend it, as you said, for a while and then if there was a need, a need to have an emergency contract
3 for additional extensions, that's all an administrative process that is doable.

4 Byron Johnson: That is correct and we all have already reviewed that scenario just in case it needs to
5 happen.

6 Kathie Tovo: And just so that I am clear, in looking at the bid, in looking at the EUC materials, I mean
7 they all had access to the bid tabulation and the dollars so none of that information is, I mean, I thought
8 I was hearing some concerns that the information we've been talking about here has now exposed the
9 figures to the public but those were all made public information at the EUC meeting, is that correct? The
10 bid tabulation numbers and the actual contract, the proposed contract.

11 Byron Johnson: The bid tabulation numbers are actually, we post those for open government. We have
12 them available to anybody online so that they have those available to be able to have access, and the
13 bids from Allied Waste would have been an item at the EUC that they had available to them, or anybody
14 can request them.

15 Councilmember Tovo: Alright thanks, and I guess I would also like, when it goes to the Zero Waste
16 Commission, I would really like them to dig into some of the amounts and really look over some of the
17 financial information that Ms. Miller was talking about, about the different, looking at the 2009 figures
18 and the incremental costs and some of those increases and really bringing some recommendations to us
19 with regard to the recycling component and whether they feel that that proposal is manageable. I did
20 have one more question, I know that we've discussed our options here. One is to accept it, one would
21 be to reject it. Would another alternative be to modify the renewal and say, you know, this is a one year
22 contract, no renewals, so that we don't get into a position of extending a contract, of having a contract
23 that would extend beyond the Allied Waste proposed closure time?

24 Byron Johnson: The answer is you have four options. Let me just help you by laying them out again.
25 First, obviously you can desuetude, to postpone or table the item to a future date, as one of the motions
26 is. Second, you can have the option, as always, to approve it as is. Third, you could approve it with the
27 base contract and eliminate the options because again as they are options and they are not, we require
28 that when somebody bids on a contract, that they bid for the base period and the options are just
29 exactly that. Don't base your prices on the fact that you are getting any options, and then as the city
30 attorney has said, you count as a governing body to always have the option to reject any and all bids on
31 every solicitation.

32 Councilmember Tovo: Alright, thank you.

33 Mayor Lee Leffingwell: Just to make sure that I have it straight, a postponement, which is the only
34 motion on the table right now, until April 11th, that does not re-open the process?

35 Byron Johnson: It doesn't - that is a correct statement.

1 Mayor Lee Leffingwell: The bids remain as they are today, and it just comes back and when it is
2 considered on April 11th, those other options that you outlined that were available to Council, those can
3 be considered at that time?

4 Byron Johnson: Sure.

5 Mayor Lee Leffingwell: Okay. Councilmember Morrison.

6 Councilmember Morrison: I'm going to support this motion. I wanted to add one more request to staff
7 and that is that you all, that Austin Energy chat with the Resource Recovery Department and maybe
8 provide, I realize it's Austin Energy's project, but I think it would be great to have any comments or input
9 also from Mr. Gedert and his department, especially with regard to how it sort of integrates with our
10 future mission.

11 Cheryl Mele: And there is some coordination that has happened with my staff and the environmental
12 area, as well as with the Austin Resource Recovery Department looking at that. And, you know, we just
13 need to look at the types of waste here and look at how many of those fall into the purview of the Solid
14 Waste Advisory Committee. We need to be careful not to mix what their normal oversight is with some
15 of the things here, so we will work together with Bob and make sure we understand those things that
16 normally are in their purview and see where that opportunity to get some feedback exists.

17 Councilmember Morrison: Right, and just to be clear, I understand that this motion takes up to the
18 commission but I'd also be interested in any input and observations from the department itself. Thank
19 you.

20 Mayor Lee Leffingwell: All in favor of the motion to postpone until April 11th say Aye.

21 General Council: Aye.

22 Mayor Lee Leffingwell: Oppose say No.

23 Bill Spelman: No.

24 Mayor Lee Leffingwell: Passed on a vote 6 to 1 with Councilmember Spelman voting no.

25

Ray Bryant

From: Castillo, Dolores <Dolores.Castillo@austinenergy.com>
Sent: Thursday, March 07, 2013 1:48 PM
To: Ray Bryant
Cc: Sanchez, Paul; Eldred, Jim
Subject: 60 Day Holdover for Contract #MA 1100 NA090000114
Attachments: NA090000114 A4.docx

Thank you Mr. Bryant.

Attached for your contract file is an executed Amendment #4 for a 60-day holdover. If you have any questions or concerns, email me or contact me at the numbers listed below.

Dolores Castillo

Senior Buyer

City of Austin

Purchasing Office

P.O. Box 1088

Austin, TX 78767

Office: 512-322-6466

Fax: 512-322-6490

dolores.castillo@austinenergy.com

Manager: Shawn Willett shawn.willett@austinenergy.com 512-505-7351

For information about contracts and payments, please visit Austin Finance on line at:
<http://www.ci.austin.tx.us/financeonline/finance/index.cfm>



Please consider the environment before printing this e-mail or attachments.



Amendment No. 4
to
Contract No. MA 1100 NA090000114
for
Class 2 Waste Disposal
between
Texas Disposal Systems Inc.
and the
City of Austin

- 1.0 The City hereby holds over the above referenced contract for a period of 60 days in accordance with the holdover language in the "Term of Contract" provision in Section 0400, Supplemental Purchase Provisions, which reads as follows:

"Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this agreement for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 days unless mutually agreed on in writing)."

- 2.0 Effective March 9, 2013, the term for the holdover will be March 9, 2013 to May 8, 2013.

- 3.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Signed:

Dolores Castillo, Senior Buyer
City of Austin
Purchasing Office

03/07/2013

Date

Ray Bryant

Exhibit 12

From: Ray Bryant
Sent: Tuesday, April 02, 2013 1:22 PM
To: dolores.castillo@austinenergy.com
Subject: Requested Document

Good Afternoon Dolores,

Hope your day is going okay. Would you mind emailing me the complete bid packet for Allied Waste Services (Solicitation No. IFB 1100 DKC0093)? Thanks!

Ray

Ray Bryant
Texas Disposal Systems
www.texasdisposal.com
Office: 512-421-7646



This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the system manager. Please note that any views or opinions presented in this email are solely those of the author and do not necessarily represent those of Texas Disposal Systems (TDS). Finally, the recipient should check this email and any attachments for the presence of viruses. TDS accepts no liability for any damage caused by any virus transmitted by this email.

Exhibit 13

Bob Gregory

From: Bob Gregory (bgregory@texasdisposal.com)
Sent: Friday, April 05, 2013 1:54 PM
To: 'Dolores.Castillo@austinenergy.com'
Cc: Rick Fraumann (rfraumann@texasdisposal.com); Ray Bryant; Gary Newton (gnewton@texasdisposal.com); Whellan, Michael (MWhellan@gdhm.com); JimHemphill (JHemphill@gdhm.com); Adam Gregory (agregory@texasdisposal.com)
Subject: Contract No. MA1100NA090000114 Management & Disposal of Class 2 Non-Hazardous Industrial & Special Wastes
Attachments: 4-5-13 Ltr to D Castillo COA Sr Buyer Re MA1100NA090000114 contract extension of 4 yrs on 2009 contract.pdf

Please see attached letter.



TEXAS DISPOSAL SYSTEMS

TEXAS DISPOSAL SYSTEMS, INC. • TEXAS DISPOSAL SYSTEMS LANDFILL, INC.

P.O. BOX 17128
AUSTIN, TEXAS 78760-7126
512-421-1300
512-243-4123 (FAX)
www.texasdisposal.com

April 5, 2013

City of Austin Purchasing Office
Attn: Dolores Castillo, Senior Buyer
Municipal Building
124 West 8th Street, Room 310
Austin, Texas 78701

**RE: Contract No. MA1100NA090000114
Management & Disposal of Class 2 Non-Hazardous Industrial & Special Wastes**

Ms. Castillo:

It has come to my attention that Section 0400, Supplemental Purchase Provisions, Term of Contract, Subsection 6C of the existing TDS contract No. MA1100NA090000114, for the Management & Disposal of Class 2 Non-Hazardous Industrial & Special Wastes, allows the existing contract to be extended on the same terms and conditions for an additional twelve months and may be extended thereafter for up to three additional twelve month periods, upon written notice to the Contractor from the City's Purchasing Officer or his designee and the acceptance of the Contractor. Therefore, I request that you provide written notice to TDS that this 2009 contract will be extended for an additional four year term as the original contract. I commit, on behalf of TDS, to approve the extension and be bound to the existing rates for the initial twelve month period, and for each of the twelve month extension options thereafter, subject to an increase in state disposal fees affecting other similar waste disposal throughout the state.

If you have any questions or comments concerning this request and offer, please contact me, at your convenience.

Sincerely,

Bob Gregory
President and CEO
Texas Disposal Systems, Inc.

**CITY OF AUSTIN
PURCHASING OFFICE
SUPPLEMENTAL PURCHASE PROVISIONS**

4. CITY WARRANTY

- A. City warrants that the waste specified in the specification represent waste streams generated by the City. The City will strive to provide analytical, Material Safety Data Sheets, and generator knowledge for proper identification of waste streams. The City holds clear title to all waste material to be transferred thereunder and has contractual authority to dispose of the materials. The City is under no legal restraint or order, which would prohibit transfer of possession of such materials to the Contractor for transportation, storage, or disposal.

5. CONTRACTOR WARRANTY : In addition to any other warranty:

- A. Contractor warrants that it is fully qualified to perform the services described in the specification and that it understands the currently known hazards, which are presented to persons, property and the environment in the transportation, storage, and disposal of the waste materials described in the Price Sheet (0600). Contractor warrants that it understands the scope of applicable regulations to properly transport, store, and dispose of such materials in full compliance with all laws, governmental regulations and orders, and in full compliance with all terms and conditions specified in permits currently held by Contractor, as applicable to providing the services described in the specification.
- B. Contractor further warrants that 1) all disposal facilities, transporters, and handlers are properly permitted, 2) employees, subcontractors, and employees of subcontractors are properly trained to perform the various tasks which may be required pursuant to this agreement, and 3) that all wastes or materials shall be handled, transported, stored, and disposed of in accordance with all applicable federal, state, local statutes, laws, regulations, rules or ordinances.
- C. The breach by Contractor of any of its warranties under this section shall be a material breach of the contract. In addition to any other remedy, Contractor shall defend (at the option of the City), indemnify, and hold the City harmless from and against all cost, loss, expense (including attorneys' fees, court costs, and expenses or litigations), damage, civil or criminal penalties, claims, suits, judgments, and liability of every nature arising out of, concerning, or caused by the breach of any of the warranties under this section.

6. TERM OF CONTRACT

- A. The Contract shall be in effect for an initial term of twelve (12) months and may be extended thereafter for up to three (3) additional twelve (12) month periods, subject to the approval of the Contractor and the City Purchasing Officer or her designee.
- B. Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this agreement for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 days unless mutually agreed on in writing).
- C. Upon written notice to the Contractor from the City's Purchasing Officer or his designee and acceptance of the Contractor, the term of this contract shall be extended on the same terms and conditions for an additional period as indicated in paragraph A above. A price increase, subject to the provisions of this Contract, may be requested by the Contractor (for each period of extension) for approval by the City's Purchasing Officer or his designee.

**CONTRACT BETWEEN THE CITY OF AUSTIN ("City")
AND
Texas Disposal Systems, Inc. ("Contractor")
for
Class 2 Waste Disposal
Contract No. MA-1100-NA090000114**

The City accepts the Contractor's Offer (as referenced in Section 1.1.3 below) for the above requirement and enters into the following Contract.

This Contract is between Texas Disposal Systems, Inc. having offices at Austin, Texas 78760 and the City, a home-rule municipality incorporated by the State of Texas, and is effective as of the date executed by the City ("Effective Date").

Capitalized terms used but not defined herein have the meanings given them in Solicitation Number IFBSMH0007.

1.1 This Contract is composed of the following documents:

- 1.1.1 This Contract
- 1.1.2 The City's Solicitation, Invitation for Bid (IFB), SMH0007 including all documents incorporated by reference
- 1.1.3 Texas Disposal Systems, Inc. Offer, dated January 6, 2009, including subsequent clarifications

1.2 Order of Precedence. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

- 1.2.1 This Contract
- 1.2.2 The City's Solicitation as referenced in Section 1.1.2, including all documents incorporated by reference
- 1.2.3 The Contractor's Offer as referenced in Section 1.1.3, including subsequent clarifications

1.3 Quantity of Work. There is no guaranteed quantity of work for the period of the Contract and there are no minimum order quantities. Work will be on an as needed basis as specified by the City for each Delivery Order.

1.4 Term of Contract. The Contract will be in effect for an initial term of twelve (12) months and may be extended thereafter for up to three (3) twelve (12) month extension option(s), subject to the approval of the Contractor and the City Purchasing Officer or his designee. See the Term of Contract provision in Section 0400 for additional Contract requirements.

1.5 Compensation. The Contractor shall be paid a total Not-to-Exceed amount of \$305,458.00 for the initial Contract term and \$305,458.00 for each extension option as indicated in the Bid Sheet, IFB Section 0600. Payment shall be made upon successful completion of services or delivery of goods as outlined in each individual Delivery Order.

Bob Gregory

From: Castillo, Dolores <Dolores.Castillo@austinenergy.com>
Sent: Friday, April 05, 2013 5:23 PM
To: Bob Gregory
Cc: Rick Fraumann; Ray Bryant; Gary Newton; MWhellan@gdhm.com; JHemphill@gdhm.com; Adam Gregory; Ledesma, Rosemary; Miller, Yolanda
Subject: RE: Contract No. MA1100NA090000114 Management & Disposal of Class 2 Non-Hazardous Industrial & Special Wastes
Attachments: 4-5-13 Ltr to D Castillo COA Sr Buyer Re MA1100NA090000114 contract exte....pdf

Hello Mr. Gregory:

Thank you for your email. I've included below a table with the authorized contract actions as approved by Council on 03/08/2009 and which have all been exercised. The contract in section 0400 stipulated an initial 12-month with 3-12 month options.

Action	Exercised Dates of Actions
Initial Contract	03/09/2009 – 03/08/2010
1 st option exercised	03/09/2010 – 03/08/2011
2 nd option exercised	03/09/2011 – 03/08/2012
3 rd and Final option exercised	03/09/2012 – 03/08/2013
60-Day Holdover	03/09/2013 – 05/08/2013

Based on the above breakdown, extending your contract for any additional long term period such as you offer in your letter is not an option under this contract. TDS and the City are currently in a 60-day holdover period due to the delay in obtaining Council approval on the new solicitation. At this time, the contract is set to expire on 5/8/2013; therefore, I cannot consider your offer, but do appreciate you reaching out to me.

Thank you again.

Dolores Castillo

Sr Buyer

Purchasing Office

Office: 512-322-6466

Fax: 512-322-6490

From: Barbara Lazenby [mailto:blazenby@texasdisposal.com] **On Behalf Of** Bob Gregory

Sent: Friday, April 05, 2013 1:54 PM

To: Castillo, Dolores

Cc: Rick Fraumann; Ray Bryant; Gary Newton; Whellan, Michael (MWhellan@gdhm.com); JimHemphill (JHemphill@gdhm.com); Adam Gregory

Subject: Contract No. MA1100NA090000114 Management & Disposal of Class 2 Non-Hazardous Industrial & Special Wastes

Please see attached letter.