

Bob Gregory

From: Bob Gregory
Sent: Tuesday, February 07, 2017 11:33 PM
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Cc: Adam Gregory; Ryan Hobbs; mwhellan@gdhm.com; djbutts@sbcglobal.net; Gary Newton; Bob Gregory
Subject: Items 3A & 3B – Please reject secret deals and insist on full transparency

Dear ZWAC Commissioners,

I'm writing to strongly urge you to vote to recommend that City Council not approve Item 3A Organics Processing, and Item 3B City Facilities Dumpster Collection Service (aka Citywide Dumpster Services Contract) on your February 8th meeting agenda, and to terminate both of these Requests for Proposals (RFP)s and direct staff to seek Advisory Council and City Council approval on the City Policy to be included in new Invitations For Bid (IFBs) with public disclosure of negotiated contracts and operational details prior to staff requesting contract execution recommendations and approvals on these services from the appropriate advisory commission and from City Council.

Please note that I previously wrote to ZWAC Commissioners in advance of your November 9th meeting about my serious concerns and the substance of both of these items, which can be found [here](#). I will not restate most of these concerns. I also wrote to the Council prior to their December 15, 2016 meeting addressing the same concerns and additionally responding to Mr. Gedert's December 13, 2016 memo re: Citywide Dumpster Services Contract which can be found [here](#). My November 9th email also included the TDS annotated response to staff backup for these items, which can be found [here](#). You will recall that ZWAC voted [unanimously](#) on November 9th *not* to support the proposed Republic Services contract associated now with Item 3B, which now appears before you a second time with additional information. See transcript of the ZWAC discussion of this item [here](#). In November, ZWAC also heard City staff's presentation on the proposed Organics By Gosh contract associated with Item 3A, but moved to delay consideration until numerous questions raised by Commissioners could be addressed. The transcript of that discussion is found [here](#). Please allow me to remind you of the full context of both of these items before sharing critical concerns about both, even beyond those I raised in November.

BACKGROUND

As you may now know, in rapid succession between late March and early June 2016, Austin Resource Recovery (ARR) and Austin Water (AW) staff – both under the direction of Assistant City Manager Robert Goode – released five separate but related RFP solicitations that taken together intended to effect a fundamental reengineering of the Austin marketplace for waste collection, processing and disposal.

As ZWAC Commissioners, I believe you appreciate the complexity of the public and private marketplace for these services in Austin, whose most fundamental premise is that the City's role is confined by Ordinance to collecting *residential* waste and single-stream recycling and a relatively small number of commercial customers using *plastic* cart containers, while private businesses compete with each other to collect *commercial, industrial, institutional* and multifamily waste and single-stream recycling using *steel* dumpster containers and small commercial customers with plastic cart containers – and *also* to process, through recycling and composting, and/or dispose of Austin's *entire* waste stream (with the partial exception of biosolids, currently).

This puts the greatest onus, by far, on Austin's private-sector haulers and processors to achieve most of our community's ambitious 'Zero Waste' goals. To do so has required and will continue to require those companies to make massive investments in expensive equipment and facilities, which in turn requires *the continued unobstructed, undirected flow of waste materials into the free marketplace* to service the debt on those investments.

When City staff attempt, as has been the case regularly over the past 30 years, to expand *control* over those services and the *revenue derived* from the flow of Austin's waste streams, the balance on which our community has relied *successfully* for decades to achieve both environmental and economic development goals (i.e. thousands of private sector jobs) is fundamentally altered to the detriment of everyone not employed by the City of Austin.

As ZWAC Commissioners, I know you also appreciate the inter-connected nature of Austin's separate waste streams in the context of meeting 'Zero Waste' goals – for example, that the flow of organic materials like brush, wood, food scraps and yard waste is directly linked to the flow of biosolids, if making biosolids compost rather than direct land applying sludge to rural farmland is our community's preference. This means that obstructing or directing the flow of one waste stream is nearly certain in every case to directly impact the flow of other waste streams, and those who handle those materials, and perhaps even be determinative vis-à-vis their processing outcome. Witness the domino effect of the staff's approval of the Simple Recycling contract. Staff should not work under the premise that it is better to ask for forgiveness than to ask for permission.

In that context, fully informed and fully transparent City planning and contracting is paramount. Unfortunately, City staff's efforts in 2016 plainly prioritized ambition for control and department revenue over transparency and broader community interest by advancing a coordinated plan, embedded into the five separate RFP solicitations, to alter the flow of nearly every local waste stream – from biosolids and organics to recyclables and solid waste – all presented under the banner of *achieving* Austin's 'Zero Waste' goals when their certain outcome would be the exact opposite due to market disruption involving important facility and infrastructure owners. If it is staff's intent to create a Los Angeles type market takeover with one or more exclusive haulers, then staff should publicly state their intent and allow the full and thoughtful public discussion pertaining to the intended and long-term and short-term unintended consequences of such a dramatic act to begin. Meanwhile, all of these RFPs pending and their secretive process to gain Council approval should be terminated and replaced with current City policy compliant IFBs, which honor the separation of duties between the City and the open competitive market participants.

The five RFPs were:

- RFP SLW0509 for "Organics Processing Services" issued on March 21, 2016 (proposed contract with Organics By Gosh, Item 3A on the February 8, 2017 ZWAC agenda). (OBG responded to the March 21, 2016 RFP on April 12, 2016. Also, TDS submitted its contract reminder [unsolicited offer](#) to both City Council and ZWAC on April 12, 2016. The City reissued the RFP on May 30, 2016 and only OBG responded.
- RFP JXP0501 for "Removal and Sale of Untreated Compost" issued on March 28, 2016 (proposed contract with Mr. Allen Click, RFP has now expired).
- RFP SLW0511 for "Curbside Textile Recycling Services" issued April 4, 2016 (contract with Simple Recycling unilaterally entered into by City staff in July 2016, without ZWAC, City Council or stakeholder input, and recently the subject of public outcry and [City Council intervention](#) due to the problems it has caused and the more than \$1 million cost to the City reported if the contract is terminated now).
- RFP CDL2003 for "Beneficial Reuse of Biosolids" issued on April 4, 2016 (proposed contract with Synagro, RFP recently withdrawn by City Council for re-issue as a new solicitation based on concerns related to the RFP process and violations of the Anti-Lobbying Ordinance).
- RFP SLW0514 for "Citywide Dumpster Collection Services" (aka City Facilities Dumpster Collection Services) issued June 6, 2016 (proposed contract with Republic Services, Item 3E on the November 9, 2016 ZWAC agenda and Item 3B on the February 8, 2017 ZWAC agenda).

As previously [noted](#) in my email of November 9, 2016, in some cases these RFPs opened the door to a wholesale transformation of the Austin marketplace in direct conflict with established City policy, while in other cases the RFPs sought to create City policy where none existed. Nevertheless, despite the broad, policy-making scope of the plan – but more likely *because* of it – Assistant City Manager Goode and City staff not only failed to solicit *any* pre-RFP policy input from the City Council or their advisory commission members, but have *since then* attempted to secure both Commission and Council approval of the resulting contracts without revealing even *basic contract details* to policymakers, advisors, obvious stakeholders, environmental advocates or the public.

Remarkably, this has included withholding the full language of RFP responses and proposed contracts, including the respective RFP responses proposed exceptions and pricing, refusing to reveal the name or location of recycling and composting facilities and landfills proposed for use so that all can determine whether the facilities are in compliance with Travis County's Siting Ordinance for Solid Waste Facilities, and deliberately concealing the identity of proposed subcontractors and interrelated operations at the undisclosed facility locations. City staff members have even refused to make public the location of sites, perhaps inside the city limits of Austin or in Travis County, proposed for direct land application of Class A and/or Class B biosolids sludge – the end product of Austin's wastewater stream – despite the obvious potential public health and nuisance implications for unsuspecting site neighbors. (Please note that City staff's proposed biosolids management vendor, Synagro, [has recently been sued](#) by residents of Upper Mount Bethel, Pennsylvania, over the land application of the similar Class A biosolids sludge product Synagro would produce in Austin, with site neighbors alleging odors and "running noses, burning eyes, burning throats, respiratory distress, irritated skin and rashes.")

Indeed, while City staff's five RFP solicitations ranged from relatively small (e.g. the Simple Recycling contract) to enormous (e.g. Item 3B, a \$16.9 million contract proposed for award to Republic Services, and the \$20.3 million Biosolids Management Contract), each of them has been advanced with *the exact same alarming lack of transparency*. From capitalizing on staff's overly restrictive interpretation of the Anti-Lobbying Ordinance (ALO), to the executive staff requiring staff RFP reviewers to sign questionable non-disclosure agreements which keep them from answering questions during publicly posted meetings, to ignoring that Republic Services apparently did not timely submit its RFP response and should not even be a qualified respondent, to the staff ignoring its past history of negotiating solid waste, recycling, and composting contracts without competitive bidding and anti-lobby restrictions as clearly allowed by Texas state law, City staff members have in each case gone far above what can be considered reasonable to keep key deal terms of these RFP responses and the proposed contracts secret and to silence criticism and public debate, all seemingly without regard to the impact of these far-reaching proposals on a broad range of community constituents, ranging from non-profit groups, small business owners, local waste haulers and processors like TDS, special event organizers, rate payers, and many others.

I do not believe any of the five proposed contracts can withstand public scrutiny on their own merits, based just on the partial details that have slowly been revealed, the inappropriate reverse-engineering of 'City policy by RFP', and the unsettling veil of secrecy characterizing each of these proposals. These things would and should be more than enough justification to terminate each one of the RFPs and instead demand a new, fully transparent and demonstrably fair IFB process for each, driven by community values and Council/Commission policy direction vis-à-vis the most responsible management of the City's waste at the most reasonable cost, rather than by City staff's desire to expand control over the marketplace, preordain the landfill, recycling and compost facilities that the City contractor must use, as well as the land application of sludge sites and the second hand product managers to receive the materials collected and processed under these yet to be made public RFP responses and contracts. The staff's self-imposed process restrictions related to their RFPs demands that IFBs should be used and negotiated contracts should be posted for public review and comment with no need to withhold critically important facts that policymakers need to know in order to avoid irrevocable damage caused by voting to execute contracts before important facts are disclosed.

ITEM 3A: ORGANICS PROCESSING

ZWAC need look no further than the Simple Recycling Contract and Item 3A for troubling examples of City staff's determination to obscure the details of the five RFPs and proposed contracts. Please see the linked [transcript of ZWAC's November 9th](#) discussion regarding the proposed Organics By Gosh contract (the only RFP response received), in which Commissioners are told by City staff that "*purchasing rules*" would not allow ZWAC members to ask questions of the RFP respondent, who was present and sitting on the front row at that public meeting, to answer any Commission questions about his proposal, about his operation, his site location, or his proposed contract. Indeed, Commissioners and the respondent were cautioned "against talking about anything having to do with the bid or the solicitation because that could cause some problems with all the rules."

In other words, in an interpretation without any precedent at Austin City Hall that I'm aware of, City staff suggested to ZWAC that City policy prevents Council-appointed advisory commissioners from asking questions of the proposed recipient of a multi-million dollar City contract supposedly under their purview, at a public meeting where the contract is posted for discussion and action and the respondent is present, when the respondent's RFP response, the location of the facility or facilities, the facility's compliance with the County Siting Ordinance, the facility's association with other

types of waste, the size of the facilities, the proposed methods to be used, the finished product marketing plan and the terms of the contract have not been revealed.

Further, City staff themselves declined in November to answer Commissioners' questions about the proposal citing "confidentiality restrictions" and instead referred all questions to the City's Purchasing Office to be answered at a later date. A City of Austin Purchasing Office staff person made an incorrect and misleading statement to justify not disclosing important information. This statement came during the discussion of agenda Item related to a Republic Services proposed contract at the November 14, 2016 Electric Utility Commission (EUC) meeting (transcript is [here](#)). The relevant part of the statement was "... around disclosure of proposals, of contents, anything like that, that is per Texas Local Government Code Chapter 252 and that states that any of the proposals that we receive are confidential until the award so we would not be able to disclose the pertinent details of a proposal or any of those details. That's actually from State law."

That is in reality an incorrect characterization of State law. What the Texas Local Government Code actually says in Section 252.049(b)"..... proposals shall be opened in a manner that avoids disclosure of the contents to competing offerors and keeps the proposals secret during negotiations."

The language in this section is very straightforward and simple. All proposals must be kept confidential until the negotiations are complete unless allowed to be disclosed by the respondent, not until the contract is finally awarded. Rather, the statute allows a full public disclosure of the proposed contract and a full discussion of all related facts after negotiations are complete, and prior to award. The City Purchasing Office staff was either badly misinformed or deliberately overly cautious or misleading in responding to this issue. To both meet the requirements of the law and allow a complete review of the proposed contracts and critical operational details prior to the execution of a contract, ZWAC and Council should require that final approvals of contracts only be requested after the negotiated contracts are publicly available, and there has been sufficient time provided for public review and comment prior to a vote to execute the contract.

If the backup documentation posted for Item 3A this week is any indication, the promised response to a host of critical questions about this proposed contract (including Commissioner White's question about removal of compostable plastic bags before they decompose into the compost, which appears to have either been misunderstood or misconstrued by City staff based on the language in the backup memo) may not *ever* materialize, as City staff are now suggesting that "the vendor may choose, but is not required, to respond to questions regarding their bid" at this week's meeting. See TDS notes responsive to memo [here](#).

Unfortunately, the handful of written responses that City staff did choose to include in this week's backup memorandum include information that I believe to be intentionally incomplete. Specifically, staff members assert in the response to Question 1 that the City is obligated by the City Charter to competitively bid this and other solid waste-related services. In fact, the City Charter clearly states that "competitive bidding is required for services *other than those exempted by state statute.*" Waste, composting and recycling services *are* exempt under the Local Government Code Section 252.022(2). It has been state law in Texas since at least 1936 that cities do not have to competitively bid proposals like these waste, composting and recycling services, which are needed to preserve public health or safety, and all that staff has to do is reference this. The City can directly negotiate with any and all willing providers of these services – including TDS – to secure the best deal for the citizens without being limited by time-consuming solicitation processes or by applying burdensome ALO restrictions to those negotiations. Further, there is of course no requirement in state law for City staff members who review solicitations to have to sign nondisclosure agreements, thus "preventing" them from sharing basic RFP response and proposed contract details with policymakers. Attached here for your review please find an excerpt from a [recent case](#) (see page 5) that explains this concisely. Republic Services, the proposed vendor for Item 3B, is certainly well aware of this because one of its predecessor companies was the defendant in the attached case, successfully arguing that state competitive bidding requirements do not apply to contracts for collection and disposal of solid waste.

In sum, once again this month, City staff's position appears to be that ZWAC should vote to support the execution of the Organics By Gosh contract *without* access to the RFP response, *without* full access to the wording of the resulting contract, without full information regarding facility size and locations, the partners involved, the scope of the operations involved, the operator's contingency plan, etc., and *without* full answers to key questions from ZWAC and Council members. For the sake of Austin taxpayers and those community constituents who could be adversely impacted when

the details of the executed contract become clear and *after* the operation of the facilities commence, I urge you please to recommend to Council that they not approve this item, and that they direct staff to present the negotiated contract for public review and comment well before seeking a final approval.

ITEM 3B: CITY FACILITIES DUMPSTER COLLECTION SERVICES

As noted, Item 3B previously appeared on the November 9th ZWAC agenda and was [rejected unanimously](#) at that time based on concerns articulated by Commissioners in the final resolution (see [transcript](#) of that ZWAC discussion), including:

- Lack of diversion policies/goals
- Inclusion of the Austin Energy waste which is problematic for reasons that date back to the original version of the contract rejected by Council
- Expansion of services
- Tripling of cost
- Lack of information about location of the landfill
- Lack of information about carbon footprint
- Concern about the impact of special events services

ZWAC members need the proposed contract to review to make sure they know what is under consideration. The caption may say, "City Facilities Dumpster Collection Service" but the RFP asked for prices for different services anywhere in the City for any entity in addition to City facilities. A contract based on the RFP would allow City staff to require commercial businesses to use City provided services through a City contract with Republic Services. ZWAC members must have the proposed contract to review in order to insure a system is not being established that allows City staff to take over commercial waste services from private companies by governmental edict without compensation.

While each of these concerns remains [valid](#) (see attachments to my email of November 9, 2016), after the November 9th ZWAC meeting City staff did subsequently reveal to City Council members information it previously withheld from ZWAC, including the name and location of the proposed landfill, which is the Waste Management-Austin Community Landfill (WMI-ACL) at 9900 Giles Lane in Austin, and the staff designated recycling facility, which is Balcones Recycling, and the staff designated composting facility, which is one of the Organics By Gosh facilities that currently processes materials for the City. See staff [answers](#) to Council Questions.

As you may know, the proposed use of the WMI-ACL is deeply problematic for a host of reasons, not the least of which is that the landfill contains extensive amounts of what today would be considered toxic and hazardous waste. As a result, the WMI-ACL facility has in the past been *disqualified* from consideration for City landfill disposal contracts due the potential for significant environmental liability for the users of the site, according to a third party engineering study commissioned by the City. As recently as December 2015, the City Council voted unanimously to deny City staff's request to extend a contract for commercial waste and Class II Non-Hazardous Industrial Waste collection and disposal services from Austin Energy facilities based on the fact that Republic Services was proposing to utilize the WMI-ACL for the disposal of the subject waste material. Now, we believe, City staff are seeking authorization to dispose of City-generated waste materials from City buildings at the WMI-ACL, and to dispose of Austin Energy's waste materials at a landfill located in San Antonio.

However, *of even greater concern* is the fact the WMI-ACL is immediately adjacent the Sunset Farms Landfill, previously operated by the proposed vendor, Republic Services. You may recall that in 2008, [City staff unilaterally entered into a Rule 11 Agreement](#) and agreed to restrictive covenants removing the City Council's opposition to the expansion of Republic's Sunset Farms Landfill and supposedly requiring the permanent closure of the facility by November 1, 2015 through the filing of restrictive covenants on the land.

Unfortunately, while the Republic landfill did close to the receipt of waste on or about October 31, 2015, *those restrictive covenants are not binding to the owners of the land comprising the Sunset Farms Landfill at that time or now, according to the latest available Travis County Deed Records*. We pointed this out and suggested remedies at the time, but City staff apparently was willing to allow the agreements to *not* be enforceable. Only the owner of the landfill permit is bound as one who controls the reopening of the landfill, and a simple permit modification can change the name on the permit from one subsidiary owned by Republic to another subsidiary owned by Republic, or to another qualified company.

Since the restrictive covenants were executed by entities that did not own the land comprising the landfill, they are not binding restrictions on the use of the land.

That means if the permit authority for the operation of the site were to be transferred from Republic Services to Waste Management, Inc., Waste Management would be able to seek a major permit amendment to reopen and combine and expand the two landfills, fill in the valley between, and raise the height of the landfill over the combined disposal footprint. Such an expansion could potentially add over 110,000,000 cubic yards of disposal capacity to landfills that have been the source of controversy in our community for decades.

I firmly believe this potential combination and expansion of these problematic landfills is the goal of Waste Management, Republic Services and, unfortunately, perhaps City staff. Indeed, there is no known insurmountable legal impediment to the combination of these landfills. Per the deed records on file with Travis County, no restrictive covenant is binding on the current landfill landowners BFI Waste Systems of North America, Inc., and Mobley Chemicals, Inc., the landowners of record. Given that the increased volume of material received by the WMI-ACL since the closure of the Republic landfill, the expected remaining life of the WMI-ACL is approximately 4.5 years. It is clear that both Republic and Waste Management need to expand their local disposal capacity, one way or the other.

It is equally clear that if ZWAC and the City Council were to support the award of this 6 year contract, Republic and Waste Management would be perfectly positioned to use that long-term commitment of City waste to the WMI-ACL as a basis to challenge and potentially nullify any City opposition to such a planned landfill expansion needed to satisfy the disposal capacity necessary to meet the contract requirements. Without the benefit of complete information, it's possible that Austin policymakers would not even be aware they are binding the City in this manner. As such, I urge you to please review the [legal analysis](#) of TDS General Counsel Gary Newton on this issue.

THE TDS RECOMMENDATION FOR ZWAC ACTION

As noted, even if Item 3A and Item 3B (and indeed all the remaining proposed contracts resulting from the five 2016 RFPs) were defensible on their merits, I believe the indefensible process by which they have been advanced demands their rejection in favor of an entirely new process with transparency and fairness. This can be accomplished, subsequent to stakeholder input and specific Council/Commission direction to ensure compliance with City priorities and policies, by utilizing an IFB process rather than the current RFP process, by suspending ALO restrictions on all five new solicitations required by Council, and by revising the City's current solicitation scoring matrix to redefine "local business presence", all of which I urge you to please recommend to the City Council.

- **Invitations For Bid / IFBs vs. Requests For Proposal / RFPs**

In essence, IFBs are simple requests for fill in the blank pricing and certifications of conformance and compliance with IFB requirements for a specific, pre-prescribed set of services and contract provisions, responses to which can and should be much more easily made fully public throughout the advisory commission and Council review and approval process. Conversely, RFPs, as they have been promulgated by City staff, are open-ended requests for proposals to accomplish broad objectives and which allow for exceptions, responses to which can and often are treated by staff as proprietary and confidential, in part or in whole. With IFBs, all policymakers and the public can have full access to and a complete understanding of both the services being solicited, the language of the contract, the locations of the facilities, and the prices being proposed, etc., promising a fair, open and objective analysis by staff, by stakeholders, by the advisory commissions, and by City Council. With RFPs, vendors and staff may choose to withhold key details from certain policymakers and the public, raising concerns about subjectivity, favoritism and hidden agendas in proposed contracts. And, in many cases, as today with the Simple Recycling contract executed last July, staff still has not released 11 pages of that contract, and all will agree that the staff's haste to execute the Simple Recycling contract without any stakeholder input process has caused the City Council, the network of charities and private companies adversely impacted, and the vendor who reports his losses would be more than a million dollars if the contract was cancelled a great deal of trouble. Please do not allow this to happen to another contract and to some of the same stakeholders. All proposed contracts should see the full light of day prior to consideration by ZWAC and Council, and all should be able to demonstrate compliance with City policy prior to being considered for a contract approval. In short, I believe that given City staff's demonstrated preference for promoting solicitations with little information available to stakeholders and policymakers, transparency and fairness strongly favor IFBs.

- THE ANTI-LOBBYING ORDINANCE / ALO

Similarly, City staff's interpretation and [demonstrated misapplication of Austin's ALO](#), especially in tandem with an RFP, rather than an IFB process, likewise has a corrosive effect on informed, transparent decision-making by restricting and indeed penalizing the free flow of information. For example, had TDS responded to the RFPs associated with Item 3A or Item 3B and at least one of the other three 2016 RFPs, then simply sharing the information in this email with ZWAC Commissioners or any other City official would not only have disqualified us from participating in this solicitation process, it would also have assigned us all three allowed "strikes" over a 60-month period and most likely we would be "debarred" – prohibited from providing *any* goods or services to the City – for up to three years; meaning that staff would not allow TDS to provide services to the City under any of our numerous existing contracts. Especially when the City staff functions as both a regulator and a competitor, as is clearly contemplated in Item 3B, the ALO becomes a tool for City staff to silence criticism and tilt the competitive playing field rather than level it. I therefore strongly urge you to recommend that each of these five RFP solicitations, whether they're returned as IFBs or RFPs, be issued *without* the ALO restrictions in place. I also encourage you to review these linked documents, [here](#), [here](#) and [here](#), which include the considerable discussion that has occurred since the November 9, 2016 ZWAC meeting related to the ALO and its impact on the competitive market.

- SCORING MATRIX

To further ensure fairness in scoring bids and proposals, I additionally ask you to recommend to the City Council that the City's scoring matrix be amended to define a company's "local business presence" as one whose branch or home office is either within or within 5 miles of the City's corporate limits. Note that the current matrix assigns a scoring benefit to any company with *any* branch office inside the city limits, effectively making Apple, Wal-Mart, Starbucks, Waste Management, Inc., and other large non-Austin based companies "local", while companies like TDS – a local company for over 40 years, but headquartered in the City's ETJ – suffer a scoring ten percentage point disadvantage.

- ON ITEM 3A: ORGANICS PROCESSING

With specific regard to Item 3A, I also ask you to please recommend to the City Council that it direct City staff to issue an IFB for the receipt, decontamination and composting of *all* of the City's curbside collected organics waste, as well as the marketing of the compost via bulk sales, bagged products and/or soil and compost blends. Staff and Council should also consider the organic material tipping fee available to the City in [the current TDS contract](#), and in the April 12, 2016 contract reminder/[unsolicited offer](#). *Curbside organics processing should be done in a fashion that the Austin Zero Waste program supporters can be proud of and that can serve as a model for other communities to follow.* The viability of the contractor cannot be determined without an understanding of all the details concerning the site, its location, its size, the ability of the operator to comply with City, County and State regulations, to know what waste will be processed, the operator's capabilities, financial assurance and contingency plans, and their product marketing plan, among other things.

- ON ITEM 3B: CITY FACILITIES DUMPSTER COLLECTION SERVICES

With regard to Item 3B, I would additionally urge you to please specifically recommend to the City Council that it reject City staff's proposed recommendation and its resulting consolidation of city facilities contracts and the addition of services provided to commercial businesses and operations – which we now know has actually limited the number of companies capable of submitting competitive bids and has increased rather than decreased the City's cost of services. And, instead, that Council direct staff to issue IFBs for each separate City department's very specific needs for the collection of solid waste, recyclables and compostables at their separate City facilities with recycling, composting and reuse goals favored, along with a full disclosure of waste facilities relied upon for waste processing and disposal, and to not include the provision of steel dumpster services to special events, City sponsored events, City co-sponsored events, commercial businesses and/or other locations not operated by the City. Also, that the IFB not include Anti-Lobbying Ordinance restrictions, and that local business preference credit for these IFBs be extended to businesses with offices located within the incorporated city limits and the area within a five mile radius around Austin's city limits.

- FULL PUBLIC REVIEW

Finally, I ask you to recommend to the City Council that all solid waste, recycling and composting related RFP or

IFB responses and proposed contracts be made fully available for an adequate period of time for public review and comment prior to a vote by the appropriate citizen advisory commissions to recommend the contract to City Council, and well prior to being posted for a vote of approval by City Council. This requirement would end the pressure often placed on ZWAC and Council by staff pressing for a vote of approval on an RFP response and a contract which cannot be reviewed or even discussed.

In closing, as you contemplate recommending the rejection of each of these proposed contracts and termination of their associated RFPs in favor of IFBs based on stakeholder, advisory commission and Council input and direction before the commencement of the new solicitation process, please note that City staff can easily negotiate with any contractor, including TDS, for the month-to-month provision of services through purchase orders to meet the City's needs during the time required to develop and complete the IFB process and negotiate a contract. In fact, the Austin Energy waste disposal contract was rejected by Council in December 2015 due to staff's willingness to then reply upon Republic's use of the WMI-ACL, yet the waste has continued to be managed day to day without that contract. The same can and will happen with any other contract staff allows to run out due to their inability or unwillingness to provide the information necessary for an informed ZWAC and Council action following the review of the replacement contract. It should be the staff's job to process contracts in conformance with established City policy for ZWAC and Council consideration on a timely basis. It shouldn't be the policymaker's burden to have to approve contracts that can't be reviewed by stakeholders and concerned citizens under an emergency basis. State law allows cities to negotiate all solid waste, recycling and composting contracts without a competitive bid, but regardless of how these agreements are formed, good public policy requires that they are publicly scrutinized, whenever possible, prior to the execution of a contract. Such a discipline builds confidence and trust between staff, those affected by staff's actions and the policy makers, elected and appointed, who depend upon the stakeholders to invest their time and resources into the development of the equipment and facilities needed to reach the City's Zero Waste program's goals.

Thank you in advance for your kind consideration of these concerns and recommendations, and thank you for your volunteer service as a ZWAC Commissioner. Please feel free to contact me directly with any questions.

Sincerely, Bob Gregory
President & CEO
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