

REASONS WHY TDS DID NOT RESPOND TO THIS AND OTHER RFP'S

This RFP for a contract represents one of more than five interrelated waste services RFPs for contracts issued and pursued by City staff as a group in 2016, which together would completely transform how waste resources are managed in the Austin area. TDS did not respond to any of these RFP solicitations for a number of good reasons; in particular that:

- State law allows the City to contract for solid waste services and to compel its citizens and businesses to use and pay for the contracted services regardless of the rates, and without a competitive solicitation process. This RFP and its still undisclosed contract is a means for City staff to use a contracted service provider, in this case Republic Services, as a 'toll hauler' for the City to set up accounts in the City's name to compete for dumpster services throughout the city, and the ability to eliminate open market competition in the waste services business altogether. This would fundamentally change decades-old City policy, which leaves steel dumpster service and services to multi-family and commercial businesses to the competitive market, and leaves City staff to service primarily single-family residences and very small businesses with plastic carts. It is against City policy for staff to recommend Council approval of one hauler for the staff to utilize to establish potentially thousands of accounts, while staff interprets state law (§252.049) to prohibit the full public posting of a proposed negotiated contract, especially given that these negotiations to arrive at a contract to execute and to extend that contract three times thereafter do not require Council direction or approval. The group of interrelated waste services RFPs and their proposed contracts so dramatically affect the way waste services are provided in Austin, and so dramatically affect the cost of those services, that this RFP should not even be considered by Council until a complete public policy discussion is held involving all stakeholders regarding both the intended and unintended consequences of such a market takeover.
- This RFP allows City staff to [unilaterally add different types of services, and service locations](#), based on the Universal Recycling Ordinance, Zero Waste initiatives, City department-sponsored events and programs such as Green Builder construction and demolition projects, and/or other City needs. It also includes City facility locations and services already under contract with TDS and other small haulers (i.e. Airport Recycling, the CBD, department-sponsored events, and numerous special events). It also allows staff to fold into this contract, contracts held by other haulers and processors when those contracts come due over the next few years.
- This RFP requested extensive pricing for a range of dumpster collection services not specific to any current particular City facility or location. Again, this would allow City staff to utilize its contract 'toll hauler' to provide service to any and all of the customers they choose to take on through the City's permitting and oversight of special events, festivals, construction, demolition, commercial dumpster collection, multi-family, large businesses, restaurants, etc., located within the City limits.
- Approval of this contract jeopardizes the protections licensed private haulers hold in [City Code Sections 15-6-11 through 15-6-13](#), which require commercial premises and multi-family premises with five or more dwelling units to use a licensed private collection service, and which explicitly establishes that collection services provided under a contract with the City are not private collection services. The staff's use of a licensed hauler as the City's 'toll hauler' is a complete circumvention of long standing Council policy and is yet another example of staff using the RFP process to set policy and keeping Council uninformed of staff's intent in the process.

- Contrary to what the staff reports, we find no record of the City Council directing City staff to consolidate its waste, recycling and composting contracts into one comprehensive contract controlled by ARR. Such an attempted consolidation has resulted in a \$9 to \$10 million cost increase to the City as compared to the City's cost to have the same City facilities serviced now with individual contracts, and has raised a host of questions that can only be answered by a thorough review of the entire proposed contract.
- This RFP is a vehicle for Flow Control by contract; just as Mr. Gedert explained in his [September 13, 2016 memo](#) to ZWAC regarding organics contracts. However, the still undisclosed contract contemplated by this solicitation is most certainly intended to be used to control far more than the solid waste, compostables and recyclables generated by the City at City department business and services facilities.
- City staff has told TDS on several occasions that if TDS were to respond to any solicitation with Anti-Lobbying Ordinance (ALO) restrictions, TDS could only communicate with the designated Purchasing Department contact person about any waste or recycling issue while the solicitation was pending.
- 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 this Citywide Dumpster Collection Services RFP, the Organics Processing Services RFP which is now planned to go to Council on the March 2, 2017 agenda, and one of the other 2016 RFPs, then communicating our concerns about these items with Council, 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" by staff – prohibited from providing *any* goods or services to the City – for up to three years; meaning that staff would not have been able to utilize the 30 year landfill disposal contract, which the City relies upon to dispose of all solid waste collected by City crews, and not utilize the 20 year single stream recyclables processing contract, which the City relies upon to sort and market approximately 45% of the recyclables collected by City crews. It would have also barred TDS from managing the airport waste related services which, in TDS' first year of operations, has experienced more than a doubling of recyclables being diverted from waste landfilled, among other TDS contracts with the City, which would be ended. When the City staff functions as both a regulator and a competitor, which has been the case for years and as is clearly contemplated in the Citywide Dumpster Collection Services RFP, the ALO becomes a tool for City staff to silence criticism and tilt the competitive playing field rather than level it. The ALO should not be abused by staff to keep policymakers uninformed and to effectively set them up for being blindsided.
- In addition to those things listed above, TDS was in negotiations with City staff regarding the reset of terms for the TDS recyclables processing contract, and staff had told us that any dispute might have to be taken to City Council, and TDS wanted to be free to communicate with Council members, if the need arose.

So, to summarize, and as explained above:

- The solicitation further establishes the City as a competitor of private haulers and other service providers, while imposing anti-lobby restrictions on those private haulers against which the City seeks to compete;

- The solicitation requests pricing for services that TDS is currently providing to private entities. Specifically listing as examples numerous special events of which TDS is the current private service provider;
- The solicitation requests pricing for recycling and other waste services that TDS already provides to the City under contract with the Aviation Department, and which is not appropriate for inclusion in a low bid consolidated services contract;
- The solicitation requests general base pricing, which can be increased to account for customer specific, site specific, or waste type specific circumstances, but which will be used by staff to unfairly compare to certain private hauler rates reported by customers;
- The solicitation expands the definition of City sponsored/co-sponsored events to include essentially any event in Austin occurring on City controlled property and right of ways, and makes it clear that it will be used to compete with private haulers;
- The solicitation requests pricing for commercial services that are not tied to any City facility, but would be provided by the contractor on demand anywhere in the City, to include any, and as many as all, existing commercial businesses and institutions solid waste, composting and recycling services;
- The solicitation requests volume discount pricing as part of a large package of services for City owned facilities that will have the effect of artificially lowering the quoted prices when compared to accounts with customized services, which the RFP and staff have stated will be used to compete against the private haulers currently providing these services.

For all these reasons, TDS could not respond to this solicitation or the other solicitations still outstanding, and give up our ability to express our concerns to public officials. Please note that the City of Los Angeles City Council approved such a radical plan in December, which completed a wholesale takeover of all of the waste services business in L.A., except, for now, construction and demolition hauling, but they went through a multi-year high profile public discussion involving all stakeholders as to what the City was doing to haulers, processors, and businesses. Yet, in Austin, staff wants to gain Council approval for such a plan without the Council or most all of the stakeholders having a clue of what is going on. We knew that was where the staff was headed well before these RFPs were issued, which is why TDS chose many months ago to stop bidding on staff RFPs and, thereby giving up our right to communicate with City policymakers to defend our rights as a licensed hauler and as the largest participant in the local waste services market by having to submit ourselves to an overly restrictive set of staff interpretations of different parts of the City's Anti-Lobbying Ordinance. Furthermore, TDS will not be able to respond to such solicitations until Council provides TDS and other contractors protection from being silenced by staff's interpretation of the ALO and until complete proposed contracts are published for public and stakeholder review prior to the execution of waste services contracts.

P.S. The following quotes from staff are just some of the statements which clearly indicate the staff's intention to compete with licensed private haulers; indeed, [invoices obtained through open records requests](#) appear to show that ARR has already begun providing commercial solid waste, recycling, composting, and even portable toilet services to special events for free:

Staff Quotes from [11/9/2016 ZWAC Meeting](#) on Competition with Private Haulers:

- "At that time we tell them they have a choice to utilize, they are eligible for City services and City contract services, or they can go their own way and choose a private hauler."

- “So there is no issue with competition because we don’t force them to choose City services.”
- “So often times before an event can get their permit approved they meet with City staff, we go over their waste management plan and we tell them what services are available to them, we recommend coordination with KAB, Keep Austin Beautiful, we provide them with a list of the different service providers.
- “There is an intent to be able to provide service when requested to City co-sponsored events, and that list is normally determined by City Council.”
- “Mr. Gregory stated that any department sponsored event could utilize this contract. That is true, there are department sponsors.”
- “The reason the list is provided is because it is a list of events that could potentially request our services and so we had to be all inclusive of that list. That is the list that is identified by City Council as City co-sponsored events.”
- “...so we had to list all the possible events that could at some point say “you know what, I wanna change my mind and utilize City services” So we notified all, we listed all the events that are technically considered City co-sponsored.”

-Jessica King, ARR Strategic Initiatives

- “I would add that our prices are posted and any private hauler that wants to be competitive can just bid a penny under ours, or a dollar under ours.”

-Bob Gedert, ARR Director