

12-15-16 Austin City Council Meeting
Items 46, 52 & 53

Item 46. Authorize negotiation and execution of a 36-month contract with REPUBLIC SERVICES, or one of the other qualified offerors to Request For Proposals SLW0514, to provide citywide refuse, recycling, organics and special waste collections for City facilities, in an amount not to exceed \$7,725,000, with three 12-month extension options in an amount not to exceed \$3,090,000 per extension option, for a total contract amount not to exceed \$16,995,000.

Steve Adler: All right Council, I call to order our regular session of the City Council. Today is Thursday, December 15th, 2016. We are in the City Council chambers here at City Hall, 301 West Second Street. The time now is 10:44. Council, we have some changes and corrections I'm going to read into the record. On Item Number 1 the minutes we'll be approving will be those of the work session of December 6th and the others as listed. Items 4, 5, 49, 50 and 51, noting that there was not an Electric Utility Commission meeting on December 12th of 2016, so they were not reviewed by that commission. Items 15 and 18 on December 13th were approved by the Airport Advisory Committee on a vote of 9-0, with Commissioner Leggett absent and with one vacancy. Items 29, 30, 31 and 75 are Grove matters and all related to Item Number 100 and they'll all be called up at the same time. Items 35 and 37 are withdrawn. Item 44 on December 13th, 2016, that was recommended by the Resource Management Commission on a vote of 6-0 with Commissioners Dwyer, Gill, Vaughan and White absent with one vacancy. Items 46 and 59 were postponed – will be postponed – to January 26th, 2017. Item Number 71, this was a request that this Item, which is the speed limit question – the safety issue – that it would not be called up earlier than 1:00 p.m. We'll try to get it as close to that time as we can. Councilmember Kitchen and Pool requested that Item Number 80, which is –

Ann Kitchen: Thornton Road.

Steve Adler: -- Thornton Road, not be called before 6:00 p.m. this evening. That has us – and then Item Number 89, this was the Grove, the Austin Oaks PUD, not be called earlier than 6:30 p.m. So without objection on the dais, we won't call those items earlier than those times, but now would be the time to indicate any objection. Ms. Pool?

Leslie Pool: I wanted to go back to Item 46 but I realized you had one more to go to, so before we approve it I'd like to make a change date for the postponement for Item 46.

Steve Adler: Okay. The last change and correction, and by the way by setting it no earlier than 6:00 for... and 6:30 for those two, they're kind of like on a collision course with one another depending on how many people come, so those represent 'no earlier than' times as opposed to 'we'll actually call it at those times'. And then Item Number 101, this was approving a waiver reimbursement of fees for grassroots leadership rather than "Fight for \$15 Texas". Yes, Ms. Pool?

Leslie Pool: Thanks, Mayor. Item 46 I'd like to suggest a February 2nd date instead of January 26th. I understand that there's a National Compost Conference. It's an industry conference and a lot of folks will be there and so will our staff. So if we could put Item 46 and potentially, I don't know if we need to have the other item also to February 2nd, but for sure Item 46.

Steve Adler: Okay. That's the Republic Service item as well as the Downtown Rail Station item. Staff, is there any issue with putting those off to February 2nd? And while we're waiting for staff to give us that indication, Mr. Renteria?

Pio Renteria: Yes, Mayor. I want to pull 2 and 3 for just discussion. I have some concerns.

Steve Adler: Okay, so. Yes. The next thing we're going to do is the pulled items. Ms. Kitchen?

Ann Kitchen: My question on the 59, which is the Cap Metro IOA. That one remains at January 26th, correct? We were just changing 46.

Steve Adler: Right. So just 46 moving to February 2nd. So I guess from staff I just want to confirm that there's not an issue with taking Item 46 only and moving that to February 2nd.

Robert Goode: Robert Goode, Assistant City Manager. There's no problem in moving that.

Steve Adler: So without objection, 46 would be postponed to February 2nd of next year.

52. Approve an ordinance waiving Chapter 27, Article 6 (Anti-lobbying and Procurement) of the City Code regarding past and future solicitations of Austin Water for the sale and removal of compost materials and the management of biosolids reuse and regarding contracts.

53. Authorize negotiation and execution of a 60 month contract with SYNAGRO OF TEXAS-CDR, INC., or one of the other qualified offerors to Request For Proposals CDL2003, for the management of biosolids reuse, in an amount not to exceed \$9,424,778, with five 12 month extension options in an amount not to exceed \$2,185,180 per extension option, for a total contract amount not to exceed \$20,350,678.

Steve Adler: The next item, we have on the Consent Agenda, is the biosolids issues which is Items 52 and 53. They were both pulled. They were pulled by Miss Houston, 52; Houston and Troxclair, 53. We also have citizens to speak on these issues. Do we want to hear from the speakers first? Miss Houston? Miss Troxclair? Do you want to hear from the speakers first? Do you want to introduce it first? Okay, let's speak on 52 and 53, both at the same time. We'll begin with Mr. Gregory, if he's here. Mr. Gregory. Is Ryan Hobbs here? Is Adam Gregory here? Is Paul Gregory here? Is Gary Newton here? Mr. Gregory you have 15 minutes if you want it all.

Bob Gregory: I don't need that much. May I hand you something? I do not intend to need that much time so don't be mad at me right off. I'm Bob Gregory, President and CEO of Texas Disposal Systems. My brother Jimmy is here, he and I own the company, we have about 900 employees and we've been in the solid waste business here for almost forty years. This is an item that is a very unique issue and hampered by the competitive circumstances which exist between ARR, TDS and other companies. I'm speaking particularly about Item 52 now, the waiver of an Anti-Lobby Ordinance. As you may know, my company filed a complaint that you're considering today. There may be other issues that I don't know because those things have been dealt with in executive session, which is fine, I just don't know if there are others. But I am here to urge you, City Council, to vote yes on Item 52 if it is amended to waive the restrictions and penalties of the Anti-Lobby Ordinance for future City solicitations for biosolids and composting processing and disposal, and ideally, that it be expanded, probably not on this agenda item but with another one, ideally it'd be expanded for all solid waste and recycling processing and disposal so that the Anti-Lobby Ordinance would not apply to any of these issues dealing with biosolids, solid waste, composting or recycling issues. This is appropriate and indeed urgent given the singular circumstances of City licensed operators, private haulers and processors like TDS being forced to compete directly with their own regulator, ARR, Austin Resource and Recovery department. Just as the associated Items 46, which you delayed until the 2nd of February, and 53, which is also being heard right now, propose to do. Respectfully, the minimum requirement for adopting Item 52 must be the simultaneous rejection of Item 53, the Synagro contract, in order to clearly avoid any appearance of a City Council sanction of the Anti-Lobbying Ordinance violations that occurred during the RFP process. In this circumstance a new RFP or IFB, Invitation For Bid, should be issued only after City biosolids management policies have been clearly established by the Council, with the new solicitations designed to achieve clear policy goals of the Council. What has been happening has been the opposite of that. TDS otherwise urges the Council to vote no on Item 52, if City staff's intention in bringing forward the term is, as it appears, to retroactively waive the Anti-Lobbying Ordinance in order to forgive violations that occurred for any reason. To do so would be to abandon objectivity and consistency in the application of what amounts to a limit on free speech. Please be reminded that in 2010 City staff charged TDS with a violation of the Anti-Lobbying Ordinance associated with a solicitation to which we

had not been yet, we had not even yet responded. City staff refused to withdraw the violation and TDS was forced to file suit against the City. A federal judge ruled that no violation had taken place and ordered the disqualification removed from TDS records. City staff's demonstrated misapplication of the Anti-Lobby Ordinance, including strategic staging of RFPs such as we're dealing with today, to maximize limitations on contractor's ability to communicate with City Council and the commissions, along with a conflict of interest of being forced to compete with our regulator, who is also our competitor, is the reason TDS has been unable to respond to the recent City solicitations. Although I might add, under this circumstance, the biosolids, there is a provision in the 30-year contract where staff can negotiate this entire contract without us responding to it. Would you like me; should I go straight into my comments on 53? Okay. Regarding Item 53, that's the biosolids, reuse of biosolids, beneficial reuse of biosolids. TDS urges, and by the way, what I've handed you is what I emailed you yesterday and it includes the breakdown of three of the items. One, as you know, has been delayed, number 46, and then 52 and 53 and the email up front. Separately, going back in it there's a memorandum of the TDS legal opinion on different issues on how our master contract allows this negotiation, flow control issues, some issues that staff has given legal opinions on and the confidentiality of information to keep it from coming to you and the commissions before it gets voted on by the Council. There's also a memo on there on this very issue from last month when it went into executive session. TDS urges the City Council to vote NO on Item 53 and to instead direct staff to create a new RFP or an Invitation For Bid that is reflective of established City biosolids management policy, that requires the continuation of the Dillo Dirt program, that is reviewed by the Zero Waste Advisory Commission and Water and Wastewater Commission prior to publication, and ideally, that does not include the Anti-Lobby Ordinance restrictions. Please recall that on August 11th, 2016, City Council did not act on this same request as Item 53, but rather directed that a detailed policy review of the contract and the solicitation be undertaken by ZWAC and the Water and Wastewater Commission to ensure that the contract was in compliance with City policy and did not create new policy not considered by a City Council prior. A limited policy discussion was held by a joint work group of ZWAC and Wastewater Commission over the course of three private meetings. And some policy positions were formulated by this working group, however, no review of the proposed Synagro contract took place before ZWAC. The contract was only supported by the joint working group based on staff's stated intent to reflect whatever those policy goals are in the contract. We've not seen the evidence that that has been done. The full Water and Wastewater Commission did recommend approval of the contract before you in 53 but without being able to fully review the contract documents. The full ZWAC was prohibited by staff from even discussing the contract and were only allowed to recommend policy preferences. Overall it's plain that City staff prevented the commission from adequately fulfilling what you, the Council, set them out to do on August 11th directive. Further, despite Synagro's public commitment on August 11th to release a complete version of their contract and their RFP response, only a portion of it has been released and all of it was never released, even up to this point, including very important parts of it involving a location where material will be processed and composted, who those partners are that will do that, whether that location is in compliance with TCEQ regulations, whether it's in compliance with Travis County Siting Ordinance that limits where solid waste facilities can be sited. While it appears City staff has made some of these changes in posted documents, even the limited policy statements adopted by Commission have not been adequately addressed it seems. Based on the available information this contract will still result in the termination of the Dillo Dirt program, as there is no requirement for Synagro to produce any amount of Dillo Dirt, and no prescriptive method for production of Dillo Dirt or any other type of compost for that matter that we can see. Indeed the draft contract still states that Synagro's entire composting process will take three to four weeks and as the area's largest composter I'm here to tell you, you cannot compost in three to four weeks. The bugs don't work that fast. So whatever this product that would be shipped off the site in three or four weeks, it would not meet any definition of compost. I believe it's a partly cooked Class A biosolids sludge that would be restricted, certainly be restricted by the County Siting Ordinance, and would not be allowed without a siting ordinance waiver and I don't believe it would be allowed by the TCEQ because something like this has never been done in Texas. It's been done in California and Florida. It's not been done in Texas yet that we know of anywhere and we know a lot of the people in the industry and certainly the people at the state agency. There's no requirement that the siting ordinance or these things be met in the contract portions that we can see – we can't see all of it – which

the contract contemplates. Also, if approved, City staff can use this contract as the basis to implement flow control of organic material to a facility designated by the contract or a City-owned facility such as Hornsby Bend. This is a huge concern to a large group of haulers in town who rely on those recyclables for their own composting operation and also rely on the hauling for that. So flow control is of utmost concern to us. Synagro has a well-documented history and record of corruption and bribery scandals; you can find this on the Internet. And just since the issue came before you last time in August, there has been one suit in Philadelphia with over 100 plaintiffs that I believe is this exact same land application of this same type of material that we're talking about here. So we're asking you to stop and take time, send this back for a public process that has not yet been done, and to vote no on it, and require that the continuation of Dillo Dirt program and that it be reviewed by the Zero Waste Advisory Commission and Water and Wastewater Commission prior to publication and that when it does come through in the finished amount, something done to allow the finished contract to actually be considered before a commission rather than having no consideration. Those are all my comments, I'll be happy to answer questions, Mayor, if you would like.

Steve Adler: At this point it doesn't seem like there are questions, so we'll go on to the next speaker.

Bob Gregory: Thank you.

Steve Adler: The next speaker that we have is Andrew Dobbs. Andrew Bosinger is on deck.

Andrew Dobbs: Hello, did David King give me time on this one?

Steve Adler: I'm sorry?

Andrew Dobbs: Do I have a few extra minutes from David King also?

Steve Adler: I don't show that in what I'm looking at. Is Mr. King here?

Andrew Dobbs: He's not in the room so I'll just move quickly. Andrew Dobbs, Texas Campaign for the Environment, I sent an extensive memo yesterday that I hope everybody had a chance to look at that lays out a lot of our positions on this and I will reiterate some of that and talk about some things I didn't get a chance to do there. Our basic position on this right now is that you've got the, on 52, we have an Anti-Lobbying Ordinance on this city. It was in effect on this contract. There was a charge leveled that this ordinance was violated. That has to be adjudicated one way or the other. If there was a violation we need to start this process over. If there was not a violation then we can move forward and deal with the contract. But the one thing that is certainly not acceptable under any circumstance is to say we're going to change the rules in the middle of the game, especially when in other instances, companies have been disqualified from being able to do business with the City because a sustained allegation of violation of the Anti-Lobbying Ordinance. That's just basic common sense and it would be a terrible precedent for us to say we're going to change the rules in the middle of the game whenever we want to because like, "Don't Dallas my Austin" is what I've been saying on this because that's the kind of thing that we deal with up there, to be honest. Love them though, great city. What I would say is that, so that's our basic concern on that. If they are, if you believe, if you find, and I don't know what mechanism you're using to determine this, but if you have found and can sustain that they didn't violate the Anti-Lobbying Ordinance then here are the extant issues that we have with the contract, are 1, we have said from the beginning that we want to see all redactions, there are concerns that we have remaining about that; and number 2, there are elements of the contract that delegate some of these elements, namely dust and odor control and emergency application, land application to City policy. We need to direct that those... we need you to direct that that policy would come back to you before it's enacted and go before the Water and Wastewater and ZWAC Commissions because we just don't want that to be made and then kind of promulgated all on its own. You know the basic concern here, and the basic thing that we believe determines this and that has created this situation where what should've been an easy thing has become very, very difficult is the fact that we have staff making policy without Council oversight. This is a 20 million dollar contract to privatize a major city service. This is something that when it was in the contract phase there was a proposal to land apply 100% of our biosolids in rural communities in Bastrop and Fayette County. That's how I got mixed up in this, is those people called us and were like, "We need help stopping this." So, you know, the fact that these decisions were being

made without a Council committee, without a Commission, without y'all, without a stakeholder process, brought us to this point. Had all that happened, we would probably have the exact, we could have the exact same contract here and it would have been months ago and it would've been put through easily. Right? We cannot have the policy – (timer goes off) – okay, excellent, thank you – we cannot have the policy shoehorned in after the contract has already been negotiated. To their credit, Synagro has agreed to every change that we've asked for to this date, except for those redactions that I mentioned, but they have agreed to all the contract protections that we've asked for, and so the policy is, to a large extent, in the contract, as it stands. But once again if there's an Anti-Lobbying Ordinance violation then that has to be dealt with. The two last things I want to say, in my memo yesterday I said "officers of Synagro were implicated in corruption." That was a misstatement, it was an employee of Synagro that was involved several years ago. There are other concerns that we've had about them and other places in the past, but in this instance the folks that we've dealt with on this contract have been very helpful so I do want to mark that. So to kind of summarize on that, the Anti-Lobbying Ordinance needs to be adjudicated, if they did do it, then we need to start over, if they didn't do it, then we still want to see those redactions and we need to make sure that the policies indicated in the contract are reviewed by you and by our Commissions. And the last thing I wanted to do here, if I get a second for this, is to thank Councilmember Zimmerman and Councilmember Gallo for their service to our community and to our city. I will, believe it or not, miss both of you. I do not... I consider it a shame when I get up here and I testify and I don't get questions from Councilmember Zimmerman. It is one of my favorite parts of testifying is getting to answer those and to have that back and forth. And Councilmember Gallo, I think you are a really good, really good policy maker and an excellent elected official and your office has been wonderful to work with. And the final person I have to say is Director Bob Gedert, who I saw earlier and I doubt that he's watching this because I'm pretty sure you can't fire him now, and so he has been a hero for our movement, he is an expert, he is somebody who has provided vision for this city on these issues and we hope that we can find somebody that shares his commitment to zero waste and moving forward and that can help implement the policies and the visions that he has set for our city. So I'm honored to work with all of y'all. I'm happy to answer any questions. There we go.

Steve Adler: Mr. Zimmerman.

Don Zimmerman: Thank you Mr. Dobbs and I won't disappoint you today either. Mr. Gregory did send us a long email, you may not have this yet, but I do remember the Zero Waste Advisory Committee voting unanimously against extending that Republic...

Andrew Dobbs: Well that's another issue, but yes.

Don Zimmerman: Well that's the issue I want to touch on briefly. Because I thought it was great when we had the Zero Waste Advisory Commission unanimously, all sides, all factions, everybody was against staff and they brought it to Council anyway. Do you agree with his contention that a lot of the same facts for our vote against that are also present today on Item 46?

Andrew Dobbs: That's not the Item that we're, I will say that yes, the issues, to speak to that at this time, yes, the issues that were brought up last year remain extant for that issue this year. Those still need to be addressed and in fact there were specific things that you brought up, Councilmember Houston, Councilmember Casar brought up in that debate that were not reflected in that proposal today.

Don Zimmerman: All right, thank you for that, I just wanted to verify that with you because again it sounds like we're on the same page on that Item, so thank you.

Steve Adler: So here's what I'm wrestling with on this, and this is very, very confusing, this whole thing, and Mr. Gregory, I may give you an opportunity to come back up to address this later. Not now, let me get to the rest of the speakers. This issue came up, it was confusing when it came up back in August, because there were concerns that what we were heading for didn't reflect the policy that we had. So the City Council in kind of an extraordinary, and by that I mean extra ordinary, looked at staff and looked at the community and said "Let's pause this for a second and let's have a true-up on what's happening here." So, and we talked about how, generally the issues that we wanted to have addressed. So we created in the middle of a contract process a stop by a Council that was asking for

the community to vet policy and policy in relation to the contract, which seemed to have happened at some level in the community. What resulted from that in trying to accommodate what the Council request was in that process, there may or may not have been a violation of the Anti-Lobbying Ordinance, and I think that I feel, and maybe some others on the dais feel, some sense of ownership of that confusion if there was any confusion associated with that. As people in the community were trying to accommodate the request for information and the analysis that the Council addressed. So I see Item 52 as the Council looking back and saying, "Hey, if people were trying to accommodate what it was that the Council asked for in the middle of a process, highly unusual, would run afoul, we don't want anyone to be penalized for that because we feel that we in part created that." And then one possible action is then not to approve 53 but just say to staff, now go do a new RFP with the same or similar scope. And then the only issue associated with that would be whether or not we waive going forward, the Anti-Lobbying Ordinance. Which is also confusing to me, because I hear some people and perhaps even Mr. Gedert now saying that the Anti-Lobbying Ordinance is not something that is, on balance, constructive. And, if that's the case then we probably should get rid of the Anti-Lobbying Ordinance. But if the Anti-Lobbying Ordinance is right, then I'm uncomfortable waiving it on an ad hoc basis. So one course of action available to Council would be to say, "Look, if somebody, if there was a violation going back in an effort to accommodate this extraordinary request that the Council had made, we're not going to hold anyone responsible for that. But because that may or may not have happened we would say to staff, go ahead and reissue the RFP on this and let everybody who wants to then participate at that level." Does that work?

Andrew Dobbs: That would be fine with us. We are agnostic as to whether or not it happened or not. It's not our place to necessarily determine that. That process would be fine. It's not like I love the Anti-Lobbying Ordinance. It has created a lot of problems in a lot of different scenarios. It certainly needs changing and I'm hoping that councilmembers will take some leadership on changing that in the future. And if we do do a new process it would make sense for that to be suspended. It would also make sense for us to take the policy that was developed in this extraordinary process, especially the one that was ultimately determined by the Zero Waste Advisory Commission, which took the working group's document and added to it a bit, to take that policy as the foundation for the new RFP so that we don't end up with the situation where we're having to entertain proposals of land applying 100% of our biosolids, et cetera. So that's an area you described that would be amenable, would be acceptable to us.

Steve Adler: Okay. Any further discussion? Okay. Thank you.

Andrew Dobbs: Thank you.

Steve Adler: Mr. Gregory, you want to come down here for just one second, please? I have another question. Take your time. Do you understand what I was saying?

Bob Gregory: Yes. It is very confusing. It's very frustrating for all of us. I will tell you, for what it's worth, there was a violation before this Council acted on Thursday, August the 11th. It was after the ZWAC meeting on Wednesday October 10th, but this is a problem, it's a major problem. There are four contracts moving almost simultaneously. We thought they were going to go to the Council within a couple weeks of each other. The biosolids compost, the sale of unscreened Dillo Dirt, y'all may remember that one. Then there's the one today, the Republic contract. And then a processing contract for the third cart, the curbside recycling food waste and yard waste. All of those are happening at the same time. It has gotten so bad with staff's interpretation with the ALO, that you, the policymakers, or in the case of ZWAC, the policymakers, really only have one time to ask questions, to interface with the respondent, like Synagro here today. You can't see them out in the hall, you can't call them for meetings, you can't do that under the Anti-Lobbying Ordinance. When the Zero Waste Commission met in October, right on the front row right here in this chamber, was the respondent for the composting contract. A man – nice guy, local guy – a man and his wife, and they were here, seemingly, to present themselves, to answer questions, because their Item was on the agenda to be addressed. Members of the Commission were asking them questions. Staff stood here and said "Don't answer that" with their hands like this. Don't answer that question. Would not let them ask, would not let him answer. Because the Anti-Lobbying Ordinance is not only to protect y'all so you don't have to be hassled, but also to

keep a level playing field. But that's the only time you can ask. When it comes on a posted public meeting.

Steve Adler: So the question before us today: do we want to have the Anti-lobbying Ordinance?

Bob Gregory: No.

Steve Adler: But I certainly see that that's something we should pick up and take a look at.

Bob Gregory: If you just let me finish making my point. The Anti-Lobbying Ordinance, taken to the extreme that it is now, as a policy maker, you can never get the truth of the matter other than what staff wants to give you. Even to the point of coming to a posted meeting like it is right now, this one, if you can't ask questions and get straight answers how can you possibly make the decision other than what staff, the information that...

Steve Adler: That goes to the question of whether we should have the Anti-Lobbying Ordinance.

Bob Gregory: You should have it, and I think it's fine to have it on everything else except where the City is a competitor of those it regulates. Austin Energy, the airport, others, that doesn't apply.

Steve Adler: So with respect to right now on this issue, 52 has us looking back and saying, do we waive any violation, if any violation occurred, without finding whether a violation occurred or not, in part because Council did something in the middle of that process that sent back and precipitated a conversation?

Bob Gregory: Our communication on the complaint is specific enough that it went before that action. However, I still stand before you advising you and asking you to waive it as long as you send the issue back through the process. It is not our goal to eliminate Synagro.

Steve Adler: So in what I described a second ago, if this Council were to take action, to look back and say, we're waiving a violation that occurred in the past if any violation occurred in the past, and second, we're instructing the City to restart the RFP process, here. Do you have... is there an issue with that I'm not seeing?

Bob Gregory: I am asking you to do just that. To waive the process... to waive the Anti-Lobbying violation, or the Ordinance for this Item as long as you send it back.

Steve Adler: So there are three questions. First one is, do we waive the ordinance going *back* as to any violations that might have occurred?

Bob Gregory: Yes, if you send it back.

Steve Adler: Second question; do we restart the RFP process? Which we can do.

Bob Gregory: Yes.

Steve Adler: And the third question is, do we waive the Anti-Lobbying Ordinance going forward as concerns this matter?

Bob Gregory: I think you should.

Steve Adler: Right; and I think those are the three issues that we have in front of us. Those are the three issues. Do we waive it going back, which is what 52 is. Do we keep a waiver going forward, also in 52. And, do we not pass 53 and just say restart the RFP process. And where I'm sitting here right now, for me, I would waive it going back because I think we precipitated any problem that might exist. I would join, if my colleagues are so inclined, in saying to the staff, "Restart the RFP process". I am uncertain as to the next one, which is waiving the Anti-Lobbying Ordinance going forward because that has me deliberating on the Anti-Lobbying Ordinance and I'm not prepared or ready to do that, but I think that it is something that we need to pull out and take a look at the Anti-Lobbying Ordinance and decide whether or not it's good. I'm not sure that this is the vehicle to do that.

Bob Gregory: I did not, my company did not respond to this solicitation for all of the reasons that I named as well as we have a contract that allows them to negotiate; we don't need to respond to it to get work. Okay; but there were bidders who have been bound by the Anti-Lobby. If this is not waived going forward those bidders would not be able to put their two cent's worth, they would continue to be bound. Whereas we weren't bound and Synagro wasn't bound.

Steve Adler: They could continue to participate. Everybody could participate going forward because we would say start it over again.

Bob Gregory: They could participate; that's right. Just be aware of that, because there were other bidders.

Steve Adler: Gotcha.

Bob Gregory: Thank you.

Don Zimmerman: Hang on. I think I followed all of that except it sounded like you wanted the first two connected. The first two are connected. The point you kept making. The Mayor separated out the three issues but the first two are connected about the violation in the past and whether the company is allowed to rebid. For you they're connected, they don't stand separate.

Bob Gregory: Well, y'all are the ones that vote, I don't vote. But my recommendation is yes; waive it, as long as you do send it back and start the process all over again.

Don Zimmerman: Yes, that's the point, they are connected. Okay, thanks.

Steve Adler: Okay. Thank you. The next public speaker that we have on this is, because we're calling 52 and 53 at the same time, would be Andrew Bosinger.

Andrew Bosinger: Good morning Mr. Mayor and Council Members. Thank you. My name is Andrew Bosinger...

Steve Adler: And before you start, I'm sorry. Is Jorge Farfan in the room? Is Alex Chesinski in the room? No? Is Nikelle Mead in the room? You have nine minutes, Sir.

Andrew Bosinger: Thank you. My name is Andrew Bosinger, I'm with Synagro. I have been accountable for the work that we do here as the City's biosolids management partner for the last eight years. And, I'm here to ask you to put forward Item 53 today. I've been in the business of public contracting with government agencies across Texas and across this part of the country for 23 years. I have never seen a contract that I think has been more fully vetted and recommended to a Council than this one. Purchasing Department; your subject matter experts, and Austin Water Utility staff; your appointees on the Water Wastewater Commission have twice recommended this contract; the Zero Waste Advisory Commission's Organics Subcommittee; the joint work group of the ZWAC and the Water Wastewater Commission; and the ZWAC itself, all have opined on this; injected policy considerations and recommended this contract to you. I think that's a really loud voice that I think speaks in this area. This is the first time that you've gotten to hear in any material way from Synagro because of the anti-lobby requirements. This is, you know, we went into this contract eyes wide open because we've competed in this arena before, and we knew that what was going to happen has happened, and that means there's been an ongoing, systematic campaign of lobbying and misinformation, frankly, provided to you. Just in Mr. Gregory's testimony earlier, I can't even list to you the number of things that were factually incorrect about Synagro and our proposal; this is the first time you get to hear any of that. But I hope that the voice of all those appointees and staff members that are trusted by you and charged by you for coming to you with these recommendations are heard above that. I would also ask you to look at a track record. Synagro's been here for eight years doing biosolids management projects. The City of Austin has a flagship biosolids management program in the state and nationally. I can't imagine that you've heard one single negative word except from our competitors or others with an interest in the work about the biosolids program. I will tell you that there is nothing that we've proposed that is fundamentally different than what's going on right now, than what we've been doing successfully for three years. Producing compost; marketing compost. There will be no more land

application, that's a change, unless as directed by the City, that is still allowable. There's outsourcing on the Hornsby Bend site, you have a private partner working there now. The only thing that's changing is an element of who's doing what pieces. It's fundamentally the exact same highly successful program, and the difference is you're going to save a million dollars a year. That's the big difference. And, you know, we've been called "shoddy operators" in communications that have come to you. Our performance history at Hornsby Bend says very differently. We are the only private composting company in the United States to achieve platinum certification from the National Biosolids Partnership Water Environment Federation. That means we have industry leading operating requirements, we've been audited by third parties to verify that, and no other company, including our competitor here today, has been able to achieve that operating standard. So, I do think it's unfortunate that this is the first time you're hearing about that, but anti-lobby rules aren't unique to Austin. We do business in 600 cities around the United States and virtually every one has some sort of quiet period around a procurement. They're there for a reason; to help ensure equitable outcomes. And the markets function just fine with those, they really do. You know we're quite comfortable with it. As far as, you know, anti-lobby goes, I would say that I do feel like I need to address that. There's been a consideration and it's been thrown out in very heavy kind of terms that Synagro violated this, or Synagro violated that. I haven't heard anyone up there say that, in fairness. But what we're talking about, as I understand it, is whether a meeting was adequately posted or not. This isn't something that Synagro did to bias a project or bias a procurement. The City Council has at its discretion and the authority to move forward with this contract, and, you know, I think, look past or get us past those kinds of potentially minor procedural issues. You know, I think, if it is determined, that you determine that this must be rebid, Synagro will be harmed in that. We followed your recommendation to disclose our proposal in its entirety. The only thing that remains un-redacted is the names of potential, not actual, but potential subcontractors. They don't want to be named because the competition in this arena creates a toxic environment for them. If you were a small business would you want to put your name out there and subject it to this kind of scrutiny and this kind of allegations against you? Baseless allegations when you're trying to grow a small business and you don't even have a contract, you have a maybe-contract? I don't think most of us would want to do that. So we've taken heat for it. But in fairness to our potential partners, we remain, and actually the joint work group concluded that we had provided every material piece of information required for them to make a recommendation. So, I hear the issues but, you know, I think we've been open, honest, fair, we've worked extremely hard and rigorously to follow the requirements of the anti-lobby ordinance, we've sought approvals at every step to go speak at meetings, to make presentations, or answer questions when necessary. A rebid would be punitive to us in this and I don't think it's in the City of Austin's best interests because contractors watch how these things proceed in cities and it informs how they want to proceed in doing business with a city. We respect your decision, whatever it is, and we want to be your partner going forward. We've got a very successful relationship. We hope that you'll give consideration to our efforts on this and the way we have approached this project. Thank you, I'll answer any questions.

Steve Adler: So let me begin with, again, on the same line that I was talking before. Obviously you know there are claims that there was a violation in the past.

Andrew Bosinger: Yes.

Steve Adler: And if they exist, they would exist in part due to the request that this Council made in sending things back and how that was implemented. One resolution for that is to pull down that process and say start again, but to waive any violation, if it occurred, without determining whether or not a violation occurred going back, so that anybody who participated in that process would be able to participate in the process going forward, and then to ask the staff to reissue it with same or similar scope with the rules that the City has in place. Is there, other than what you mentioned a second ago, is there any other issues associated with us doing it that way?

Andrew Bosinger: Well, Mr. Mayor, I think it would be equitable and in the City's best interest to waive it retroactively in this case, and say "However this situation was created, whether or not a violation occurred," you know, we, Synagro, as the recommended bidder on this, was acting at the City's instruction, has worked within a well-defined procurement process to try to comply, and has put forth...

Steve Adler: You're saying waive it going backwards.

Andrew Bosinger: Right. I said before that I think that the market operates just fine with anti-lobby kind of requirements. We're used to dealing with them.

Steve Adler: Your issue goes to whether or not we would reissue...

Andrew Bosinger: Yes, sir.

Steve Adler: And I understand that. If we don't do that then some people will complain about a process that might have had a violation in it and we're retroactively...

Andrew Bosinger: Well, our competitor will complain, Sir.

Steve Adler: I'm sorry, what?

Andrew Bosinger: Our competitor will complain, Sir. There were multiple other bidders on this project. We fairly submitted with them, they were all evaluated. We were the highest ranked bidder by far and the lowest cost bidder.

Steve Adler: I understand. I understand.

Andrew Bosinger: None of them are here complaining.

Steve Adler: I understand. Any other questions for this witness? Mr. Zimmerman.

Don Zimmerman: Yes, thank you for being here. The American National Standards Institute, there are various standards bodies, right, that define technically what things mean. But, I mean, in terms of what compost means, technically, are there any standards you can point to that help me understand how you can compost something in three to four weeks, because normally it takes a lot more calendar time to sufficiently...

Andrew Bosinger: It does, you're correct.

Don Zimmerman: Okay, so under your proposal here that's proposed to be voted on, the 20 million dollar project, what kind of composting are you proposing in three to four weeks?

Andrew Bosinger: Well, that's one of the misstatements that was made, that is known, yet was made as a factual statement today. Our proposal includes a description of the compost process. The basic process is three weeks to four weeks, that's the just the basic process to meet the federal and state permits. That's not finished compost. It meets the definition of compost. The best standard I could refer you to would be the U.S. Composting Council's definition and you will hear today from the president of the U.S. Composting Council who is here to speak on this Item. Everything we produce will meet the definition of compost per the U.S. Composting Council. That's the most neutral, kind of weights and measures, if you will, kind of standard that I could refer you to.

Don Zimmerman: Okay, thanks for that, cuz you know, I just mentioned ANSI because I've done engineering standards but I don't know that business. Thank you. Second quick question, the operating locations for where you would get this process completely done. So Hornsby Bend is kind of downwind, if the northern wind blows through it's going to blow into our airport, Bergstrom Airport, as you probably know. Can you tell me where these locations are, where various stuff is going to be done?

Andrew Bosinger: Well you've hit on another point that was misstated earlier but is known to be fact that all composting will be done at Hornsby Bend.

Don Zimmerman: Okay. Thank you.

Steve Adler: Okay. Thank you very much.

Andrew Bosinger: Thank you all.

Steve Adler: Next speaker is Lorrie Loder-Rossiter. Michael Whellan is on deck.

Lorrie Rossiter: Good afternoon, thanks for your time today. My name's Lorrie Loder-Rossiter, I'm actually a former employee of Synagro, and I am currently the United States Composting Council President. I was an employee for Synagro for 20 years and I've been a member of the Compost Council since 2009. First let me applaud the City in your recycling efforts for organics. I know you guys are leading the nation in everything you're doing and Director Bob Gebhardt really needs a round of applause. Your city has actually set the stage for many cities across the nation that our organization likes to work with to help keep food waste and organic materials out of landfills and put them back to soil use. So I applaud all your efforts there. I actually support Council's approval of 53, with approving that contract with Synagro. They've been in business since 1986 composting; they've been awarded Composter of the Year through the U.S. Compost Council; they have their NVP-EMS program in force at their compost facilities which is very similar to ISO 14,001 standards. I know that there was some question of "what is compost." Compost is defined, biosolids compost is defined by the EPA regulations that take you through the process to further reduce pathogens and vector attraction reduction. And you can do that within that three weeks, three to four weeks; typically about 22 days. I just encourage the Council to approve the contract with Synagro today. This actually will allow the City to have two high quality vendors to manage all the many organic materials that you all are producing and to continue to move that material back out into soil and productive use. Thank you so much.

Steve Adler: Thank you. Mr. Zimmerman:

Don Zimmerman: Quick question. I am on the compostingcouncil.org, it says U.S. Composting Council, I'm happy to have that website here and information but I've scanned through it and I don't see, nothing jumps out at me yet as to where the standards links are. Could you point me to where I would find them?

Lorrie Rossiter: It's called the Seal of Testing Assurance. We follow the federal guidelines for composting biosolids and those manures back for food safety regulations. So we encourage folks to follow the standards to meet the fecal and salmonella.

Don Zimmerman: Okay, again, I'm trying to find that, and I don't see a reference to that.

Lorrie Rossiter: Is it under Programs?

Don Zimmerman: Programs, okay.

Lorrie Rossiter: It might be under Programs, Seal of Testing Assurance. I might have to speak to my staff and have them move it forward more on our website.

Councilmember Zimmerman: That would help, thanks.

Ora Houston: Mayor.

Steve Adler: Miss Houston.

Ora Houston: Ma'am, excuse me, could you come back just a minute because I'm interested in the three to four weeks and 22 days. So all of the biosolids that you all collect can be broken down and are ready to be put into Dillo Dirt, or put in my flower beds in 22 days?

Lorrie Rossiter: So the regulation requires temperatures of 131 degrees Fahrenheit or higher for 14 days. If it's windrow it's 15 days, a 15 day period to put that material through the composting process, and you temperature that compost every day through that process. So you may not get temperatures those first three days, but that next 15 days that material, once you blend nitrogen with carbon, creates the compost process. So biosolids compost typically is gone through the federal regulations, and Texas state regulations for composting, to meet environmentally and public health, safety standards.

Ora Houston: So this is a new field for me. So how to do you get the temperature up that high and it's maintained that high for 15 days?

Lorrie Rossiter: It takes carbon, nitrogen, water and oxygen. Just nature. You mix those components together at a specific recipe and the organisms just take over and generate heat. Now once you've gotten through the PFRP process, or process to further reduce pathogens, through that federal and

state guideline, now you have a composted product, you can then screen it to a size to meet the needs for your market. So you're going to run it through, very much like a window screen and size it, to the sizes that you need for a golf course grade, or a landscape grade, or an agricultural grade.

Ora Houston: And those larger pieces, you re... re...

Lorrie Rossiter: They go back into the process.

Ora Houston: ...they go back into the process. Thank you so much.

Lorrie Rossiter: Thank you.

Steve Adler: Yes, Thank you very much. Michael Whellan.

Michael Whellan: Michael Whellan on behalf of Texas Disposal Systems. First, before I make a few comments about the Anti-Lobbying Ordinance, Councilmember Houston, it would have been fair for you, as if you were in deposition to say, "Objection, nonresponsive", because your question was, "Can I put something that's been sitting out for 22 days in my flower bed?" And I can assure you the plague of flies and the stench would send you running.

Ora Houston: Mr. Whellan, I'm one of, I am not one of the lawyers...

Michael Whellan: Okay, I know you're not, you have plenty of them up there. So I had a few points about the Anti-Lobbying Ordinance, and really one thing that's troubling, and I'm glad that there might be a movement to look at it more broadly, is, it becomes an Anti-Information Ordinance when people sign RFPs and aren't able to provide you with important information especially in the area of Austin Resource Recovery, and I point to that specifically because when you look at energy, water, aviation, public safety, those are all monopolies; they are entering into contracts for particular items, tasers, typewriters, etcetera. With Austin Resource Recovery in addition to being the regulator, they are also a competitor and some might say a predator. They are moving, and some have expressed this concern, we've expressed this concern, to try and consolidate and ultimately monopolize this industry and take away all competition through flow control. We would actually urge that you seriously consider eliminating the Anti-Lobbying Ordinance from any Austin Resource Recovery related bids all together, perhaps after this hearing, in the new year. I think the egregious cases of the misapplication of the Anti-Lobbying Ordinance in the past hurts the City because those episodes create less competition. I'm going to give you a very specific example of why you get less competition because of the Anti-Lobbying Ordinance. When somebody is disquali... if somebody has a contract with the City and they are disqualified two times they can then be barred; that contract can be voided. Nobody's going to take that risk when they have, in the case of Texas Disposal Systems, a 30 year contract to handle trash for the City. In fact, because they were disqualified inappropriately, they went to Federal court, as Mr. Gregory already indicated. Certainly here, we agree Mayor, the ALO, the Anti-Lobbying Ordinance, should be waived, and the biosolids contract should be denied and re-bid after the Council adopts the policy, or a policy, after reviewing and considering the biosolids policy. I think that would be in the best interest of the City. I would point out also that the... it's interesting, they said that the contact had been the most vetted ever and yet there are major portions of it that were redacted, including the locations, and I think that was your question, somebody's question, Councilmember Zimmerman, about where they're going to be putting this 3-4 week baked material. So, I would... (timer goes off) ...that would be my request. Thank you.

Steve Adler: Thank you. Those are all the speakers that we have listed. We're now back to the dais. Someone want to make a motion on Item number 52?

Ora Houston: I have a motion.

Steve Adler: Yes, Ms. Houston.

Ora Houston: It's been passed out with the dais, on the yellow sheet of paper, it has number 52 on the top. The motion is to strike "past and future", and to remove part three on the second page of two, and to change part four to part three.

Steve Adler: Okay. There's been a motion to approve Item number 52 but with the changes that Ms. Houston has made, basically taking out part three so that the waiver is retrospective and not proactive, not prospective. Is there a second to that motion? Mr. Casar. Any further discussion on this motion?

Don Zimmerman: Point of information. Is this, can we put that on the overhead for just a second, so everybody can see what we're talking about? Thank you. One other quick thing, a point of inquiry, that's the back side and that is the part that's struck. On the other side there's the striking of the words "past and future", if you want to show that quickly. So you see the strike at the top where it says "City code regarding past and future", so that's struck out. That's good. Thank you, so you can flip it back over. Terrific. Thank you. Just want to make sure we know what we're talking about here.

Steve Adler: Okay. All right, so the motion is to approve number 52, striking part three. Any discussion? Then let's vote. Those in favor, please raise your hand. Those opposed? It's unanimous on the dais with Councilmember Troxclair off. That gets us to Item number 53. Someone want to move to withdraw 53?

Don Zimmerman: I'll make that motion to withdraw, or would it be more appropriate to deny, or just withdrawing it?

Steve Adler: I think it's withdrawing 53 and asking staff to reinitiate an RFP process.

Don Zimmerman: Or do we close? I think we close an RFP... I'll make that motion.

Steve Adler: We're just going to withdraw 53, take no action on it, giving staff direction to reissue the RFP.

Greg Casar: Mayor, to clarify.

Steve Adler: Yes.

Greg Casar: That motion, also to reissue the RFP with the environmental stipulations and others, agreed upon by the stakeholders in the new RFP.

Leslie Pool: And I can offer those; we want to present the RFP to the Zero Waste Advisory Commission, Water and Wastewater Commission, and then to the Council for review and approval before issuing to vendors.

Steve Adler: Is there any issue with that? To go through the process?

Leslie Pool: This may not be the standard City language, but the point is ZWAC, Water-Wastewater, and then back to Council for review.

Steve Adler: What we're doing is we're asking the City Manager to resolicit for the same/similar services to include the recommendations of the Zero Waste Advisory, and Water and Wastewater Commissions. I think that's what that is. Okay?

Greg Casar: That's right.

Steve Adler: That's the motion from Mr. Casar. Directing the City Manager; not any action on 53 as proposed, but instead asking the City Manager to resolicit, same/similar services to include the recommendations from the Zero Waste Advisory and Water and Wastewater Commissions. It's been moved, is there a second to that? Ms. Pool seconds that. Any discussion? Those in favor, please raise your hand. Those opposed? It's unanimous on the dais, with Ms. Troxclair gone. So that takes care of 52 and 53.