



August 6, 2014

Honorable Mayor Jean Quan
Members of Oakland City Council
Henry Gardner, City Administrator
Zero Waste Committee
City of Oakland
1 Frank H. Ogawa Plaza, 3rd Floor
Oakland, CA 94612

Re: Zero Waste Services Requests for Proposals

Dear Mayor Quan, Council Members, Mr. Gardner:

Waste Management of Alameda County, Inc. (“WMAC”) reiterates its opposition to the proposed award of the Zero Waste Services collection and disposal contracts to California Waste Solutions, Inc. (“CWS”) and Republic Services, Inc., and submits this formal protest to the adoption of the respective ordinances granting the three contracts. As stated in our earlier correspondence to the Council and to the Zero Waste Services staff, and as expressed to the Council at its July 30, 2014 meeting, such an award violates the terms and conditions of the procurement process authorized pursuant to City resolution. Moreover, the awards also violate the California Environmental Quality Act for the reasons discussed below.

As you know, the Zero Waste Services procurement process was a long and complicated task that provided for specific deliverables and commitments from proposers and set hard deadlines for submittals. The Request for Proposals for the three categories of services, Mixed Materials and Organics, Recyclables, and Disposal, were issued more than two years ago. Any company qualified and interested in proposing on said services was required to submit such proposals, and identify any partners and/or subcontractors by no later than January 9, 2013. Several companies expressed an interest in the RFPs, but only two companies submitted compliant bids, and only one company, WMAC, submitted a proposal for Disposal Services. Republic Services, which had requested an RFP package, chose not to submit a bid, and was not identified as a partner or subcontractor to any other proposers.

On June 18, 2013, after the Zero Waste Staff presented the only two qualifying proposals to the Council, the Council authorized the Staff to begin concurrent negotiations with those two proposers – WMAC and CWS. The staff was not authorized to negotiate with any other companies, and, again, only one company, WMAC, was qualified for the Disposal Services portion of the RFP; CWS did not bid Disposal services. Also, no company, including any non-proposer, ever filed a protest of the Staff’s or Council’s action by the deadline specified in the RFP process.



On May 29, 2014, the Council rejected the Staff's recommendation that the MM&O, RR and Disposal contracts be awarded to WMAC. The only other qualified proposer considered in those discussions was CWS, and no company, including CWS, was considered for Disposal services other than WMAC. In its May 29th motion, the Council derailed the approved procurement process and allowed new bids on all components of the respective services, including submittals on the MM&O, RR and Disposal agreements. WMAC issued a protest to the Council's May 29th action on June 6, 2014, pointing out that such action was in clear violation of the only authorized procurement process, and that considering new proposals based on WMAC's comprehensive bid and confidential information was inappropriate and contrary to law. These arguments were reiterated in additional submittals to the Zero Waste Services staff, and to Councilmembers.

Nonetheless, as evidenced by the Council's action on July 30th, unsolicited, untimely and non-conforming proposals were considered by Council in violation of the authorized procurement process. WMAC vehemently protested this action, and reiterates its position that the Council must refrain from a final adoption of the proposed Ordinances at its August 13, 2014 meeting.

We remind the Council that in 2006, pursuant to Resolution No. 80286, the City adopted a Zero Waste Strategic Plan with the intent that Oakland would become one of the greenest cities in the nation. By resolution, the Council stated it "must establish a process and schedule for procurement." The process included a commitment to uphold "the highest professional and ethical standards." This included a commitment to ensure that any proposals be timely, conform to the RFP deadlines, and be "complete and responsive." Such timely proposals would then be subject to a review based on "qualifications, extensive technical and financial review and analysis, facility investigations, review of performance in other jurisdictions, interviews, and finally, scoring and ranking." Obviously, if a proposer did not timely submit a proposal, none of these qualifications would or could be properly vetted, and by the express terms of the RFP, any such proposal would be deemed non-responsive.

Under the current proposed ordinances, the Council is considering the award of all three contracts to a proposer that admittedly revised its proposal twice after the submittal deadline, which is contrary to the express terms of the RFP and contrary to the City's commitment to a fair and equitable process. Moreover, the Disposal Services contract, if awarded, would involve Republic Services, a company that deliberately chose not to bid on the contract, and was never identified as a partner or subcontractor by the specific RFP deadlines. In addition, considering that Republic Services has now offered to "partner" with and support CWS efforts, including the deployment of equipment, customer services, and processing capabilities, the City is in effect awarding the bulk of the Zero Waste Services to a company that deliberately chose not to bid. Consequently, the City never had the opportunity to properly vet such a proposal as required under the approved process.

Also, the May 29th abandonment of the approved process allowed CWS to provide pricing and service adjustments based on information that WMAC provided to City Staff pursuant to what was represented to be a confidential process. WMAC protested the release of this information, and was told by the City staff that it would evaluate the issue and respond to WMAC prior to releasing any information. It did not – the information was released in a modified format to CWS without first informing WMAC. At no time did the City provide CWS' submittal to WMAC.



As a further matter, the Council's authorization violates the California Environmental Quality Act (CEQA). The City failed to conduct a meaningful independent review of the environmental impacts resulting from CWS' proposal and incorrectly deemed its approval to be exempt from CEQA, thus preventing any public comment on the proposal. The Council's approval is not exempt from CEQA; the CWS proposal requires new operations and the construction of new facilities, fails to achieve the City's Zero Waste goals, was based on seriously flawed assumptions regarding vehicle trips and emissions which will actually result in increased emissions through the continued use of diesel trucks, is inconsistent with the City's Zero Waste Strategic Plan and the Alameda County Integrated Waste Management Plan, and has the potential to cause a significant effect on the environment. CWS' proposal will, in fact, have serious environmental impacts, including the need to construct a new facility on lead-contaminated soils on property owned by the East Bay Municipal Utility District (EBMUD). The City assumes that EBMUD will approve the project as an addendum to a previous environmental impact report (EIR), an erroneous assumption given that an addendum is legally unavailable at this stage and would violate the provisions of CEQA because facility construction will undoubtedly have serious environmental impacts, particularly if it involves the disturbance of contaminated soils. As a responsible agency in EBMUD's pending CEQA review of the proposal, the City cannot approve any aspect of the project prior to EBMUD's completion of a new EIR for the project. Other agencies must also participate in the CEQA process, including the Regional Water Quality Control Board and the Department of Toxic Substances Control. Thus, the City's approval and directive to issue a Notice of Exemption violates the requirements of CEQA.

Abandoning the procurement process on which WMAC relied, and which was the only process authorized by the Council, is not only contrary to the law and unfair to the only proposer who chose to follow the rules, it is also unfair to the residents of Oakland who look to the City to meet the Zero Waste objectives. Under the current proposal, the City has not only abandoned its approved Zero Waste Services procurement process, it has abandoned its commitment to the Zero Waste goal.

To reiterate, we urge the Council to reject the final adoption of the Ordinances that were introduced on July 30th and to follow the only process that has been legally authorized.

Regards,

A handwritten signature in black ink, appearing to read 'Barry Skolnick'.

Barry Skolnick
President, Waste Management of Alameda County, Inc.
Area Vice President, Northern California-Nevada

cc: Barbara Parker
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