



## Late Backup

March 6, 2013

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

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

Ms. Castillo:

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

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

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

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

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

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

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

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

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

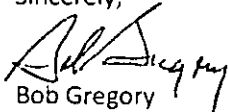
Ray Bryant, who had delivered and signed the Cover Page (Offer Sheet) to the IFB. In reference to your statement that the cover sheet was not signed, page two of the IFB section titled "Return the following documents with your offer" states that the Cover Page is the Offer Sheet, which is the first page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

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

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

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

Sincerely,



Bob Gregory  
President and CEO

Texas Disposal Systems, Inc.



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

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



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

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

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

## DRAFT REPORTS ARE SUBJECT TO CHANGE WITHOUT NOTICE

### QUESTIONS FROM COUNCIL

1. Agenda Items #2-4
  - a. QUESTION: Please indicate total cost of the energy efficiency improvements and percentage AE proposes to reimburse. COUNCIL MEMBER TOVO
  - b. ANSWER: For agenda item #2: The total cost of the Austin City Lights project is \$109,025 and the rebate will cover 90% of the cost. For agenda item #3: The total cost of the Hudson Miramont project is \$110,415 and the rebate will cover 90% of the cost. For agenda item #4: The total cost of the Toscana Apartments project is \$135,109.33 and the rebate will cover 90% of the cost. Austin Energy will include this information in future RCAs for multi-family rebates.
2. Agenda Items #2-8
  - a. QUESTION: Are any of these properties located outside the city limits? COUNCIL MEMBER MARTINEZ
  - b. ANSWER: No, these projects are located within the Austin city limits.
3. Agenda Item #18
  - a. QUESTION: Please describe the community outreach that was performed in preparation for the addition to the park, and the process for determining that the community is in favor of the new amenity. When were the elements presented to PARB (2 nature trails and dog park)? COUNCIL MEMBER MORRISON
  - b. ANSWER: See Attachment
4. Agenda Item #26
  - a. QUESTION: Please provide the bid tabulation that was included in the Electric Utility Commission's back up materials. The bid tabulation indicates that the pricing represents a 16% increase since the last (2009) contract. Did the other bid received by the COA offer lower pricing? How much? Please indicate why the other bid was disqualified. If there were errors in the bid package, was there an attempt by the bidder to make corrections? Can the City elect to re-bid the contract? References to a 2009 settlement agreement


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


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

5. Agenda Item #27

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

**END OF REPORT - ATTACHMENTS TO FOLLOW**

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

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

IFB DKC0093  
BID SHEET DESCRIPTION OF TASK

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

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



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