



COUNCIL AGENDA: 8-15-06  
ITEM: 7.1

# Memorandum

**TO: The Honorable Mayor and  
City Council**

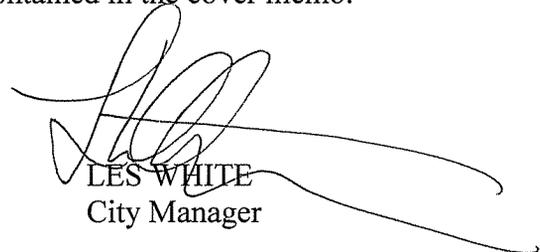
**FROM: Les White**

**SUBJECT: Recycle Plus Study**

**DATE: August 10, 2006**

In July 2006, the City retained the services of Macias Consulting Group to provide a third party review of the validity of claims that California Waste Management Solutions (CWS) transported recyclable materials outside of the City of San Jose limits prior to a site visit conducted by City staff in connection with the City's current bid process for a new solid waste contract for the years 2006 and 2007.

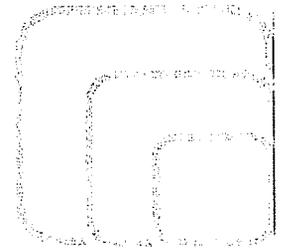
Per Rules Committee discussion and direction on August 9, 2006 to transmit this third party review in its entirety in an effort to preserve the intent of a an outside review of this issue, please find attached the full report by Macias Consulting Group on the Recycle Plus Bid Procurement Process Review. The conclusions of the report are contained in the cover memo.



LES WHITE  
City Manager

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CONSULTING GROUP



**City of San Jose**

**Final Report**  
**Recycle Plus RFP Procurement**  
**Process Review**

**August 10, 2006**



To: Walter Rossmann, Chief Purchasing Officer  
City of San Jose, California

On July 21, 2006, Macias Consulting Group contracted with the City of San Jose (City) to assess the validity of claims that California Waste Solutions (CWS) transported recyclable materials outside of City limits prior to a site visit conducted by City staff in connection with the City's current RFP process for a new solid waste contract between July 1, 2007 and June 30, 2013. The City currently prohibits the transporting of unprocessed recyclable outside of City limits unless authorization is granted by City officials.

Since 2002 CWS has handled the processing of recyclable materials as a subcontractor to Norcal Waste Systems (Norcal). Norcal contracts with the City of San Jose to collect, process, and transport solid waste and recyclables materials within the City. The current solid waste and recyclable contract expires on June 30, 2007.

We have implemented the procedures outlined in this report that were agreed to by the Procurement Division of the City of San Jose, solely for the purpose of assisting the City in evaluating the integrity of the current RFP process for a new solid waste contract. The sufficiency of the procedures performed is solely the responsibility of those parties specified in the report. Consequently, we make no representation regarding the sufficiency of the procedures we implemented either for the purpose for which this report has been requested or for any other purpose. Our engagement was conducted in accordance with generally accepted government auditing standards between July 27, 2006 and August 9, 2006.

Our examination found the following:

- CWS did transport recyclable materials outside of City of Limits that was unauthorized by City officials.
- CWS may have breached its current contract with Norcal Waste Management Systems in transporting 463.43 tons of unprocessed recyclable materials (Mix-C Commodity) between May 30, 2006 and June 7, 2006.
- CWS transport of unprocessed recyclable materials should trigger consideration by City officials to disqualify CWS from the current RFP process. Even though CWS actions, in our opinion, were to help ready the site for a site visit by City officials, there is sufficient



testimonial evidence to establish that the extent of the site clean-up created the perception that operations were not generally reflective of day-to-day operations. However, the City must consider in their decision to disqualify CWS from the current RFP process that while opinions among some evaluation panel members on the capacity of CWS to handle the processing of recyclable materials were altered stemming from the site visit, many evaluation panel members reported their opinions were altered negatively against CWS rather than positively. Thus, there may not have been significant benefit gained by CWS in clearing the site of recyclable materials.

- City officials responsible for contract management of the current contract with Norcal took sufficient action to follow-up on issues raised by the Teamsters Local Union No. 350 pertaining to transporting of unprocessed materials by CWS to Oakland and the use of non-labor drivers used in the hauling of the materials.

Macias Consulting Group, Inc.

August 10, 2006

## **BACKGROUND**

San Jose implemented its "Recycling Plus!" system for integrated solid waste, recycling, and yard waste collection services in the residential sector on July 1, 1993.

Of particular note in the Recycling Plus! system is the structure of contractor payments. San Jose wanted contractors to make their profit on the Recycling Plus! contract from recycling, not garbage, and the city structured the payments for contractors to accomplish that. The City included performance incentives to contractors if specified diversion rates were met. Diversion rates gauge the amount of materials that were processed and sold for other uses rather than having materials hauled to solid waste disposal sites. Currently, Norcal has a minimum diversion requirement of at least 35 percent from the City's landfill.

The recycling incentive to haulers is designed to maximize recycling. In addition, contractors must pay their own disposal fees for garbage not recyclables (about \$30 per ton), encouraging them further to minimize land-filled wastes. Finally, the City allows the contractor to keep all the revenues from the sale of recyclables (which has varied between \$50 to 60 per ton average for all the materials recycled).

In October 2005, the City began working on a new Request for Proposal (RFP) so that solid waste companies and recyclers can propose on a new Recycle Plus contract starting July 1, 2007 until June 30, 2013 because the current contract is set to expire on June 30, 2007. This request for proposal was issued on February 15, 2006. Proposers had until April 24, 2007 to submit their qualifications to perform solid waste, recycling, and yard waste collection services. To assist in the evaluation of the proposals, the City established a panel comprising of seven Technical Evaluation Committee members. These members represented the City's Environmental Services Division, the City's Transportation Department, and Building, Planning and Code Enforcement Department as well as the Director of Streets and Automotive Services from the City of Santa Clara and a Management Analyst from the County of Santa Clara.

## **Approach**

Macias was asked to address four key questions in this evaluation:

1. Did Norcal/CWS transport recyclables materials outside of City limits prior to the proposal site visit?
2. If yes, did Norcal/CWS adhere to current contract requirement to request authorization by City officials to transport recyclable materials outside of City limits

3. Should unauthorized transport of recyclable materials outside of City limits disqualify Norcal and its subcontractor CWS, from the current proposal process? (or should the action void the remainder of the existing contract between the City and Norcal?)
4. Did City contract administration staff take appropriate actions to address issues raised by the Union pertaining to the proposal site visit?

To address these issues, we performed the following tasks that were agreed upon by the City.

- Reviewed vendor proposals
- Reviewed the request for proposal issued by the City
- Interviewed five of seven technical evaluation committee members on the result of the site-visit
- Interviewed City officials responsible for oversight and management of the Norcal Waste Contract
- Reviewed the existing City's contract with Norcal and their contract with recycling subcontractor CWS
- Analyzed outgoing tonnage delivered and recycled data
- Analyzed incoming weight tickets and scale reports
- Analyzed CWS maintenance records
- Analyzed CWS expenditure information
- Discussed 2007 Recycle Plus! proposal preparation process with applicable staff
- Reviewed proposal evaluation worksheets used by Technical Evaluation Committee panel members
- Discussed Recycle Plus contract management activities with applicable ESD purchasing managers
- Conducted analysis of tonnage data received and recycled by CWS at the San Jose facility for each day for the past 3 months
- Assessed efforts by CWS and Norcal to request permission to transport recyclables outside of City limits
- Assessed the differences between actual processes or events carried out with policies and procedures and contract requirements
- Reviewed letters received from Teamsters Local 350 alleging shipment of recyclables to Oakland
- Analyzed records on tonnage delivered and recycled at CWS' San Jose facility for San Jose materials
- Reviewed city notes, correspondence, and documentation pertaining to RFP and evaluation materials
- Conducted trend analysis of outgoing weight tickets of recyclable materials

**Question 1: Did Norcal/CWS transport recyclables materials outside of City limits prior to the proposal site visit on June 7, 2006?**

**Answer:** Yes. CWS did transport shipments of recyclable materials outside of City limits between May 31, 2006 and June 7, 2006.

**Analysis:**

We were able to verify that 463.43 tons of Mix-C material was picked up and transported by a CWS vendor – American Recycling Services (ARS). The last two outgoing loads of Mix-C Materials out of CWS’ San Jose facility were at 12:19 and 12:39 a.m. on June 7, 2006-just prior to the 9 a.m. proposal site visit.

We further determined that ARS delivered 393.32 tons to CWS’ Oakland facility between May 31, 2006 and June 7, 2006 but we could not verify whether all of these materials were San Jose materials. We successfully traced that 56.52 of the 393.32 tons were shipped directly from CWS’ San Jose facility to CWS’ Oakland facility. For the remaining 340.76 tons shipped to the CWS’ Oakland facility, we could not verify whether the materials were solely from the City of San Jose.

When reviewing monthly reports that Norcal, the City’s prime Recycle Plus contractor, submitted to the City on CWS recyclable commodities sold, we determined that CWS does not routinely sell Mix-C recyclables. Prior to May 31, 2006, the last time CWS had sold Mix-C material was July 2005 when 14.87 tons were sold. Between May 31, 2006 and June 7, 2006, CWS transported 497.1 tons of Mix-C – a significant increase from its last sale of the material. CWS officials explained that the Norcal data that we used in this analysis was incorrect. Norcal officials reported that all data submitted by CWS is sent directly to the City without review by company officials.

Moreover, we determined that CWS incorrectly invoiced ARS for the Mix-C recyclables shipped out of San Jose. We determined ARS shipped 463.43 tons of Mix-C materials, but CWS invoiced ARS for only 393.32 tons. CWS officials explained to the City that a discount was provided to ARS, however we found no evidence or trail of the discount taken. We would have expected to see, at a minimum, the same tonnage shipped at a reduced price but the invoices show a different amount of tonnage shipped. We would recommend the City undertake an audit of CWS invoicing practices to determine if the invoicing error was an isolated case or a systemic problem.

Finally, our review of Mix-C shipments and sales data noted key discrepancies in the tonnage data reported by CWS. According to CWS Weight Tickets, and the corresponding CWS Outgoing Tonnage Reports from the CWS’ San Jose facility, we found that between May 31,

2006 and June 7, 2006, 33 truck-loads totaling 463.44 tons of Mix-C Recyclables were transported by the vendor, ARS. However, another CWS quarterly report submitted to Norcal showed 497.10 tons of Mix-C shipped in May and June 2006. We were unable to reconcile the difference of 34 tons.

**Question 2: If yes, did Norcal/CWS adhere to current contract requirement to request authorization by City officials to transport recyclable materials outside of City limits?**

**Answer:** No. City of San Jose officials responsible for contract management and oversight did not receive any request for permission by CWS or Norcal, in writing or by telephone, to transport recyclable materials outside of City limits. Additionally, Norcal had not received any request by CWS to have Norcal seek permission from the City to transport recyclables outside of City.

**Analysis:**

The City's contract with Norcal per Section 12.03 requires Norcal "to secure processing capacity at an alternative facility, approved by a City Representative, for use if ....the Materials Recycling Facility is unable to process Recyclable Materials in accordance with the requirements of the Agreement. If the Materials Recycling Facility is unable to store the amount of material required by Section 12.01, the Norcal may arrange for alternate storage capacity at a facility approved in advance by the City representative". When on June 03, 2006, at least 56 tons of Mix-C recyclable materials were transported outside of City limits without processing, we verified with City officials responsible for contract management that notice for authorization to transport recyclable materials was not received from Norcal, the City's prime contractor. Also, we contacted Norcal officials to determine whether CWS initiated a request to transport the materials outside of City limits. Norcal officials reported that they were first aware of the unauthorized transport after the shipments were made when City officials contacted them for additional information. Norcal officials also explained that CWS contacted them about a request for authorization for prior shipments made, after a letter was issued by Teamsters Local 350 notifying the City that unprocessed materials were shipped to CWS' Oakland facility. Norcal did not take action to forward the CWS request to the City.

**Question 3: Should unauthorized transport of recyclable materials outside of City limits disqualify Norcal and its subcontractors CWS, from the current proposal process? (or should the action void the remainder of the existing contract between the City and Norcal?)**

**Answer:** No. The unauthorized transport of recyclable materials outside of City limits should not disqualify Norcal from the current proposal process or void their existing contract with the City.

Yes. The unauthorized transport of recyclable materials by CWS should trigger consideration by the City to disqualify CWS from the Recyclable Plus 2007 RFP procurement process.

**Analysis:**

The unauthorized transport of recyclable materials outside of City limits should not disqualify Norcal from the current proposal process or void their existing contract with the City because Norcal was reportedly unaware of CWS' actions in transporting unprocessed materials during the time the site-visit was made to help select the next vendor for the 2007 Recycle Plus contract. Because the two firms are competing for the contract, Norcal in this case, should not be penalized for unauthorized actions by CWS. The only circumstance, in our opinion, that would warrant disqualification for Norcal in this situation would be Norcal's prior knowledge of the shipped materials during the May 31 – June 3 timeframe. Norcal officials explained the company did not become aware of the authorized shipment until after June 7, 2006 when City officials notified them in writing and CWS subsequently contacted them to receive authorization for prior shipments.

The unauthorized transport of recyclable materials by CWS should trigger consideration by the City to disqualify CWS from the Recyclable Plus! 2007 RFP procurement process. Additionally, the City should consider requesting Norcal to void their existing subcontractor agreement with CWS. We found the following:

- CWS had not since July 2005 sold Mix-C materials until May 31, 2006. The 14.87 tons in Mix-C materials sold calls into question the motivation of shipping and subsequently shipping 463 tons of the Mix-C materials just prior to the proposal site visit. (A site visit was requested by the City to help substantiate information provided by CWS in the proposal and the oral interviews that their San Jose Facility could handle additional capacity).
- While CWS officials reported that the company did clean the site up in preparation for the visit, which is a reasonable action, there is sufficient testimonial evidence to substantiate that the extent of the clean up performed was not typical of day-to-day operations of the facility. City contract management officials, Norcal officials, and evaluation panel members reported the CWS facility is routinely at capacity to the extent that trucks are lined up outside of the facility waiting to tip their load. During the site visit, no excess materials were noted on the tipping floor by evaluation panel members. As a result, the extent that CWS cleared the site of recyclable materials would appear to contradict information provided by CWS that it could handle its current capacity as well as the additional capacity expected with the new contract. (It is important note that CWS acknowledged in its proposal that new equipment would be needed if the company was awarded the 2007 Recycle Plus! Contract).

**Question 4: Did City contract administration staff take appropriate actions to address issues raised by the Union pertaining the proposal site visit?**

**Answer: Yes.** City contract administration staff took appropriate action to respond and address concerns raised in a letter submitted by the Teamsters Local 350 on June 2 and 7, 2006.

**Analysis:**

On June 2, 2006, Teamsters Local 350 contacted City officials responsible for oversight and management of the Recycle Plus contract with Norcal to alert them of the significant amount of unprocessed recyclable materials that was transported by non-union drivers to the Oakland facility to be processed by non-union personnel. This contact was followed up by a letter prepared by Teamsters Local 350 that formalized the Union's concerns. The letter stated the shop steward reported CWS was removing unprocessed material from their facility, using non-bargaining unit personnel to transfer the material to where it was being processed with non-bargaining unit personnel. The June 7, 2006 letter specifically mentions 16 loads transferred on June 3 with the same transfer allegations.

We were able to successfully trace the timeline and the extent of actions taken by City officials responsible for the Recycle Plus contract to address the issues raised in the Union letter and found that the actions were appropriate given the short time period involved. The City's key actions are shown below.

- June 7, 2006 – ESD submits letter to Norcal requesting documentation from CWS regarding the Teamster complaints received on June 2 and June 7, 2006. The documentation was subsequently reviewed by City officials that led to additional requests for information because of concerns over reporting discrepancies.
- June 29, 2006 – The City's Chief Purchasing Officer requests an auditor review of documents submitted by CWS, including CWS/Norcal residue tonnage reporting and corresponding payments, and CWS shipped commodities.
- June 30, 2006 – The City submits second letter to Norcal regarding Bulk Shipments of Collected Materials and directs Norcal to cease shipment of materials labeled mixed-c/as-is to ARS, and to submit monitoring reports of CWS weekly. The letter cites Article 1.27 of the agreement regarding diversion rates, and Article 12.01 through 12.03 regarding processing recyclable materials and if the MRF is unable to process, Norcal was to secure processing capacity at an alternative facility.
- July 13, 2006 – The City Manager, one Deputy City Manager, the City Attorney, and the City Auditor met and discussed the need for an evaluation and contracting with an external firm.
- July 21, 2006 – in response to Norcal's letter dated July 18, 2006 requesting to delay weekly reporting of CWS to the city due to the RFP process and that CWS and Norcal are competing for the contract, ESD denies Norcal's request to delay reporting of CWS and directs Norcal to immediately begin the monitoring of CWS' MRF, and explains the possibility of administrative charges that may be applied as outlined in Article 18 of the Agreement between the City and Norcal.

- July 21, 2006 – the City’s Purchasing Division formally engages Macias Consulting Group to examine issues pertaining to the transport of recyclables materials outside of City limits.

**OTHER ISSUES ADDRESSED:**

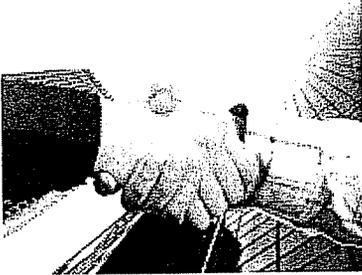
1. During our review, we believed that it was necessary to first determine whether the site visits that were made to the Norcal facility and the CWS facility were included as part of the request for proposal that was prepared by the City. Although a site visit is not explicitly stated as a requirement in the 2006 Recycle Plus RFP, Section 8 –22 Subsection 6 of the RFP states: “That by submission of this proposal, the Proposer acknowledges that the City has the right to make any inquiry it deems appropriate to substantiate or supplement information supplied by Proposer, and Proposer hereby grants the City permission to make said inquiries, and to provide any and all requested documentation in a timely manner.” As a result, we determined that the site visit was a reasonable action in order to assist Technical Evaluation Committee members assess or confirm claims or plans in the proposal, or statements made during oral interviews by the proposers. Five of seven evaluation panel members that we interviewed variously reported that the site visit was used to substantiate items stated in the proposal. Further, two panel members cited specific items of review during the site visit included observations of CWS’ current capacity and how it would handle additional loads.
2. We urge the City to conduct a performance audit of CWS reporting of tonnage sold to Norcal and then Norcal’s subsequent reporting of the data to the City because our review found discrepancies in the tonnage data shipped and sold. The City provides financial incentives to the prime contractor if diversion rates exceed levels of 35 percent. (In simple terms, diversion rates are the amount of recyclable materials sold that would mitigate the need to use the City’s solid waste landfill to dispose of the materials). Continued mis-reporting or the lack of controls in record keeping could impact the diversion rate reported to the State of California. Additionally, inaccurate diversion rates could erroneously lead to providing added financial incentives to Norcal. Fortunately, our analysis of diversion rates between January through June 2006 showed that the Norcal and its subcontractor, CWS, had not exceeded contractual diversion rates level that would trigger an incentive payment.
3. The City should take action to determine whether ARS is a bona-fide company registered to do business in California. Our preliminary reviewed noted that American Recycling Solutions, Inc. may not be registered corporation or LLP/LLC with the California Secretary of State.

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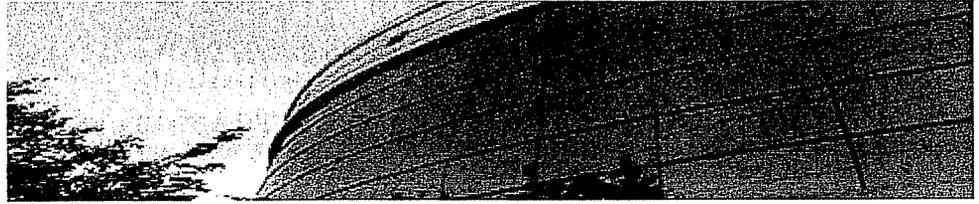
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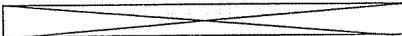
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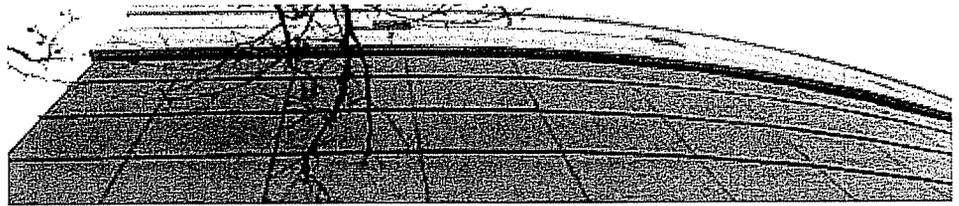


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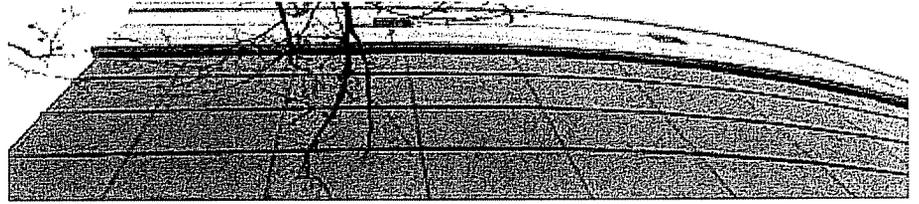
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### Our Core Values

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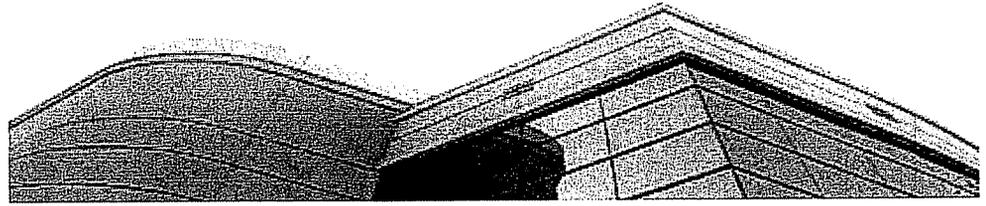
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