

# SUPPLEMENTAL

COUNCIL AGENDA: 04-05-11  
ITEM: 7.1



## Memorandum

TO: HONORABLE MAYOR  
AND CITY COUNCIL

FROM: John Stufflebean  
Scott P. Johnson

SUBJECT: REPORT ON RFPs FOR  
COMMERCIAL SOLID  
WASTE SYSTEM

DATE: 04-01-11

Approved

Date

4/1/11

### SUPPLEMENTAL

#### REASON FOR SUPPLEMENTAL

The City Council will consider staff recommendations for the award of proposals for the Commercial Solid Waste System on April 5, 2011. Following the preparation of the staff report on the matter, Recology Silicon Valley (Recology) filed an appeal of staff's determination on Recology's protest.

As a preliminary matter, the City Council should first decide if the appeal should be denied for failing to comply with the procedural requirements of San Jose Municipal Code Section 4.12.460. If Council should wish to consider the appeal on its merits, this memorandum is staff's substantive response to Recology's appeal.

#### RECOMMENDATION

Consideration of appeal by Recology regarding the Commercial Solid Waste and Recyclable Material Collection Franchise Request for Proposals (Collection Franchise RFP) and adoption of a resolution setting forth the decision of City Council.

#### BACKGROUND

As described in the Council memorandum, the City's Purchasing Officer received a protest from Recology regarding the Collection Franchise RFP. After a careful review of the issues raised, the Purchasing Officer issued a response letter on March 9, 2011 and upheld the award recommendation as outlined in the staff report. In accordance with San Jose Municipal Code section 4.12.460, the protesting party may file an appeal of the Purchasing Officer's decision

with the City Council. The appeal must be in writing, and filed with the City Clerk within ten calendar days of the sending of the Purchasing Officer's decision.

The appeal from Recology was submitted directly to the Mayor and Council in a letter dated March 18, 2011. However, the appeal was not filed with the City Clerk's Office and Staff only received notice of the appeal on March 24, 2011, five days after the deadline for filing an appeal. The requirement to file with the City Clerk serves two purposes: to verify that the appeal was filed within the deadline through a stamped receipt, and to provide Staff sufficient time to respond to the appeal.

### **ANALYSIS**

The City Council will consider Recology's written appeal in the context of the award recommendation for the Collection Franchise on April 5, 2011. Specifically, Recology's appeal letter claims that:

- Awarding both the North District and South District franchises to a single provider would put the City at greater risk.
- The evaluation panel did not properly consider: 1) "value-added services" offered by Recology; 2) the carbon footprint of Recology's proposal in comparison to Allied's proposal; and 3) Recology's exceptions to the exemplar agreement.
- Additional franchise fees offered by Allied should not be included in the evaluation.
- The staff report misrepresented facts regarding the rate adjustment process.

Staff's responses to the Recology appeal letter are detailed below.

#### **A. Award of North District and South District**

The Recology appeal letter alleges staff's recommendation goes against "long standing precedence and practice of contracting with multiple service providers for citywide programs" and puts the City at greater risk. While separate proposals for the North and South collection districts were required options for evaluation, the RFP stated specifically that "the City could award both service district franchises to the same proposer." The benefits of awarding both collection district franchises to Allied include: highest ranked services, uniform services, consistent customer rates and outreach messages throughout the City; and lower costs (nearly 5% savings) as compared to awarding to the two highest ranking proposals from different companies.

Staff did consider the potential system risks of awarding both franchises to one company and determined the risks were not significant. Allied and its parent company, Republic Services, represent the nation's second largest non-hazardous solid waste and recycling company with significant local resources that could be made available to fulfill their obligations under the franchise agreements. Numerous other Bay Area operations (some larger than San José's commercial system) rely on only one service provider. For example, Recology is the exclusive hauler for commercial and residential solid waste collection for the City of San Francisco and for

South Bayside Waste Management Authority (serving most of San Mateo County).

## **B. Evaluation Results**

Recology objects to certain aspects of the evaluation including:

- The evaluation panel did not consider “value-added services” offered by Recology. The evaluation panel did consider the value-added services offered by Recology and points were given to Recology for these services which were scored under the “technical innovation” sub-evaluation criteria, under the “technical” evaluation criteria. Recology earned 4.1 out of 5 maximum points for this criteria. It is true, however, that the staff report primarily focuses on the characteristics of Allied’s proposal in order to fully describe for the City Council’s consideration the basis for staff’s recommendation on issuance of the commercial franchises.
- The evaluation panel incorrectly concluded that Allied’s proposal results in a lower carbon footprint than Recology’s. The environmental effects of each proposal were fully evaluated by panelists based on pre-determined evaluation criteria and Recology earned 4.4 out of 5 maximum points for two sub-criteria (“Environmental Innovation and Mitigation of Impacts” and “Furthering Green Vision Goals”) related to environmental effects. The size of the carbon footprint depends in part on the number of trucks and truck hauling distance required in the proposers’ collection system. Recology’s proposal depends on the business customers to properly sort materials into two or more bins for the two container option with each container being directed to one of two different recycling facilities, one equipped and permitted to process “wet” waste and the other for “dry” waste. It is likely that the wet and dry waste will not be consistently placed in the correct container by the customers and will need further processing at a second facility. The evaluation panel scored Allied higher for their ability to process all types of waste at one facility.
- Recology was wrongly penalized for taking exceptions to the exemplar agreement. The RFP requested that proposers submit exceptions to the City’s exemplar agreement that was included in the RFP, and advised that excessive exceptions may result in a lower score. Recology took numerous exceptions that were evaluated on the likelihood that substantive technical exceptions could significantly impact the City’s ability to successfully negotiate a contract within the required timeframe. Under the “technical exceptions to contract” evaluation sub-criteria, Recology earned 1.4 out of a maximum of 3 points assigned for this sub-criteria.

## **C. Consideration of Franchise Fees in the Evaluation**

Recology contends that Allied did not follow the RFP and cost form instructions by including additional franchise fees, and therefore, these fees should not be considered in the evaluation. The additional franchise fees offered by Allied were not considered in the technical scoring of the proposals. The additional \$500,000 annually, per district, was included in separately scoring

Allied's cost proposal. The additional franchise fees caused Allied to lose points because it raised their annual revenue requirement. Allied, however, still proposed a lower service cost than any other proposer.

#### **D. Staff Report**

The Recology appeal letter claims that the staff report misrepresented facts regarding the rate adjustment process. Recology contends that the report incorrectly paints the picture that Allied offered mitigations to reduce the rate risk to businesses, while Recology's proposal did not. The specific statement at issue states: "Other proposers offered changes to the exemplar agreement which placed more risk on businesses. For example, Recology requested that the City eliminate most ceilings to rate adjustments in the exemplar agreement." Recology's proposal did in fact include a number of exceptions. As to the substance of one of the exceptions relating to the rate adjustment process, Recology did proposed to essentially eliminate the exemplar's 6% cap on rate adjustments by allowing Recology to receive amounts over 6% in the following year. This exception places more rate risk on businesses. By contrast, Allied did not seek to remove the cap. To the extent that there remains points of negotiation on the rate adjustment process, the potential amount of the increase to rates would still be less with Allied because the adjustment would be limited to the annual cap in the agreement, resulting in less rate risk to businesses.

#### **E. Conclusion**

Staff agrees that the issues raised by Recology are important and must be considered in the evaluation. However, all of the concerns that have been raised were considered and independently scored in accordance with the evaluation process that was set forth in the RFP. Therefore, based on the facts provided in the appeal letter, staff believes that there is no reason to reconsider the scoring and resulting recommendation of the evaluation panel.

#### **COORDINATION**

This memorandum was coordinated with the City Attorney's Office.

/s/  
JOHN STUFFLEBEAN  
Director, Environmental Services

/s/  
SCOTT P. JOHNSON  
Director, Finance Department

For questions regarding the procurement process please contact Mark Giovannetti, Chief Purchasing Officer, at 408/535-7052 and for questions regarding the Commercial Solid Waste Program, please contact Jo Zientek, Deputy Director, Integrated Waste Management Division, at 408/535-8557.