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VIA EMAIL

Hon. Thomas Wong, Mayor (twong@montereypark.ca.gov)
Hon. Vinh T. Ngo, Mayor Pro Tem (vnngo@montereypark.ca.gov)
Hon. Yvonne Yiu, Councilmember, District 2 (yyiu@montereypark.ca.gov)
Hon. Henry Lo, Councilmember, District 4 (hlo@montereypark.ca.gov)
Hon. Jose Sanchez, Councilmember, District 3 (josanchez@montereypark.ca.gov)
City of Monterey Park City Council
320 West Newmark Ave.
Monterey Park, CA 91754

Re: Request for Applications for a Waste Collection and Recycling Franchise

Honorable Councilmembers:

This firm represents Arakelian Enterprises, Inc. (“Athens”) in connection with the City of Monterey Park’s (“City”) Request for Applications for a Waste Collection and Recycling Franchise. On behalf of Athens, we submit this letter protesting the City’s recommendation to award a residential source-separated collection franchise to Ware Disposal, Inc. (“Ware”).

The Municipal Code states, “If the council determines that it is going to award the franchise to other than the lowest bidder, the council must make findings that the lowest bidder either cannot meet material requirements of the franchise or materially failed to file a responsive bid.” *See* Mont. Pk. Muni. Code at Sec. 6.09.070(a). Accordingly, Athens asks the City Council find that Ware does not meet material requirements of the RFA or materially failed to file a responsive bid, and award the City’s residential source-separated collection franchise to Athens. Alternatively, as the sole bidder for the City’s residential mixed waste collections franchise, Athens asks that the Council to award Athens the City’s mixed waste franchise.

Athens stands ready to support the City’s source-separated or mixed waste collection system options, whichever it prefers.¹ However, the transition from a two- to three-cart system is not a minor inconvenience—the change is major. The Municipal Code states that “before deciding whether to grant one or more solid waste franchises, the city council may hold one or more public hearings or implement other procedures for obtaining public input.” *See* Mont. Pk. Muni. Code at Sec. 6.09.070(b). No such hearings have been scheduled to discuss a change in

¹ Athens does not object to the City’s recommendation to award nonexclusive commercial collection franchises to Ware and Athens. Athens serves nearly 90% of the City’s commercial accounts and is confident in its ability to maintain current subscription levels while moving forward with SB 1383 compliance.

collection service, but if the City is seriously considering source-separation, it should solicit public input. The City has had a mixed waste program for over two decades. The impacts of any change will reverberate throughout the City: more trucks, more traffic, more containers, more lifts. Customer education and outreach, as well as municipal engagement, will also take a shape never seen before. Public input before the City makes any such determination is paramount.

I. INTRODUCTION

Athens has served the City for over a half-century. During that time, the company has employed dozens of residents, assisted hundreds of businesses and serviced thousands of customers. The owners of Athens even started their careers in the City, personally (and proudly) running truck routes decades ago. Athens' relationship with the City runs deep.

However, on March 21, 2024, City staff published a report recommending, among other things, an award for an exclusive residential franchise to Ware. The report leaves the impression that Ware can (and will) deliver everything required by the City. But the report never addresses the technical merits of the Ware residential application. And when the report's general conclusions are measured against the Ware application and the requirements of the City's planned franchise, it becomes clear that Ware cannot satisfy the franchise requirements or service customers at the levels to which residents are accustomed. Given this, and for the reasons addressed below, the City Council should reject any residential award to Ware.

- ***Failure to determine technical competency***

The City must consider criteria other than price before it determines its "lowest bidder," including specific consideration of "technical responsibility" and "demonstrated competence." Agencies must do more than simply verify that a solicitation provision has been addressed—they must analyze the solution proposed to ensure that the requirement can, in fact, be satisfied. That did not happen here, and as a result, there is no basis to render any award to Ware. The purpose of applicable law is to find the lowest technically competent bidder, *not* the company that simply submits the lowest bid, regardless of its ability to perform.

- ***Performance risks***

No one seems to have asked a basic question: Is Ware technically competent? Ware failed to include landfill disposal costs and annualize its tonnage estimates, among other flaws. There are also questions about Ware's ability to guarantee disposal capacity and meet diversion requirements (for example, unlike Athens, Ware relies on third parties for processing facilities). The company has only serviced one other residential franchise close to the City's size—and it is not even a municipality—making Ware the most inexperienced of all bidders that the City deemed "qualified." And Ware has never conducted an SB 1383 transition or led a change from mixed waste to source-separated collections systems. Likewise, there is no discussion of how Ware will be able to acquire

42,000 carts (14,000 each of black, blue and green) by the implementation date, acquire the near dozen hauling trucks required to service the City, or accommodate approximately 14,000 new daily customer lifts necessary for a source-separated program. Based on the record before the Council, Ware is ill-equipped to assume responsibility as the City's exclusive residential waste hauler.

- ***Failure to respond to RFA requirements relating to “technical ability”***

Ware's application offers no solace. The RFA asked bidders to describe their “technical ability to meet the requirements specified in the draft franchise agreement(s).” Ware failed to respond, choosing instead to provide its company background and a listing of franchises. None of those franchises include a residential franchise with a municipality and Ware never explains why the City should entrust its services to a company with no demonstrated municipal experience in the residential space. Ware also never discusses how its prior experience demonstrates technical ability in connection with the specific work at hand or its ability to comply with the City's franchise agreements, yet the City deemed Ware responsive—once again, overlooking issues of compliance and technical competency (or lack thereof). This compels the rejection of any Ware award.

- ***Failure to disclose noncompliance for Los Angeles franchise***

Ware failed to disclose liquidated damages for violation of the terms, conditions or requirements of its franchise in the City of Los Angeles. The City of Los Angeles issued Ware 21 liquidated damages assessments. While Ware disclosed \$465,000 in liquidated damages for diversion, and some assessments may arise from the inception of its Los Angeles franchise in 2017, overall noncompliance appears to have been underreported. The underreporting raises questions as to whether Ware is proceeding with full transparency and whether the City is proceeding based on an incomplete record.

- ***Lack of documentation and transparency***

The public deserves a fair and meaningful opportunity to understand and evaluate the proposed selection. However, the City has not released contemporaneous records relating to its evaluation of Ware. As a result, Athens filed a Public Records Act Request to facilitate that review. An agency must sufficiently document its selection decision to allow the public to determine whether the decision is reasonable. There is nothing the City can point to that would allow the public to understand whether any proposed award to Ware is reasonable.

II. RELEVANT FACTS

On October 18, 2023, the City Council approved a Request for Qualifications (“RFQ”), intended to identify companies capable of processing, recycling and disposing solid waste generated within the City. The RFQ explained that “[i]f the company desires to be considered for a residential franchise in Monterey Park, it must be currently providing services relatively similar to

those described [in the RFA] in at least three residential franchise areas in California.” *See* RFQ at Sec. 6. In turn, the City deemed Ware and Athens, among others, as qualified to respond to the RFA. However, Ware was the least experienced residential applicant. *See infra*.

On January 17, 2024, the City released the RFA. The RFA advised bidders that “franchises will be awarded to the applicants proposing the lowest monthly rates to the customer, which will be determined by calculating the lowest total first-year rate revenues.” With respect to residential franchise, the City also noted, “The City Council will determine whether it will select residential option 1 [for a three-cart, source-separated collection system] or option 2 [for a two-cart mixed waste collection system] after consideration of the proposals and will award to applicant(s) proposing the lowest total first year rate revenue for the City Council’s preferred option (Option 1 or Option 2).” The City has operated a mixed waste collection system for more than 20 years. *See* Staff Report at 5 (City Council Agenda Packet at 12).

While the RFA explains that awards will be based on the lowest rates, the City also addressed how the City would arrive at making such a determination. For example, in a response to questions asking, “How will the City evaluate the relative technical merits of each proposal if the City will only award to the lowest bidder? Will bidders be disqualified if the City does not deem technical proposals to be sufficient?” the City added in relevant part:

Per MPMC 6.09.070, ***applications will be evaluated*** based upon the proposed monthly rates for service pursuant to the franchise; ***compliance with bid specifications including, without limitation, financial and technical responsibility***; proposed diversion rate; proposed franchise fee; and any other reasonable and material criteria identified in the notice soliciting applications, the Monterey Park Municipal Code, or any other rule or regulation promulgated to implement this chapter.

See RFA, Addendum No. 1 at Q7, A8 (emphasis added).

On or around February 14, 2024, the City received proposals from Ware and Athens. At approximately 6:30 p.m. on March 21, 2024, the City published a staff report recommending “an exclusive franchise contract for a Three-Cart Residential Waste Collection and Recycling Services System to Ware Disposal, or an exclusive franchise contract for a Two-Cart Residential Collection and Recycling Services System to Athens Services.” The City’s report includes copies of the Ware and Athens proposals but does not include any records relating to the City’s contemporaneous evaluation of the relative technical merits of each proposal as required “[p]er MPMC 6.09.070.”

On March 22, 2024, Athens submitted a Public Records Act Request asking the City to provide, among other things, records relating to the City’s evaluation of bidder compliance with

performance of the services required. In order to implement this method of selection . . . local agency heads contracting for . . . environmental . . . services may adopt by ordinance, procedures that assure that these services are ***engaged on the basis of demonstrated competence*** and qualifications for the types of services to be performed and at fair and reasonable prices to the public agencies.

(Emphasis added.)

With all due respect, the City cannot, *in a vacuum*, recommend an award “based on the applicant proposing the lowest proposed monthly rates to customer.” Measure BB requires the City to evaluate “technical responsibility,” among other items. The Government Code also expressly states that “selection” must be made “on the basis of demonstrated competence.” In other words, the City must award to the *lowest bidder with demonstrated competence*.

Competency is crucial. The RFA covers a wide and complex set of services, requiring contractors to maintain and ensure compliance with various state and federal environmental laws, develop and maintain programs that keep the City in compliance with its City’s Source Reduction and Recycling Element (as well as SB 1383), maintain permits on behalf of the City, and develop and maintain the City’s outreach and procurement programs, among other projects that keep the City in compliance with applicable law. This is more than simply collecting, transporting and disposing solid waste. Solid waste management services, particularly with the advent of SB 1383, require a high degree of specialization.

It is revealing that the staff report does not provide details concerning the technical responsibility or competence of Ware—no discussion of non-price criteria, no application of those criteria to bidders, nothing. The City must critically assess whether Ware can, in fact, satisfy the RFA. Government agencies must perform due diligence to ensure that requirements can be met as proposed. *Boydston v. Napa Sanitation District*, 222 Cal. App. 3d, 1362, 1370 (1990). Courts will overturn contract awards lacking in evidentiary support. *See Eel River Disposal and Resource Recovery, Inc. v. Humboldt*, 221 Cal. App. 4th 209, 224 (2013). Procurement decisions explain:

Where an agency fails to document or retain evaluation materials, it bears the risk that there may not be adequate supporting rationale in the record for us to conclude that the agency had a reasonable basis for its evaluation conclusions.

See Trident Vantage Sys., LLC; B-415944.5 (citations omitted).²

² Federal procurement decisions are considered “strongly persuas[ive]” authority in California. *California Pacific Architects Collaborative v. State of California*, 100 Cal. App. 3d 110, 125 (1979).

An agency must sufficiently document its selection decision to allow the public to determine whether the decision is reasonable. But in this case, there is nothing the City can point to that would allow the public to understand whether a proposed award to Ware is even reasonable. A cursory review of the information at hand raises serious questions as to Ware’s technical competency:

1. Comparable experience (or lack thereof)

Ware was the least experienced residential applicant, with only one residential franchise—South Whittier—of similar size or larger than the City based on number of customers. *See* Table 1, *infra* (Residential Franchise Overview); *see also* City Staff Report dated January 14, 2024 (identifying “the largest residential franchise [in Los Angeles County] of similar size or larger than the City based on number of customers”). The City does not explain how South Whittier (or any Ware residential franchise) is comparable to Monterey Park. The South Whittier franchise is a county franchise, which is fundamentally different than a municipal franchise where community involvement, responsiveness to City officials, and customer outreach must be more direct. And even if South Whittier is comparable, that does not mean Ware is technically competent or responsible to service the City.

Any reasonable evaluation of technical competency should include an analysis of comparable experience, but there is no record of that analysis having occurred after the City received Ware’s application. This leaves the City at risk, not knowing whether Ware can handle the service demands of the City now or in the future.

Table 1
Residential Franchise Overview

No.	Proposer	Jurisdiction and weekly customers	No. of residential franchises similar to or larger than City (13,975 residential customers)
1.	<u>Athens</u>	<i>Norwalk - 18,000 - 22,000 customers</i> <i>Azusa - 8,800 customers</i> <i>Covina - 8,000 - 12,000 customers</i> Monrovia - 7,000 - 7,500 customers South El Monte - 2,800 - 3,200 customers Irwindale - 300 - 500 customers	<u>3</u>
2.	Burrtec	Santa Clarita - 52,140 customers Santa Clarita/L.A. County - 12,734 customers East Pasadena/L.A. County - 11,632 customers La Crescenta/L.A. County - 5,033 customers Duarte - 4,662 customers Bradbury - 327 customers	3

3.	CR&R	Orange - 27,033 customers Bellflower - 11,300 customers Artesia - 3,325 customers Santa Fe Springs - 952 customers	2
4.	Republic	Alhambra - 12,786 customers Rosemead - 10,905 customers Bell - 5,186 customers	2
5.	Valley Vista	El Monte - 15,500 customers L.A. County (Hacienda Heights) - 14,000 customers L.A. County (Valinda/Basset/San Jose Hills) - 13,250 customers Cypress - 12,883 customers Walnut - 8,677 customers La Puente - 6,500 customers Industry - 250 customers	4
6.	<u>Ware</u>	<i>L.A. County (South Whittier) - 13,650 customers</i> L.A. County (East Charter Oak) - 3,610 customers L.A. County (Lennox Garbage Disp. Dist.) - 2,213 customers	<u>1</u>
7.	Waste Management	Chino Hills - 21,586 customers Diamond Bar - 17,651 customers San Dimas - 12,030 customers Arcadia - 11,200 customers Malibu - 2,643 customers	4
8.	Waste Resources	Carson - 21,996 customers Gardena - 12,998 customers Lynwood - 9,546 customers Hawaiian Gardens - 1,892 customers	3

2. SB 1383 transition experience (or lack thereof)

The transition is quickly approaching, and the transition schedule is so ambitious that the City acknowledged companies declined to submit bids because “they needed additional time . . . for preparation and transition.” See Staff Report at 9 (Council Agenda Packet at 16). However, the Ware application does not identify any residential SB 1383 transition experience, much less experience with a transition from mixed waste to source-separated collection systems on an accelerated schedule. As far as the Ware application shows, Ware has not conducted a meaningful transition for over six years.

The record raises questions about whether Ware can perform as promised and, more fundamentally, whether Ware can even procure the carts and trucks necessary to service the City. By comparison, Athens has transitioned three large communities (Pomona, Riverside and Ventura County) in the past year alone, and Athens is prepared for a transition here. If a bidder does not have applicable transition experience, the lack of experience should at least be relevant to the technical competence of the bidder, but the City’s evaluation appears to have missed that entirely.

3. The Ware-proposed rates raise questions

There is a difference between unrealistic and realistic low rates, and this is precisely why demonstrated competence is relevant. Yet the City does not explain or analyze whether Ware is able to perform in accordance with the RFA requirements at the rates quoted to the City. As discussed below, Ware appears to have omitted landfill costs and failed to estimate on the basis of annualized tonnage (choosing instead to submit costs for operations through September). *See infra*. A new source-separated program will also result in an increase of approximately 14,000 lifts per week (i.e., service of an additional organic waste container for each customer). These changes have costs and, for a company with no comparable experience, raise performance risk issues.

4. Can Ware satisfy City diversion goals?

The RFA has diversion requirements. Contractors must develop programs that “ensure that the Citywide Diversion rate . . . remains at a minimum 50% . . .” and to “[d]ivert from landfilling . . . 65% of all Construction and Demolition Waste Franchisee Collects under this Agreement.” *See* Agreement at Sec. 8.01. It is not clear whether the City analyzed whether Ware can, in fact, satisfy diversion requirements. There is no record that the City visited Ware facilities, vetted Ware diversion practices or evaluated past performance (for example, Ware failed to meet diversion goals in the City of Los Angeles, *see infra*). Unlike Athens, who has its own network of recyclable materials and organic waste processing facilities, Ware relies on third party operators, so its performance depends on those operators. This also raises competency issues—as well as limits the ability of the City to hold Ware accountable since Ware is essentially a processing “middle man.”

In the normal course, questions about technical competency and responsibility are resolved well before contract award and properly documented to provide assurance to the public that a bidder can perform as required. However, we do not have a record before the public validating Ware’s capabilities. For this reason, Ware should not be awarded a residential franchise.

B. WARE CANNOT SATISFY THE MATERIAL REQUIREMENTS OF THE AGREEMENTS AND FAILED TO FILE A RESPONSIVE BID

California law prohibits the award of a contract to a nonresponsive proposer. *See Konica Business Machines U.S.A., Inc. v. Regents* (1988), 206 Cal. App. 3d 449, 455-57; *Ghilotti Constr. Co. v. City of Richmond* (1996), 45 Cal. App. 4th 897, 904 (“A basic rule of competitive bidding is that bids must conform to specifications, and that if a bid does not so conform, it may not be

accepted.”). *Id.* As discussed below, Ware failed to respond to RFA requirements and the City should reject the Ware application.

1. Ware is non-responsive because it failed to provide a description of its technical ability to meet franchise requirements

The RFA asked bidders to provide “[a] description (limited to two (2) pages) of the applicant’s technical ability to meet the requirements specified in the draft franchise agreement(s).” *See* RFA at Sec. 3.7 (revised). Clearly, an applicant’s description as to how it plans to meet franchise requirements is a necessary input to allow the City to render a selection on the basis of demonstrated competence and technical responsibility under the Government Code and Measure BB.

Ware’s application is woefully deficient. The application offers a boilerplate description of the company, states that Ware has “significant experience providing franchise service in several communities” and lists the communities where Ware provides service with a description of the “Franchise Arrangement.” *See* Ware Application at 9 (Council Agenda Packet at 104). The application makes no attempt to link Ware’s experience or its “arrangements” to the franchise agreements at hand. *Id.*

A review of the application makes it apparent why the application is so devoid of details. Ware identifies only one jurisdiction, the Lennox Garbage Disposal District, where it provides both residential and commercial services. *Id.* And, as noted above, only South Whittier has a residential customer base that approximates the size of Monterey Park. No attempt is made to explain whether the Lennox or South Whittier franchises have any relevance to the City or the requirements of the RFA. There is no discussion of diversion, education and outreach, compliance with law, food recovery, facility access and availability, experience with transitions, equipment requirements, and more. Ware simply fails to explain how it will comply with franchise requirements.

By comparison, Athens’ application provides direct links between material elements of the City’s franchise agreement and the company’s technical ability to comply. For example, Athens provides an overview of its approach to education and outreach, summarizing its “methodology” to “target specific demographics within the City, including residents of single-family homes, multifamily properties, and commercial businesses.” *See* Athens Application at 8 (Council Agenda Packet at 25). Athens also described the “elements” of its “SB 1383 Compliance” program, along with its edible food recovery program, and commitment to “landfill avoidance.” *Id.* Finally, Athens describes how it would approach a transition plan. *Id.* at 9.

The deviations from the RFA are material. If Athens had a similar opportunity to demonstrate its technical ability by merely providing a company description and franchise list, without any linkage to the franchise at issue, Athens could have—like Ware—simply rested on blanket certifications that it planned to comply. However, a blanket promise of compliance is not

sufficient to establish responsiveness of a bid that fails to demonstrate compliance apart from that promise. *See Dewberry Crawford Group; Partner 4 Recovery* (Jul. 2, 2018), B-415940.11 (“It is well[]settled that it is the offeror’s duty to include sufficiently detailed information to establish that its proposal meets the solicitation requirements, and that blanket statements of compliance are insufficient to fulfill this duty”). Accordingly, the Ware application does not withstand legal scrutiny.

2. Ware’s residential service proposal is nonresponsive

The RFA asked bidders to “complete and submit” a “Residential Cost Form Under Option 2: Three-Cart Collection System (Solid Waste Cart, Recyclables Cart, and Organics Cart).” *See* RFA at Sec. 3.2. The form included rows for various operational costs including “Landfill Disposal Costs,” adding that “actual disposal costs at landfill, excluding transfer, transport, and MRF costs [are] to be included on Row 3.” *See* RFA at Form 4-2. The form also asked bidders to estimate “Tons Collected” based on actual tons from January to October 2023, as presented in the RFA. *Id.* *See also* RFA at Table 4. Finally, the RFA states that failure to “complete” the form renders a bidder’s proposal “non-responsive.” *Id.*

a. Ware apparently failed to include landfill costs

Ware identified the Chiquita Canyon Landfill as one of two possible disposal facilities.³ However, the company failed to include any “actual disposal costs at landfill” as required by the RFA. *See* Table 2, *infra*. Landfilling refuse constitutes one of the largest cost components of any solid waste management franchise. Ware’s omission raises questions concerning its ability to dispose waste (including Ware’s access to and agreements with landfill facilities). The omission also raises questions concerning whether Ware correctly estimated rates in the first instance. It is simply not possible for any company to service the City without a landfilling option.

³ The City asked bidders to identify “Disposal Facil(ities)” planned for City solid waste. *See* RFA at Form 4-4. Ware identified the Chiquita Canyon Landfill as one of two disposal facilities, with the other facility being the Puente Hills MRF. *See* Staff Report at Ware Application, Form 4-4 (Council Agenda Packet at 115).

Table 2
Ware (Residential Costs)

CITY OF MONTEREY PARK
 PROJECTED RESIDENTIAL ANNUAL REVENUE REQUIREMENT
 BASED ON RATE YEAR 2024-25 PRICE LEVELS (1)
 Under Option 2: Three-Cart Collection System

Proposing Company: WARE DISPOSAL, INC.

Instructions: Fill in blue, bolded boxes.

Row	Residential Cart Service			Residential Bin Service			Abandoned Item Collection	Bulky Item Pickup, Holiday Trees, City-wide Cleanups, Other	TOTAL ANNUAL REVENUE REQMT	
	Solid Waste Cart	Recycling Cart	Organics Cart	Solid Waste Bin	Recycling Cart or Bin (if applicable)	Organics Bin or Cart				
1	Operations									
2	Truck Operating Costs (2)	\$ 774,899	\$ 437,601	\$ 437,601	\$ 519,386	\$ 259,693	\$ 259,693	\$ 304,457	\$ 311,257	\$ 3,304,587
3	Transfer Station, Transport, MRF costs, net of recycling revenues	\$ 487,453	\$ 273,063	\$ -	\$ 724,140	\$ 85,500	\$ -	\$ 10,120	\$ 115,000	\$ 1,695,276
4	Organics Processing/Composting Costs	\$ 125,000	\$ -	\$ 445,682	\$ -	\$ -	\$ 65,000	\$ -	\$ 1,250	\$ 636,932
5	Landfill Disposal Costs (3)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
6	Container Depreciation/Amortization Costs	\$ 146,517	\$ 146,517	\$ 146,517	\$ 51,428	\$ 35,000	\$ 17,500	\$ 5,000	\$ 10,000	\$ 558,479
7	Other Operating Costs: (please describe)									\$ -
8	Subtotal: Operations Costs	\$ 1,533,869	\$ 857,181	\$ 1,029,800	\$ 1,294,954	\$ 380,193	\$ 342,193	\$ 319,577	\$ 437,507	\$ 6,195,274
9	Other Costs									\$ 305,155
10	General and Administrative									\$ 565,000
11	Profit									\$ 30,000
12	Annualized Auditing Cost (4)									\$ 28,571
13	Contracting Cost Reimbursement (5)									\$ 6,559,000
14	Other: (please describe)									\$ -
15	TOTAL REVENUE REQUIREMENT									\$ 6,559,000
16	Tons Collected	7,205.00	4,250.00	5,416.00	8,046.00	950.00	520.00	88.00	1,000.00	27,475.00
17	Operations Cost Per Ton Collected	\$ 212.89	\$ 201.69	\$ 190.14	\$ 160.94	\$ 400.20	\$ 658.05	\$ 3,631.56	\$ 437.51	\$ 225,49
18	Revenue Requirement per Ton Collected									\$ 238.73
19	TOTAL REVENUE REQUIREMENT (from Row 15)									\$ 6,559,000
20	TOTAL RATE REVENUE (from Att. 3-1, Row 4)									\$ 6,559,000
21	DIFFERENCE (Should be \$0)									\$ -

(1) Rate revenue requirement does not include any administrative, or other, fee that the City may require identified in Section 17.02.B of the Draft Residential Agreement.
 (2) Includes Driver/Helper/Supervisor Wages and Benefits, Vehicle Depreciation and Maintenance, Vehicle Insurance, Fuel, Uniforms and Other Route Costs.
 (3) Includes actual disposal costs at landfill, excluding transfer, transport, and MRF costs to be included on Row 3.
 (4) Audit fee is \$70,000 per audit. Annualized auditing fee is \$30,000, assuming three (3) audits over the seven (7) year term of the agreement. ((\$70,000*3)/7= \$30,000).
 (5) \$200,000 amortized over the seven-year base term of the agreement.

Failure to complete and submit this form will deem the proposer's franchise proposal non-responsive.

b. Ware apparently failed to annualize tons collected

Ware estimated approximately 27,400 tons collected. See Table 2, supra. This estimate appears to be based on RFA disclosures of “Athens Tonnage by Material Jan.-Oct. 2023” of approximately 25,000 tons disposed during that period. Ware apparently failed to annualize tons collected (i.e., the period October through December 2023). See RFA at Table 4. Apparently, Ware failed to inspect the RFA closely enough. This alone, based on Ware’s proposed \$238.73/ton results in a million dollar miss. Hardly insubstantial. Athens took a different approach. It estimated approximately 31,500 tons collected and formed its cost estimates for processing and disposal based on those amounts. See Staff Report at Athens Application, Form 4-4 (Council Agenda Packet at 38). It is unacceptable for one bidder to plan for material tonnage for a partial year.

c. Materiality

The RFA made it clear that bidders needed to consider all significant costs. Any residential rates should be considered suspect in the absence of landfill costs and costs based on annualized tons collected. For its part, Athens considered landfill costs and annualized tons collected, with the understanding that all bidders would do the same, resulting in the fair comparison of cost proposals. If Athens could have avoided landfill costs, or submitted rates on a partial year basis, not only would its risks be different but also its rates would have been less.

3. Ware Failed to Disclose Performance Failures in Los Angeles

The RFA states, “Per Resolution No. 2022-R68, the City, at its sole discretion, may eliminate from consideration for the award of a franchise, any applicant who has been found to be non-compliant with the terms and conditions of a franchise executed with a city or county in Southern California within the previous five years.” *See* RFA at Sec. 9.

Relevant here, Ware failed to disclose liquidated damages for violation of the terms, conditions or requirements of its franchise with the City of Los Angeles. The Los Angeles Bureau of Sanitation reported that the City of Los Angeles issued 21 liquidated damages assessments against Ware. While Ware disclosed \$465,000 in liquidated damages for diversion, and some assessments may arise from the inception of its Los Angeles franchise in 2017, overall noncompliance may have been underreported. The underreporting is directly relevant to Ware’s trustworthiness and ability to perform.

C. THE PROCESS LACKS TRANSPARENCY

State law requires that information relevant to the selection of a contractor be made available prior to government approval and within a sufficient period to allow “all interested parties ample opportunity to scrutinize and protest the proposed award.” *Michaelis, Montanari & Johnson v. Superior Court*, 38 Cal. 4th 1065, 1073-74 (2006). This is so because “the public may have a legitimate and substantial interest in scrutinizing the process leading to the selection of the winning proposal.” *Id.* However, the government’s stonewalling of requests for information creates a disparity of information and is evidence of “favoritism most foul.” *Great West Contractors, Inc. v. Irvine Unified School Dist.*, 187 Cal. App. 4th 1427, 1429 (2010).⁴

Inadequate documentation in the record constitutes an independent basis for granting a protest because an evaluation must be reasonable and supported by the record. *See Carahsoft Tech. Corporation; Allied Tech. Group* (May 16, 2008) B-311241.2 (award overturned where “contemporaneous record fails to adequately document the basis for the agency’s decision”).

The City is rushing an award prior to the production of documents justifying its selection decision. The City provided a staff report without any contemporaneous source documents supporting the selection. Athens issued public records requests for necessary materials, but those records have not been produced, prejudicing the ability of the public to understand the City’s selection decision—and how it could have deemed Ware responsive and technically competent to perform the work specified in the RFA. This is inconsistent with proper procedure, and therefore,

⁴ The California Public Records Act (CPRA) is in accord, prohibiting the use or construction of any provision in the CPRA “to delay access for purposes of inspecting public records.” Govt. Code § 7922.500.

constitutes an additional ground to sustain this protest. *See Eel River*, 221 Cal. App. 4th at 224, *supra* (selection decisions will be overturned if “inconsistent with proper procedure”).

Prior to the RFA, the City similarly rushed the Council’s RFQ hearing, eliminating any meaningful opportunity for the public to inspect the City’s procurement process. In turn, the City approved several bidders, including Ware, that failed to disclose liquidated damages in the City of Los Angeles. *See supra*. The public also lost the opportunity to raise issues with Ware’s lack of comparable experience. *Id.* Avoiding another situation in which material omissions are overlooked is precisely why state law requires prompt production of records and a reasonable opportunity to review.

IV. CONCLUSION

Athens’ relationship with Monterey Park began in the late 1960’s when the then-existing low bid hauler that the City retained could not perform and abandoned the City. Trash was left scattered in the streets. The City called Athens to clean up the situation and take over service. Since that time, Athens has proudly served Monterey Park. It wants to continue that commitment to the City and insure that the City does not find itself in a similar situation where unchecked deference to the lowest bid results in a situation where the critical needs of public safety and service provided by reliable residential waste hauling are not met because the low bid hauler is not capable of performing.

In the end, the question before the Council is straightforward: is the City prepared to entrust its residential trash service to a hauler that does not have any other municipal residential waste hauling contracts?

The answer must be no. The Ware application fails to respond to RFA requirements relating to its technical ability, fails to include landfill costs or annualized tonnage for residential services, and fails to disclose its performance in other jurisdictions. Ware is not a responsible bidder. And regardless, the proposed residential award is inadequately documented. The award must be rejected. Athens’ protest should be sustained.

Sincerely,



Brandon D. Young

BDY

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