



TRASHTALK:

Rethinking the Waste Management RFP Process by the South Bayside Waste Management Authority

Issue

Did the South Bayside Waste Management Authority follow its stated goal to “conduct the RFP process with integrity and transparency” for the Collection Services Contractor and the Facility Operations Contractor?

Background

South Bayside Waste Management Authority’s Request For Proposal Goals

In July 2005, five years before the contract with Allied Waste (Allied) was due to expire, the South Bayside Waste Management Authority (SBWMA) initiated two Requests For Proposals (RFP). The RFP process involved a four-year period for planning, soliciting and evaluating proposals, and selecting and negotiating with the selected contractors, and a one and one half year implementation period leading to commencement of services on or before January 1, 2011.

The stated goals of the SBWMA during the RFP process were:

“Integrity, Competition in Selection Process, and Industry-Standard Contract Terms

- Conduct the RFP process with integrity and transparency
- Maintain the association of Member Agencies
- Select contractors that meet Member Agency and SBWMA needs
- Enter into contracts with fair terms and conditions
- Set high performance standards and use incentives/disincentives to achieve standards related to:
 - Collection quality
 - Customer service
 - Diversion from landfill disposal
 - Deliver high quality cost-effective services to customers
- Stimulate competition among proposing companies”

The South Bayside Waste Management Authority

The SBWMA was first formed in 1982 as the South Bayside Transfer Station (SBTSA) Joint Powers Authority (JPA). Its purpose was to consolidate local collection services and address the need for coordinated municipal efforts to manage solid waste disposal, ensuring that its 12 member agencies (Atherton, Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, Redwood City, San Carlos, San Mateo, West Bay Sanitation District, and unincorporated portions of San Mateo County) would collectively have lower collection and

solid waste management costs. The SBWMA has delivered the lowest garbage rates in the Bay Area. A key consideration for managing costs was the construction of the transfer station in San Carlos in 1984, which is the only such facility in central San Mateo County. Browning Ferris Industries (BFI) built and operated the facility from its inception until the SBTSA purchased the transfer station and adjacent Material Recycling Facility (MRF) from BFI in 1999.

Since the inception of the JPA, one company, Allied, previously known as BFI, operated both the collection services and the disposal services of solid waste. The current SBWMA contract with Allied is due to expire on January 1, 2011. In anticipation of the contract's expiration, the SBWMA decided to initiate an RFP process for collections services and facility operations for the next ten years to:

1. Introduce a single-stream recycling system to increase the use of recyclables and divert garbage from the landfills and
2. Execute the new Shoreway Master Plan Facility (Shoreway Facility), which includes a transfer station, MRF, and Environmental Educational Center; and

The SBWMA has stated that the Collection Services Contract will be one of the largest in the United States.

Selecting the Collection Services Contractor

1. The proposals for collection services were submitted to the SBWMA for review and recommendation. After the SBWMA recommendation was made, each member agency was to negotiate an individual contract with the recommended provider, depending on the agency's individual needs.
2. There would be a one-year truing up period, after which "the adjustment to costs is objectively based on CPI-type indices. The only other adjustment, besides the annual index based adjustments, to a proposer's cost is related to service level changes for the Collection Agreement. Since the RFP stated that certain assumptions must be used by all proposers, there are two cost adjustments, one for 2011 and another in 2013, for changes in service levels from the RFP data to actual data [e.g., the number of single family accounts, commercial bin lifts and drop box pulls, requiring the driver to get out of the truck]. The process to adjust for service level changes is also objectively prescribed in the Agreement. No adjustments to costs to reflect changes in service levels shall be made after the change made in 2013, when setting compensation for 2013 and beyond."
3. All proposers were required, when preparing their proposals, to use the same operational assumptions for key items such as residential cart sizes, use of new collection vehicles for core services, and use of new commercial collection containers. This requirement was for the purpose of obtaining comparable cost proposals from proposers. Member agencies retain the right to establish cart sizes for residents, use of used equipment, etc., as part of the final negotiated scope of services and costs with their selected contractor.
4. The proposers will be held to their bid assumptions during the contract. For example, if a company states that the price of gas is \$ 2.50 a gallon in its bid, and the price of gas goes up, the base contractual obligation will not change. Fluctuations are limited to some CPI-

type index. Presumably, the company will buy, or has bought, oil futures that secure the price.

5. For collective bargaining agreement (CBA) employees, labor and benefit costs would be adjusted to reflect the CBA pay and benefit rates for the Rate Year during the term of the CBA contracts in effect at the start of the Agreement. Both a worker-retention and prevailing-wage clause would be in the contract, but no labor-peace clause was included.
6. In order to submit a proposal, the competitors had to agree not to appeal the process.
7. Alternate proposals were allowed, but the SBWMA was not required to consider them.
8. The new contract was designed for ease of oversight.
9. In the current SBWMA contract, Allied collects the garbage and also operates the Shoreway Facility where the garbage is sorted and processed. In the new contract, the operation of the collection and processing will be split between two separate companies.
10. The collection company can increase its profit by lowering cost and meeting a specified diversion percentage. The facility operator can increase its profit by increasing revenues from recyclables and is dependent on the collector to bring recyclables to the facility in good condition.

The Evaluation Process For Selecting A Collection Services Contractor

On November 1, 2007, the SBWMA released the Collection Services Contract RFP to select the contractor to serve the SBWMA service area. By the March 11, 2008 deadline for submission of proposals, the SBWMA received four proposals from companies qualified to provide the collection services described in the RFP.

The four competitors for the Collection Services Contract were:

1. Allied Waste Services of San Mateo County (Allied)
2. Bayside Environmental Services & Transfer (BEST), a joint venture of Peninsula Sanitary Group, South San Francisco Scavenger Company, Green Waste Recovery and Zanker Road Resource Management
3. Norcal Waste Systems of San Mateo County (Norcal), an Employee Stock Ownership Plan (ESOP)
4. Republic Services of California, Inc. (Republic)

Evaluation and Selection Committees

The SBWMA divided the judging process for the Collections Services Contract into two committees: an Evaluation Committee and a Selection Committee. The Evaluation Committee analyzed and scored the proposals. The Selection Committee considered the recommendations of the Evaluation Committee and selected a Collection Services Contractor.

The Evaluation Committee was chaired by the SBWMA Executive Director and also included the SBWMA Recycling Programs Manager, the SBWMA Finance Manager, a representative from a nearby regional waste management district, and two consultants, who were partners in the same consulting firm.

The Selection Committee consisted of six SBWMA Board member representatives and included the SBWMA Board Chairman, who chaired the Selection Committee.

How the Proposal was Scored

The Evaluation Committee evaluated and numerically scored the companies' proposals. The ratings from the evaluators were compiled and discussed during several Evaluation Committee meetings to determine a preliminary ranking of the proposals based solely on the evaluation criteria.

Each evaluation criterion was divided into two parts: a "competitive" part and a "reasonableness" part. In determining the "reasonableness" points of a proposer's cost proposal, equipment selection, labor, and operating assumptions were to be "considered against industry standards" and against other proposals. The point allocation process was described by Grand Jury witnesses as "highly theoretical and subjective," with a potential for a limitless amount of "theoretical points" being combined with "actual competitiveness points" by the individual Evaluation Committee members, up to the maximum score in each Evaluation Criteria category. Neither the individual members of the Evaluation Committee nor the Selection Committee were required to report how many overall points assigned to each criterion were based on "reasonableness" or "competitiveness."

The Grand Jury received a paper titled "Solid Waste Management—A Guide for Competitive Contracting for Collection" written by a SBWMA consultant and was told that it was the guideline for the RFP.¹ Addressing "reasonableness," the paper states, "The municipality may choose to give each of the selection criteria equal consideration or to weight the factors in accordance with specific interests of the community. If the selection criteria are to be weighted, the municipality should precisely state the 'weighting formula.'" The criteria for judging contractors qualifications included:

- "Experience providing like services – The municipality may not wish to risk contracting with an inexperienced company. Most municipalities prefer to have contractors that have experience providing similar services and a good track record with favorable references.
- Legal encumbrances – Cities need to know with whom they are doing business. Are there financial or character issues regarding the company that has been determined in a court of law?
- Labor issues –This includes union and non-union lawsuits, for example. Does the company have a good relationship with its employees?"

Members of the Evaluation Committee independently analyzed and scored the proposals. The results were jointly discussed at four separate meetings with the Selection Committee. The Selection Committee unanimously approved the Evaluation Committee's recommendation to

¹ "Solid-Waste Management" – A Guide for Competitive Contracting for Collections –August 1996, p.7; Scarlett, Lynn; Sloan, J.M.

select Norcal. On August 28, 2008, Norcal was chosen by the SBWMA to be awarded the Collection Services Contract for the ten-year period from 2011 to 2021.

Each Evaluation Committee member individually reviewed and scored each evaluation criterion based on a maximum allowed score for each category. The total maximum score was 3,000 points. Table 1 shows the Evaluation Criteria, the maximum allowed scores for each criterion and the actual scores as totaled from individual evaluations.

Cost Evaluation

Cost for services was worth 33% of the total evaluation, more than any other criterion. The SBWMA and consultants entered the cost information provided by each of the four proposers into a Comprehensive Cost Proposal Summary. That summary was used to compare and evaluate their “competitiveness.” The final proposed costs for servicing the entire SBWMA jurisdiction are summarized in item four of Table 1.

Table 1: Proposer Evaluation Score² for Collections Services Contract

	EVALUATION CRITERIA	MAX EVALUATION	SCORE				
				ALLIED	BEST	NORCAL	REPUBLIC
1	RESPONSIVENESS TO RFP	PASS/FAIL	N/A	P	P	P	P
2	COMPANY'S QUALIFICATIONS AND EXPERIENCE	750	25%	551	665	647	661
3	PROPOSAL FOR COLLECTION SERVICES INCLUDES CORE AND OPTIONAL SERVICES	750	25%	453	638	653	51
4	COST PROPOSAL	1,000	33.30%	802	719	884	649
5	ENVIRONMENTAL ENHANCEMENTS AND OTHER CONSIDERATIONS	250	8.30%	40	190	225	40
6	NUMBER AND MATERIALTY OF EXCEPTIONS	250	8.30%	250	215	250	20
	TOTAL POINTS	3000	100%	2096	2427	2659	1421
	PERCENT OF TOTAL AWARDED			69.70%	80.90%	88.60%	62.60%
	RANKING			3	2	1	4

In Table 2, the following cost summaries were used to compare the four proposers’ costs to evaluate their “competitiveness.” SBWMA gave Allied fewer points based on the Evaluation Committee’s subjective “reasonableness” determination. The SBWMA was informed by Allied that its costs were lower because, as a large company, it had the potential advantage of hedging fuel costs. Also, due to Allied’s size, the company that supplies new bins had agreed to roll out the bins to residents free of charge. Additionally, personnel and equipment were already in place because they were the present operators.

² All the tables are from the SBWMA selection committee reports, although the tables are arranged differently in this report.

Table 2: Cost Summaries

ACTUAL COSTS	<u>Allied</u>	<u>BEST</u>	<u>Norcal</u>	<u>Republic</u>
TOTAL ANNUAL COST	\$44,949,227	\$52,165,632	\$46,239,552	\$63,811,856
TOTAL OPERATING COST	\$43,502,035	\$49,717,944	\$44,470,447	\$61,433,400
TOTAL CAPITAL AND STARTUP	\$53,052,230	\$78,910,864	\$58,518,543	\$63,782,666

Cost Proposal Appraisal by the SBWMA

On August 28, 2008, when Norcal was selected to be the Collection Services Contractor, the following explanation was presented:

“Norcal: Awarded the most points for its cost proposal due to the strength of its cost proposal in both competitiveness and reasonableness.

Allied: Awarded the second most points for its cost proposal primarily due to submitting the lowest cost proposal; however, the company lost considerable points based on reasonableness. The company’s proposal based many costs on its ability to get a rolling start as the incumbent service provider; thus, according to the SBWMA report, various costs were omitted from its proposal.

BEST: Awarded the third most points for its cost proposal, primarily due to the high overall cost proposed. BEST’s capital and start-up costs (i.e. \$78.9 million) were significantly higher than the other proposers: 49% above Allied, 35% above Norcal, and 24% above Republic.

Republic: Awarded the fewest points for its cost proposal because it had the highest overall annual cost, and many costs, according to the Evaluators, ‘simply weren’t competitive.’”³

Environmental Enhancements & Other Considerations

Table 1 above shows that the Environmental Enhancements accounted for 8.3% of the total score.

SBWMA concluded the following about each company in that category:

³ SBWMA Collection Services RFP, Selection Committee Report: Evaluation and Scoring of Proposals, August 21, 2008

“Norcal: [awarded 225 points]

The proposal included Environmental Enhancements such as: use of B40 fuel (i.e., 40% biodiesel), regular carbon footprint monitoring and reporting, use of hybrid trucks for route supervisors, and incorporating green building design practices and standards at its facilities.

BEST: [awarded 190 points]

The company is committed to using the highest percentage of biodiesel fuel available. The company will use hybrid vehicles for its route supervisors.

Allied: [awarded 40 points]

The Environmental Enhancements proposed include continuing the current practice of using B20 fuel (i.e., 20% biodiesel) in its collection fleet. In addition, the company provided an Alternative Proposal to operate CNG [Compressed Natural Gas] collection trucks for its collection fleet at an additional capital cost of approximately \$6 million.⁴

Republic: [awarded 40 points]

None specifically noted or called out in the proposal.”⁵

SBMWA’s Due Diligence Process

The Grand Jury asked the SBWMA Board members who were on the Selection Committee if they were aware of Norcal’s previous, well-publicized history in the City of San Jose (San Jose) and San Bernardino County. SBMWA reported that Norcal’s problematic history was discussed. However, many of the SBWMA Board members mentioned they had no knowledge of these discussions. During a Menlo Park City Council meeting, the SBWMA consultant, who was tasked to verify the competitors’ references, publicly testified that he phoned San Jose to confirm Norcal’s recommendations, but he never followed-up. During interviews, the Grand Jury learned that the SBWMA consultant worked in a consulting firm that helped create the RFP for waste management collection services in 2000 for San Jose and their subsequent RFPs after Norcal’s problems were revealed. This consultant and his partner were on the SBWMA Evaluation Committee.

The 2004-2005 Santa Clara County Civil Grand Jury Report stated, “That the [San Jose] Mayor’s June 26, 2000 recommendation of Norcal to the Council describes Norcal’s history and serious legal problems. The history also discusses San Bernardino County’s lawsuit against Norcal alleging bribery, fraud, and unjust enrichment. An 18-month jail sentence for a Norcal employee, who admitted taking bribes and a \$6.5 million settlement payment by Norcal to San Bernardino County were also discussed.” The 2008-2009 San Mateo County Civil Grand Jury could not determine if the Selection Committee were aware of these issues or explored them or other issues in any depth. Further, there is no evidence that the SBWMA did a diligent search of the other proposers that might have influenced the selection.

⁴ No mention was made of an opt-in proprietary program called Recyclebank, implemented successfully in Delaware and Philadelphia and awarded by the United Nations, that would supply Recyclebank’s dollars to incent household recycling; <http://www.huliq.com/1/80048?un-program-spotlights-recycle-bank>

⁵ SBWMA Collection Services RFP, Selection Committee Report: Evaluation and Scoring of Proposals, August 21, 2008

Selecting the Shoreway Facility Operations Contractor

On November 1, 2007, SBWMA released an RFP for operation of the Shoreway Facility. By the March 4, 2008 deadline, SBWMA received seven proposals.

The seven competitors for the Shoreway Facility Operations contractor were:

1. Allied Waste Systems of San Mateo County (Allied)
2. Bayside Environmental Services & Transfer (BEST), a joint venture of Peninsula Sanitary Group, South San Francisco Scavenger Company, Green Waste Recovery and Zanker Road Resource Management
3. Greenstar, LLC (Greenstar)
4. Hudson Baylor Corp (HBC) with Waste Solutions Group (WSG)
5. Norcal Waste Systems of San Mateo County (Norcal)
6. Republic Services, Inc. (Republic)
7. South Bay Recycling, LLC (SBR), a joint venture of Community Recycling & Resource Recovery and Potential Industries

The Evaluation Process for Selecting the Shoreway Facilities Operations Contractor

The SBWMA divided the judging process for the Shoreway Facility Operations Contract into two committees: an Evaluation Committee and a Selection Committee. The Evaluation Committee analyzed and scored the proposals. The Selection Committee considered the recommendations of the Evaluation Committee and selected a Shoreway Facility Operations Contractor.

On April 23, 2009, SBWMA selected SBR as the Shoreway Facilities operator.

Evaluation Committee and Selection Committee

The SBWMA divided the judging process for the Shoreway Facility Operations Contract into two committees: an Evaluation Committee and a Selection Committee. The Evaluation Committee analyzed and scored the proposals. The Selection Committee considered the recommendations of the Evaluation Committee and selected a Shoreway Facility Operations Contractor.

Members of the Evaluation Committee independently analyzed and scored the proposals. The results were jointly discussed at three separate meetings with the Selection Committee. The Selection Committee unanimously approved the Evaluation Committee's recommendation to short list SBR and HBC/WSG.

On April 23, 2009, SBWMA selected SBR as the Shoreway Facility operator.

How the Proposal was Scored

The Evaluation Committee members numerically scored proposing companies using the evaluation criteria and the weighting described in the RFP. The Evaluation Committee envisioned a short-list being developed prior to technical interviews. All seven proposers participated in the technical interview and presentation process.

Each Evaluation Committee member individually reviewed and scored each evaluation criterion based on a maximum allowed score for each category. The total maximum score was 500 points. Table 3 shows the Evaluation Criteria, the maximum allowed scores for each criterion, and the actual scores as totaled from individual evaluations. The Table also illustrates the SBWMA's point evaluation score of each firm's qualifications, technical proposal, cost proposal, and other considerations.

The results were jointly discussed at three separate meetings with the Selection Committee. At the last meeting on June 25, 2008, the Selection Committee unanimously approved the Evaluation Committee's recommendation to short list SBR and HBC/WSG.

Table 3: Proposer Evaluation Score for the Facility Operations Contract

	CRITERIA	MAX SCORE	<u>Allied</u>	<u>BEST</u>	<u>Greenstar</u>	<u>HBC</u>	<u>Norcal</u>	<u>Republic</u>	<u>SBR</u>
1	Responsiveness to RFP	Pass/Fail	P	P	P	P	P	P	P
2	Company's Qualifications & Experience	100	81.5	88	73.5	85.8	84.5	74.5	84
3	Cost Proposal	100	81.8	70.4	64.9	79.1	72	62	86
4	SRDC Operations Proposal MRF Design, & Installation	100	67.8	80	64.5	87.3	75.5	63.8	86
5	Start-up Proposal	75	58.5	65.3	63	68.6	61.9	65.3	59.6
6	Materials Marketing Plan	75	62.5	60.8	42.8	66	60.8	55.9	74.3
7	Environ. Enhancements	25	15	15	15	10	22.5	10	18.8
8	Number & Materiality of Exceptions	25	25	25	0	25	25	0	22.5
	TOTAL SCORE	500	392	405	324	422	402	332	431
	<u>RANKING</u>		<u>5</u>	<u>3</u>	<u>7</u>	<u>2</u>	<u>4</u>	<u>6</u>	<u>1</u>

The scores assigned to each of the proposal's criteria reflect the extent to which the proposer fulfills the requirements of the evaluation criteria and meets the needs of the SBWMA relative to the other competitors. Each evaluator reviewed each of the proposals and cost information using a set of established criteria.

SBWMA's Recommendation for Shoreway Facility Operator

Based on a review of the seven proposals submitted, technical interviews, site visits, follow-up questions and answers, and reference checks and litigation review, the Selection Committee, which was chaired by the SBWMA's Executive Director, initially recommended that SBR and HBC be short listed for negotiations to determine the selected facility operations contractor.

The Selection Committee announced that SBR, a joint venture of Community Recycling & Resource Recovery and Potential Industries and HBC (with Waste Solutions Group) stood clearly apart from the other five proposers for the following reasons (as quoted from the SBWMA Selection Committee report of July 17, 2008):

- “The entirety of their responses (original proposals, written answer to technical questions, and technical interview performance) was the most thorough and complete.
- These companies offer a combination of experience, technical capability, and pricing that set them apart from the rest of the field. These two firms had the two lowest overall cost proposals.
- These two firms are the two most qualified single stream MRF operators and offer the best commodity marketing capabilities. This is critical given the growing importance of commodity revenues to fund SBWMA operations.
- Each of the two firms stand out financially with HBC offering the highest commodity revenue guarantee at \$10.1 million and SBR offering the lowest overall cost proposal.
- Each firm has a strong plan for increasing diversion at the transfer station and unique attributes to their proposed transfer station operations. HBC put together the most innovative base proposal for transfer station diversion, while SBR offers the highest payloads and lowest cost transfer operation.”

Operating Costs

The scores for the operating cost proposals were considered 20% of the total possible points. SBR’s original operating cost proposal was \$4.2 million less per year than the next lowest proposal.

Table 4: Annual Operating Costs Including Interest (as of July 24, 2008)

	Proposed Annual Cost to SBWMA
Allied	\$15,870,629
BEST	\$17,703,982
Greenstar	\$16,599,003
HBC	\$15,216,385
Norcal	\$17,549,549
Republic	\$19,775,788
SBR	\$11,648,528

Cost Evaluation Explanations

SBWMA stated:

- “1. South Bay was ranked highest by virtue of the lowest overall cost proposal at \$11.6 million. South Bay’s scoring was reduced somewhat on ‘reasonableness’ due to the Evaluation Committee’s concerns regarding their extremely low transportation costs and management/administration staffing levels.
2. Allied was ranked second due to its low overall cost, third lowest overall at \$ 15.9 million, and lowest total capital cost for the MRF equipment and installation at \$15.2 million.
3. Hudson Baylor was ranked third due to its low overall cost, second lowest overall at \$15.2 million, and the highest commodity revenue guarantee at \$10.1 million. Their scoring was reduced somewhat on “reasonableness” due to proposing the highest capital cost for MRF equipment and installation at \$19.8 million.
4. & 5. Norcal and BEST were ranked fourth and fifth, respectively, due to their high overall costs. Both had the highest costs for the transfer station operations, and Norcal had the second highest MRF costs. These firms’ overall costs are \$6 million and \$6.1 million, respectively, higher than SBR.
6. Greenstar had the fourth lowest overall cost at \$16.6 million but was scored even lower due to the ‘reasonableness’ evaluation of their transfer station and transport costs.
7. Republic was ranked lowest on cost because, by far, they had the highest overall cost at \$19.8 million. Their proposed costs simply weren’t competitive, and in several cases, for MRF costs and transport costs, their costs were considered unreasonable.”⁶

Table 5: Recycling Revenue Guarantee

	COMMODITIES GUARANTEE	REVENUE SHARE
Allied	\$6,750,000	80/20
BEST	\$8,500,000	75/25
Greenstar	\$6,750,000	75/25
HBC	\$10,100,000	75/25
Norcal	\$8,000,000	75/25
Republic	\$6,750,000	75/25
SBR	\$7,250,000	75/25

⁶ SBWMA Facility Operations RFP, Selection Committee Report: Evaluation and Scoring of Proposals, July 17, 2008

Commodities Guarantee

Commodity sales, along with tipping fees, are SBWMA's main sources of revenue. Tipping fees are the charges levied upon a ton of waste, which is delivered to various landfills, depending on the waste category. The guarantees, offered by proposers that they will deliver a set commodity amount, is as crucial as operating costs to the SBWMA. Commodities are recyclables. They consist of aluminum cans that can be turned into the state for CRV funds, glass sold to bottlers, paper and cardboard sold to overseas mills. Commodity prices have been historically high in the last few years, but market prices fell dramatically in October 2008, making commodity guarantees questionable.

SBWMA's Due Diligence Process

The Grand Jury learned that SBR planned to run the Shoreway Facility as a "satellite" operation from its headquarters in Los Angeles. At what point the SBWMA discovered this fact is not clear to the Grand Jury. SBR expects to receive additional funds annually from SBWMA because of its "miscalculations and omissions." The Grand Jury has learned, subsequent to SBR's selection as Shoreway Operations Contractor, that it renegotiated, on May 19, 2009, to decrease its recycling revenue guarantee to \$6.75 million. However, SBWMA is still in deliberations with SBR and has not established a final amount to operate the Shoreway Facility.

On March 29, 2009, HBC wrote a letter to the SBWMA contesting its basis for the selection of SBR. (see Attachment 1)

Additionally, the Grand Jury learned from different sources that there is concern about ongoing problems with Community Recycling, one of the two SBR partners. The Local Enforcement Agency for Los Angeles has issued forty-two outstanding Notices of Violations to Community Recycling Sun Valley Recycling and Transfer operations. Twenty-six of the violations concern permitting. Community Recycling is operating without the correct permit. The other sixteen violations are for vector, bird and animal control; training; hazardous, liquid, or special waste containment; scavenging; traffic control; cleaning; reporting; and load checking. In addition, on February 26, 2009, during a SBWMA Board meeting, a member of the Teamsters Union distributed a letter from Teamster's Local 396 of Southern California. The letter stated the union had "major labor problems" and "horrible working conditions" with Community Recycling. SBR claims it has good union relationships.

SBWMA's Management Conduct

Allied was one of the proposers that submitted for the contract to haul garbage and run the Shoreway Facility. The decision to recommend either HBC or SBR to operate the Shoreway Facility in August 2008 meant that Allied's bid to operate the Shoreway Facility was rejected. Shortly after its bid was rejected, Allied submitted an alternative proposal to the SBWMA that addressed the ever-increasing cost proposed by the SBWMA to build the new Shoreway Facility. The request to consider this alternate proposal for building the MRF was denied by the SBWMA, due to what the SBWMA had described as "non-compliance with the RFP requirements." The denial prompted Allied to contact the press and city council members for a hearing.

In response to letters and articles questioning the RFP process, the SBWMA Executive Director solicited letters attesting to the transparency and integrity of the RFP process from proposers actively competing for an SBWMA contract. The email request, dated August 23, 2008, is quote below:

“Subject: Special request

Hello. Im sure you all saw the articles friday in three different papers re: Allied’s desperate plea for consideration of their alternative proposal. Allied’s intentions are quite clear: they want the results of both procurements thrown out and for cities to negotiate a package deal to keep them as the hauler and shoreway opearator.

Given the above, i have a special and awkward request to make: can...write a letter stating that, while you are certainly disappointed with the results and you not being selected, you feel the rfp processes were conducted professionally, thoroughly, and with the highest level of transparency and integrity. Can you write this letter? If so, can you email a signed copy to me by monday morning? My intent would be to attach this to my response. Im making a similar request of [other proposers].

If one of you can call me on my cell this weekend to confirm if you can meet this special request. My cell no is..... Thanks for the consideration.”

With this email, the copy of a newspaper article about Allied (see Attachment 2) was also sent to the proposers. The newspaper article contained controversial information about Allied, as admitted to by staff in a SBWMA meeting on August 28, 2008. Allied’s lawyer attempted to elicit an apology from the executive at a SBWMA Board meeting, but the apology was denied on the grounds that it was not legally necessary. (see Attachment 3)

One proposer refused to comply with the Executive Director’s request to validate the fairness of the RFP process. Instead, he sent a copy of the Executive Director’s email to a member of the San Mateo County Board of Supervisors, who in turn publicized it to the press and to the elected officials of the member agencies. The Executive Director learned of this, and on August 28, in the San Mateo Library, during a SBWMA Board meeting break, confronted said proposer with vulgar language.

As a result of the events, the following actions were taken by the SBWMA Board of Directors to curtail the Executive Director’s power as quoted in a letter from the Chairman of the SBWMA Board to a San Mateo County Supervisor dated September 4, 2008. An excerpt of the letter follows:

1. “The Executive Director will no longer participate as a member of the Facility Operations Contractor Selection Committee;
2. The Executive Committee (Chair or Vice Chair of SBWMA Board) will review and approve direct correspondence with proposers or the member agencies regarding the selection process;
3. The Executive Committee’s role in contract negotiations with the shortlisted Facility Operations firms will be increased to provide direct oversight of the process;”

SBWMA Hires External Consultant

The consultant's analysis was based primarily on interviews with the committee members, not on written documents. He found that the RFP evaluators submitted combined scores, which did not distinguish the point allocation between what were "competitiveness" points and what were "reasonableness" points in the RFP scoring process.

Governance Structure of the SBWMA

The Joint Powers Agreement (JPA) for the SBWMA defines the governance structure of the organization. Section 8.1 of the current SBWMA JPA states:

"The SBWMA shall be governed and administered by a Board of Directors composed of one Director from each Member. The Board shall exercise all powers and authority on behalf of the SBWMA. Each member must select its Director or the Director's designee alternate from among the following positions:

- a. County, District, City or Town Manager or the equivalent position.
- b. County, District, City or Town Assistant Manager or the equivalent position.
- c. Finance Director or Assistant Finance Director or the equivalent position.
- d. Public Works Director or Assistant Public Works Director or Environmental Programs Manager or equivalent position."

Since its inception, the SBWMA Governing Board has been comprised of "agency staff members." The original and subsequent versions of the JPA provided that each member shall designate one Director from among the positions or their designate: City/County Manager, City/County Assistant Manager, Finance Director, Director of Public Works. There is no provision in the current JPA that authorizes an elected official to serve as a member of the SBWMA Governing Board.

When a restated JPA was presented to the Board of Supervisors in late 2005, it deferred approval of the new JPA until it could learn the answers to questions that had been raised by other members. One concern was the City Council of Belmont's suggestion that the membership of the SBWMA Governing Board should permit elected officials to serve on the Governing Board. SBWMA responded that the JPA governance benefited from the technical expertise of staff and that although the SBWMA Board had considered the possibility of adding elected members to its Governing Board, it had decided to "leave the SBWMA board membership the way it has been since the organization's inception."

Section 17.1 of the restated JPA provides that "subject to all legal obligations of the SBWMA, this Agreement may be amended by one or more supplemental agreements executed by a vote of two thirds (2/3) of all Equity and Non-Equity members of the SBWMA." Such an amendment would be required to allow elected officials to serve on the SBWMA Board.

When the Grand Jury questioned board members as to why elected officials were excluded from the SBWMA Board, the Grand Jury learned that board members had asked some council members about serving and the council members showed no interest. A SBWMA Board member mentioned that (s)he acts as a buffer between the council members and the public. However, city council members from different member agencies within the SBWMA jurisdiction contacted the Grand Jury during the course of this investigation and informed the Grand Jury that it was their goal to get elected officials onto the SBWMA Board. These council members testified that they would be actively pursuing such a goal and have wanted to be on the SBWMA Board for a number of years. When a member agency's staff attends a SBWMA Board meeting, there is a cost and a loss of work hours incurred by member cities.

Investigation

The 2008-2009 San Mateo County Civil Grand Jury interviewed South Bayside Waste Management Authority (SBWMA) Board members, staff members, Requests For Proposal competitors, city council members, consultants, and attorneys. The Grand Jurors read numerous SBWMA reports, SBWMA meeting minutes, newspaper articles, in addition to visiting websites. Jurors attended SBWMA meetings, member agency meetings and watched tapes of SBWMA and city council meetings.

Findings

The 2008-2009 San Mateo County Civil Grand Jury found that:

1. In the proposal process, the requirement that all proposers use the same operational assumptions to obtain comparable costs was useful to evaluators but does not apply to the actual costs and contracts that the individual member agencies can negotiate.
2. The process allowed for alternative proposals, yet they were not required to be considered.
3. As a condition of participation, proposers had to agree not to appeal decisions.
4. In the evaluation process, the "reasonableness" points were not distinguished from the "competitiveness" points.
5. Neither the individual members of the Evaluation Committee nor the individual members of the Selection Committee were required to report how many of the overall points assigned to each criterion were based on "reasonableness" or "competitiveness."
6. The South Bayside Waste Management Authority's (SBWMA) consultant reported that Norcal's references in San Jose were not checked.
7. South Bay Recycling (SBR) was the only proposer that did not provide for on-site management in its original cost proposal.
8. SBR has asked the SBWMA to cover \$1.2 million for mistakes and omissions in its original proposal.

9. It appears that SBWMA did not give sufficient consideration to SBR's notices of violation in the operation of its Southern California operations.
10. The Grand Jury could not confirm that the proposals were adequately evaluated or reflected a thorough analysis of the proposal content and contractor background.
11. SBWMA Executive Director chaired three of the four Evaluation and Selection Committees until removed from the Shoreway Facility Contract Selection Committee by the Chairman of the SBWMA Board.
12. The SBWMA Executive Director solicited emails from active proposers, asking them to attest to the integrity of the RFP process.
13. No elected officials are on SBWMA's Board of Directors.

Conclusions

The 2008-2009 San Mateo County Civil Grand Jury concludes that the SBWMA did not follow its stated goal to "conduct the RFP process with integrity and transparency." The Grand Jury has no opinion on which contractors should have been selected. However, the Grand Jury has no confidence in the RFP processes by which the Collections Services Contractor and the Shoreway Master Plan Facility Contractor were selected.

The Grand Jury further concludes that:

1. The structure of the Evaluation and Selection Committees lent itself to the appearance of undue influence.
2. Whether or not elected officials from the member agencies are on the SBWMA Board of Directors, these elected officials are ultimately responsible for all actions taken by the SBWMA.
3. After four years of preparation, staff time, and consultant fees, the RFP process was poorly executed.

Recommendations

The 2008-2009 San Mateo County Civil Grand Jury recommends that the South Bayside Waste Management Authority (SBWMA) and its Board and designated elected officials of the 12-member agencies [Atherton, Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, Redwood City, San Carlos, San Mateo, West Bay Sanitation District, and the San Mateo County Board of Supervisors (on behalf of the unincorporated portions of San Mateo County)]:

1. Meet and reconsider pending contracts with Norcal and South Bay Recycling in light of the information contained in this Grand Jury report.
2. In future Request For Proposal processes:
 - a. Clearly define and objectively and consistently apply the evaluation criteria,
 - b. Provide for an appeals process before the final contracts are signed,
 - c. Assure the proposers that alternative proposals will be considered,
 - d. Ensure that representatives from other jurisdictions are participants on the committees, and
 - e. Ensure that no one individual chair both committees.
3. Amend the Joint Powers Authority Agreement to include elected officials from member agencies onto the SBWMA Board of Directors.

Attachment 1

March 23, 2009

Hilary Gans
South Bayside Waste Management Authority
610 Elm St. Suite 202
San Carlos, CA 94070

RE: Evaluation and Selection Committee Reports

Dear Hilary:

Hudson Baylor strongly disagrees with the Staff recommendation in the recently issued Evaluation and Selection Committee reports, and with the basis for the recommendation. We believe that the facts, as laid out in your report, and as further elaborated below, should lead to your choice of Hudson Baylor to operate the Shoreway Environmental Center. As stated in your report, the decision is based solely on your calculation of the cost differences between our proposal and SBR's. We want to provide you and the local elected officials with a more accurate and factual analysis with updated information.

To summarize, we are confident that our commodity sales structure will generate a minimum of **\$700,000 in incremental revenue** to the Authority; that our transfer station diversion plan will generate at least **\$200,000 in cost avoidance**, and that a fair presentation of our labor position results in at least **\$800,000 of cost equalization**. In total, the swing in benefits to the SBWMA and its member cities is **at least \$1.7 million in HBC's favor**.

Commodity sales can be a complicated issue, but the numbers under this contract are straightforward. SBR clearly provided a formula to you within the last several weeks, tying their prices to OBM LA Export prices (an indicator that has only included ONP Export since January 2009). We provided a comparable formula tied to OBM SF High prices in our original bid. Our formula is OBM SF High +\$10. Analyzing the worksheet titled "Exhibit B" in the report package results in SBR's formula being approximately OBM LA Export Average -\$18.50 (its formula appears to have several moving components, but the example shown calculates to \$18.50 below).

The table shown in *Exhibit 1* in the appendix to this letter outlines the result of the two formulas applied to the February 7 OBM data used in SBR's example (leaving aside any floor price issues for the moment). HBC's formula actually results in *higher* revenue for the same tons. Applying this formula to the first quarter of 2009 (the only time that it is possible to apply SBR's formula) results in HBC generating an incremental \$57,000 in sales revenue in the quarter, or approximately \$225,000 annualized. Assuming that we are over the revenue guarantee, this would generate an incremental \$170,000 to SBWMA.

Moreover, we learned that SBR now has a floor pricing arrangement to cover half the fiber volume at the MRF. HBC, as you know, has an agreement with ACN that provides floor pricing for *all* fiber tons (as well as for plastics). Up to this point, we and ACN have not divulged the prices for proprietary and competitive reasons. However, with the recommendation report out, ACN has now agreed to let us disclose that our floor prices for fiber (ONP and OCC) are 00per ton. We are providing these floor prices at this time so we can further explain our position to SBWMA decision makers with regard to material sales revenue. We do request that these floor prices are kept confidential.

As our floor prices are currently higher than the formula or market, we would be selling at our floor price today when markets are down. The table in *Exhibit 2* of the appendix to this letter shows our floor price revenue, compared with SBR's floor price revenue (same tons as in prior table). We note that for SBR, we used their floor prices for half the volume (since that is their guarantee), and their formula for the remainder of the volume. This results in \$78,442 higher revenues per month with the HBC floors, which annualizes to \$941,302 in higher sales. Assuming that we are over any guarantee levels, this would result in approximately **\$706,000 in incremental revenue to SBWMA.**

We have consistently explained to you that we felt that the Authority's analysis was lacking in understanding our ability to market material, and these figures demonstrate that either using our floor prices, or using our representative formulas, **HBC will generate higher revenues for SBWMA.**

Finally, we appreciate the kind words in the Staff report with regard to the "well thought out and innovative approach" to HBC and WSG's transfer station diversion program. The original evaluation report said that WSG offered an "excellent transfer station operation plan to maximize diversion and improve operational efficiencies". We believe that this transfer station incentive program will conservatively return **up to \$200,000 or more** in incremental revenue to the Authority. An example of this calculation is included in *Exhibit 3* in the appendix to this letter.

Adding these up, it appears that there is in fact a cost advantage for HBC over SBR. We find it unfortunate that the reports issued by the Authority reflect the opposite conclusion.

We trust that the SBWMA and its member cities will accept the above facts in the constructive spirit in which they are being offered. We want to make sure that elected and appointed representatives of the SBWMA member cities and County ultimately make a fair and informed decision for their ratepayers. We continue to look forward to work with you for the very best operation of the Shoreway facility.

Sincerely,

Scott Tenney
President
Hudson Baylor Corporation

Attachment 2

Yard waste wasted

Comments 

Aug 4, 2008 6:00 AM (327 days ago) by [Mike Rosenberg](#), The Examiner

 [SEE HOW THIS STORY DEVELOPED](#)

[EMAIL STORY](#)

[PRINT STORY](#)

» 327 days ago: Yard waste wasted «

Related Topics: [San Mateo County](#)



(Juan Carlos Pometta Betancourt/Special to The Examiner)

Down in the dumps: The South Bayside Waste Management Authority is asking Allied Waste to pay back residents for composting services it allegedly did not provide.

[San Mateo County](#) ([Map](#), [News](#)) -

The money and work of environmentally minded Peninsula residents have been partially wasted after [Allied Waste](#) garbage trucks were found to have dumped tons of recyclable material into a landfill, authorities said recently.

Allied Waste, which provides garbage services from [Burlingame](#) to the southern [San Mateo County](#) border, has dumped up to 64,722 tons of plant materials into the Ox Mountain landfill near [Half Moon Bay](#) during the last four years, according to the [South Bayside Waste Management Authority](#).

Allied is contractually obligated to send the yard trimmings to its Newby Island compost site in [Milpitas](#) so the material can be recycled and used in local gardens and agriculture.

Now the South Bayside Waste Management Authority, which oversees Allied in San Mateo County, has demanded the garbage company pay back its residents between \$560,000 and \$1.8 million for the composting services. Allied Waste charges residents a fee for composting plants from yard trimmings. The exact fine would depend on the precise number of tons Allied did not divert to composting.

SBWMA board member [Diane Dryer](#) said neglecting to compost yard trimmings increases local greenhouse gas emissions.

“It would probably be a good idea to think about banning plant materials altogether from landfills due to the global warming problems,” Dryer said.

If Allied refuses to pay, the SBWMA said it would seek legal action based on the contract violation.

“This material was set out for recycling and it was put in a landfill. It’s a breach of public trust,” said [Hilary Gans](#), SBWMA’s facility operations contract manager.

To conduct the investigation, the SBWMA in April hired [Walnut Creek](#)-based consulting agency HF&H, which presented a nine-page report on the accusations to the group’s board of directors recently.

[Evan Boyd](#), Allied Waste’s general manager for the county, admitted some of the plant material did end up in the landfill but argued the SBWMA’s numbers may be inflated a little bit.

Boyd acknowledged his company dumped 14,159 tons of plants into a landfill in 2005 and 2006. He said his company faced an unusual situation those years, due to the relocation and shrinking

of their compost pad. Allied contacted the SBWMA board about the infractions but the two could not reach a solution, he said.

“We’ve got to sit down and figure out if there’s going to be a compromise made,” Boyd said.

Despite the controversy, Boyd said the two groups still have a decent working relationship. The dispute between Allied and SBWMA comes as the two prepare to part ways on the local recycling center, a \$15 million contract.

Allied, which has operated the county’s Shoreway Recycling and [Disposal Center in San Carlos](#), will be let go by the SBWMA when its contract expires at the end of 2010.

mrosenberg@sfexaminer.com

Uncovering the compost

The South Bayside Waste Management Authority has demanded that Allied Waste pay back residents for composting service payments after Allied was found to have dumped recyclable material into landfills.

64,722 Plant tons dumped into landfill that should have been composted

14,159 Plant tons Allied admitted it dumped into landfill

4 Years Allied dumped plants into landfill

2 Years Allied admitted it dumped plants into landfill

\$560,000 to \$1.8 million Fine levied on Allied Waste

12 County cities or agencies that supplied the plant material

Source: South Bayside Waste Management Authority, Allied Waste

Attachment 3

ROBERT J. LANZONE
JEAN B. SAVAREE
MARC L. ZAFFERANO
GREGORY J. RUBENS
LINDA J. NOESKE*
*Certified Specialist, Family Law
The State Bar of California
Board of Legal Specialization

KATHLEEN A. KANE
KATE D. KOSTRZEWA

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MICHAEL AARONSON
(1910-1998)
KENNETH M. DICKERSON
(1926-2008)
MELVIN E. COHN
(Superior Court Judge/Retired)
OF COUNSEL

September 2, 2008.

Jeff Andrews
c/o Allied Waste
6800 Koll Center Parkway, Suite 320
Pleasanton, CA 94566

Re: HFH Consultants Composting Compliance Review

Dear Mr. Andrews:

We represent the South Bayside Waste Management Authority (SBWMA) and have been asked to respond to your letter of August 27, 2008 to Kevin McCarthy the Executive Director of SBWMA.

Your letter addresses a staff report and information presented to the Board of Directors of the SBWMA at a public meeting on July 24, 2008. As your attorneys will confirm, statements made by public officials and their representatives at a public meeting are excepted from the rules with respect to so called defamatory statements or communications made "in any other official proceeding authorized by law". California Civil Code Section 47 (b). It is well established in California law that statements made in the course of local government proceedings are privileged. Therefore, the statements made in the SBWMA staff report of July 24, 2008, and made at the public meeting of July 24, 2008 are privileged communications and not subject to the rules of defamation. The fact that a newspaper may have published articles about statements or reports made at the meeting is not relevant here.

Further, the comments made with respect to the City of Milpitas and use of its plant materials as ADC, were corrected, at the meeting of July 24, 2008, on the record, by the representative from HFH Consultants. With respect to comments made as to Allied's contract compliance with the City of Fremont and use of its plant material as ADC, we understand that the issue is still pending.

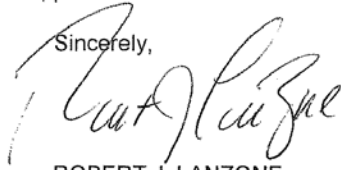
At this point in time, while we will look into the matter further, we will not be

Jeff Andrews
c/o Allied Waste
September 4, 2008
Page 2

complying with your request for "an immediate and final retraction" of statements and reports made at the July 24, 2008 meeting.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. Lanzone". The signature is written in a cursive style with a large initial "R".

ROBERT J. LANZONE

RJL:jm
cc: Kevin McCarthy, Executive Director, SBWMA



RethinkWaste

South Bayside Waste Management Authority

July 28, 2009

Honorable George A. Miram
Judge of the Superior Court
400 County Center, 2nd Floor
Redwood City, CA 94063-1655

Re: San Mateo County Civil Grand Jury Report 2009 – SBWMA RFP Process

Dear Judge Miram:

The following is the response of the Board of Directors of the South Bayside Waste Management Authority (SBWMA) to the above referenced Report by the 2008-2009 San Mateo County Civil Grand Jury. This response was approved by the Board at a public meeting held on July 23, 2009. We have responded directly to the Recommendations of the Civil Grand Jury in this letter, and address the Findings and Conclusions in the attached Addendum 1, and the facts/comments in the Background Section in Addendum 2.

I - Initial Comments

The SBWMA's goal for the RFP process was to select the best companies through a detailed and open evaluation process of the responses that could provide the desired services in the most cost-effective and environmentally superior manner. We believe that goal was accomplished. In selecting Norcal (now known as Recology) and South Bay Recycling (SBR) for consideration by the Member Agencies as the future service providers, the SBWMA did exactly as it had promised it would do through the RFP process - select the highest-rated, best firm for each service.

The SBWMA went through a very thorough and intensive process in developing, issuing and evaluating the RFPs for both the collection services and facility operations services. The RFPs clearly prescribed the proposal requirements, evaluation process and scoring system. This process took place over a four-year period to ensure that the SBWMA Member Agencies' staff and elected officials, potential proposers, other stakeholders and the public had multiple opportunities for review and input. SBWMA Board of Directors, potential proposers, consultants, legal counsel and other stakeholders helped develop and write the RFPs, selection criteria and the scoring system before the RFPs were issued. There were no objections to the RFPs received from the proposers until the recommendations for the selected companies were announced. The City of San Mateo retained an independent consultant to review the Collection Services RFP evaluations of the proposals to ensure they were done appropriately. The independent consultant's findings concurred with the recommendation for the future service provider and stated that the evaluations were appropriately executed and fair.

Honorable George A. Miram
Judge of the Superior Court
July 28, 2009
Page 2.

The RFP process has been vetted before all 12 SBWMA Member Agencies. Member Agencies will have additional opportunities for review as the final agreements proposed for Norcal for the Collection Franchise and SBR for the Operations Agreement come before them for approval.

II. Response to Recommendations

"The 2008-2009 San Mateo County Civil Grand Jury recommends that the South Bayside Waste Management Authority (SBWMA) and its Board and designated elected officials of the 12-member agencies [Atherton, Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, Redwood City, San Carlos, San Mateo, West Bay Sanitation District, and the San Mateo County Board of Supervisors (on behalf of the unincorporated portions of San Mateo County)]:

1. *Meet and reconsider pending contracts with Norcal and South Bay Recycling in light of the information contained in this Grand Jury report."*

Response:

Each of the two RFPs, one for collection services and another for facility operations, included key milestones to allow for Member Agency input and action. All governing boards of Member Agencies will be asked to give consideration to their individual franchise agreements for collection, and the agreement for the operation of Shoreway Environmental Center over the coming months, as prescribed in the RFP process. To date, ten of the Member Agencies, representing 85.6% of the Solid Waste tonnage in the SBWMA service area, have already considered and approved the Selection of Norcal (now known as Recology) as their future franchised hauler for solid waste, recyclables and organics. These votes of the Member Agencies have led to the preparation and negotiation of lengthy Franchise Agreements with Norcal to be considered individually by each Member Agency over the next few months, a process that began with these 10 Agencies in March 2009. The Town of Atherton also gave direction to its City Manager on July 15, 2009 to proceed with informal negotiations with Norcal. A JPA Member Agency is free to contract with any company it wants for collection. All documentation related to the RFP process, including vendor responses are available to Member Agencies for additional evaluation. The SBWMA will cooperate with any Member Agency that wishes to reevaluate responses to the RFP process.

The SBWMA Board at its July 23, 2009 Board considered approval of an Agreement with South Bay Recycling (SBR) to operate the Shoreway facility. As approved, it will be presented to the governing bodies of the Member Agencies for review and approval pursuant to Section 7.1.1 of the JPA Agreement. The SBR Operators agreement needs 2/3 of the Member Agencies to approve it.

Action:

The recommendation will effectively be implemented during finalization of the RFP process.

- "2. *In future Request For Proposal processes:*
a. Clearly define and objectively and consistently apply the evaluation criteria,"

Response:

The SBWMA did clearly define evaluation criteria, and to the extent practical provided objective guidelines for the application of evaluation criteria. We believe that the two concurrent RFP processes, one for collection services and another for facility operations, were both conducted professionally and thoroughly. The Evaluation and Selection Committees for each RFP meticulously followed and implemented the evaluation processes spelled out in the respective RFPs.

- "b. Provide for an appeals process before the final contracts are signed,"*

Response:

A survey of 44 other California jurisdictions that issued similar RFPs in recent years revealed that only two had bid protest provisions in their RFPs. Since these two RFPs are not Public Works "bid" type procurements, inclusion of an appeals process is not standard practice. In fact, the SBWMA RFP processes afforded stakeholders multiple opportunities to comment on the RFP documents. In addition, since the recommendations resulting from the RFP processes are made via publicly noticed SBWMA Board meetings and later considered at individual Member Agency meetings, there have been multiple opportunities for public input from companies that participated in the RFP processes and/or other interested parties. In fact, this is what has happened since September 2008 as dozens of public meetings have been held by the SBWMA Board and Member Agencies and many RFP participants voiced their opinions regarding the RFP recommendations. Lastly, the RFP process as proposed by the SBWMA was reviewed in advance by potential proposers and none commented on the lack of an appeals process or requested such a process.

In summary, every decision made regarding issuance of the RFPs, Member Agency participation in the RFP processes, recommendations resulting from the RFP processes, Member Agency consideration of the recommendations, and Member Agency approval of the recommendations via authorizing the SBWMA to prepare a contract in the case of Facility Operations or executing their own contract for Collection Services has been or will be done at publicly noticed meetings.

- "c. Assure the proposers that alternative proposals will be considered,"*

Response:

The RFPs did provide assurance that alternative proposals would be considered if submitted in compliance with the RFP. The submittal of an alternative proposal was to be treated with the same guidelines as a base proposal, which required evaluation if submitted in accordance with the RFP documents. Both RFPs addressed the submittal of alternative proposals in the same manner. During the RFP process one alternative proposal was submitted by Allied Waste and given consideration. The alternative proposal provided incomplete information, and was not responsive to the RFP. Following legal review, it was determined that the SBWMA had no legal obligation to evaluate the Allied alternative proposal as it was

Honorable George A. Miram
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submitted because it did not comply with the RFP cost and exception requirements. Nevertheless, the SBWMA actually accorded the lone alternative more consideration than legally required.

Had the SBWMA proposal evaluation process blindly included review of alternative proposals submitted not in compliance with the RFP documents or during the proposal submission period, the fundamental premise of ensuring a fair, non-biased and transparent procurement would have been compromised.

"d. Ensure that representatives from other jurisdictions are participants on the committees, and"

Response

This recommendation is unclear as to the whether the Grand Jury is recommending representatives from SBWMA Member Agencies are participants in the committees or representatives from outside of the SBWMA are participants. The RFP process did include representatives from the Member Agencies. The Evaluation and Selection Committees for both the Collection Services and Facility Operations RFPs were comprised of different SBWMA Board members, and all of the Member Agencies were represented on the PAF and PAC committees.

If the intent of the recommendation is to include representatives from non-SBWMA jurisdictions, we cannot understand why they should have any decision-making authority in a local RFP process. We know of no other jurisdictions that follow such a process.

"e. Ensure that no one individual chair both committees."

Response:

This recommendation will be considered.

Action (Applies to Responses to Recommendation #2, including items a-e):

At such time as there is a future RFP process for either franchise agreement, the concerns of the Civil Grand Jury Report will be taken into consideration by the SBWMA. This holds true for each of the successive recommendations in this section regarding future RFP processes. A future RFP process may not occur for ten (10) years.

"3. Amend the Joint Powers Authority Agreement to include elected officials from member agencies onto the SBWMA Board of Directors."

Response:

This recommendation is one for consideration by the individual governing bodies of the JPA Member Agencies which have sole authority to amend the JPA agreement. The last restatement of the JPA agreement in 2005 confirmed Member Agencies' intent to continue to appoint staff to the SBWMA Board.

Honorable George A. Miram
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Page 5.

Action:

The SBWMA Board lacks legal authority to take action on this recommendation. However, the Board will review the responses to the Report from the Member Agencies and if sufficient support (8 or more Agencies) is indicated, the Board will facilitate the preparation and circulation of an appropriate amendment to the JPA Agreement.

III. Response to Findings and Conclusions (See attached Addendum 1)

IV. Response to Background (Facts and Comments) (See attached Addendum 2)

As can be seen from our Initial Comments, the Board firmly believes the RFP process used was professionally implemented, was fully vetted to the proposers, the SBWMA Member Agencies, and the public, and resulted in recommendations of the best firms for Collection Services and for Operation of the Facilities.

Thank you for your consideration.

Very truly yours,



Martha DeBry
SBWMA Board Chair

Attachments:

- Addendum 1
- Addendum 2

ADDENDUM 1 FINDINGS AND CONCLUSIONS

FINDINGS

The 2008-2009 San Mateo County Civil Grand Jury found that:

1. *In the proposal process, the requirement that all proposers use the same operational assumptions to obtain comparable costs was useful to evaluators but does not apply to the actual costs and contracts that the individual member agencies can negotiate.*

Response: (Respondent disagrees with this Finding.)

Proposers were not required to use the same operational assumptions. To ensure a comparable analysis of cost proposals and ensure a fair cost evaluation process, proposers were required to base their cost proposals on purchasing new collection trucks and containers. Since the \$50+ million in capital equipment would primarily consist of trucks and containers, allowing proposers to include a myriad of different scenarios for the key capital purchases would certainly have resulted in apples-to-oranges cost proposals that could not be fairly compared against one another. The policy decision to require that cost proposals to include all new vehicles and containers was made in 2006 by the Process and Contracts Committee consisting of representatives from several Member Agencies. The RFP required that a Contractor is held to all operational assumptions and costs included in its proposal. If a Member Agency chooses to deploy used vehicles or equipment, then this would be negotiated by that specific agency. Specifically, Section 5.5 of the RFP, states in relevant part:

“New vehicles are required for residential and MFD/Commercial/Member Agency collection services. (This requirement is primarily to ensure that comparable cost proposals are submitted. Member Agencies reserve the right to allow the contractor to provide used collection vehicles.) New or used vehicles may be used for on-call collection services, drop box service, and support vehicles.”

Lastly, it is important to note that drafts of the RFP and contract documents were submitted to the proposers for their review and comment several months prior to the official release of the RFP and none objected to these cost provisions.

2. *The process allowed for alternative proposals, yet they were not required to be considered.*

Response: (Respondent agrees partially with this Finding.)

The statement is correct but requires that it be framed in the proper context. Section 6.2.5 of the RFP, in part, states: “SBWMA and Member Agencies are not obligated to evaluate or select alternative proposals. Alternative proposals will be considered by the SBWMA and Member Agencies if the SBWMA and Member Agencies conclude, in their sole discretion, that the alternative proposals warrant evaluation and analysis.”

In addition, the RFP explicitly required proposers to state exceptions to the collection agreement attached to the RFP and support any alternative proposal, as follows:

“Each exception or alternative must be presented separately by stating the specific exception or alternative, the suggested changes, if any, to the program or services related to the exception or

alternative, and the reason for the proposed exception or alternative. Proposers may submit suggested changes in the Collection Agreement language related to the exception or alternative, and the specific dollar change in each of the affected cost items, as proposed by the Proposer in response to this RFP, that would take place if the exception or alternative was accepted by the Member Agency. Proposers should note that if exceptions are taken, all required information as set forth above must be submitted. Exceptions taken or alternatives provided, without providing the required information will not be considered.”

Despite a follow-up request from the collection services RFP Evaluation Committee, Allied Waste Services of San Mateo County failed to provide the information required to have its alternative proposal comply with the RFP submittal requirements.

The SBWMA determined that Allied’s alternative proposal resulted in a complete abandonment of the competitive RFP process initiated by the SBWMA for both the collection contracts and the Shoreway facility operations. Lastly, in light of the fundamental incompatibility between the alternative proposal and the contract process envisioned in the two RFPs, and the lack of any detailed explanation of how the compensation arrangements in the collection contracts would actually operate (despite providing Allied ample opportunity and encouragement to provide this information), the Evaluation Committee could have omitted any reference to the Allied alternative proposal in its report to the Selection Committee. However, the Evaluation Committee did address the alternative proposal, noting that:

- Allied did not provide a cost estimate for the Recycle Bank program.
- Allied had not provided any detail about how the key compensation provisions in the collection contracts would have to be rewritten to accommodate the plan suggested in the alternative proposal.

Following legal review, it was determined that the SBWMA had no legal obligation to evaluate the Allied alternative proposal as submitted.

3. *As a condition of participation, proposers had to agree not to appeal decisions.*

Response: (Respondent disagrees with this Finding.)

This statement is incorrect. The only conditions on participation by proposers in the RFP process were related to the submittal requirements specified in the RFP that included attending the pre-proposal conference, making a public presentation, facilitating site visits upon request and submitting the required documents. In fact, the RFPs were silent on the issue of an appeal process because appeals are not standard practice for procurements of this type. A survey of 42 other California jurisdictions that issued similar RFPs in recent years revealed that only two had bid protest provisions in their RFP. Again, the SBWMA RFP was silent on the issue of protesting the process. However, since no binding recommendation would arise from the RFP process, it was clear from the beginning that any proposer choosing to protest the process would have ample opportunity when the SBWMA Board and individual Member Agencies considered the recommendation resulting from the RFP process.

4. *In the evaluation process, the “reasonableness” points were not distinguished from the “competitiveness” points.*

Response: (Respondent disagrees with this Finding.)

This statement is incorrect. The Collection Services RFP specified five criteria that contained 24 distinct and specific sub-criteria, as follows:

- Qualifications and Experience – 7
- Proposal for Collection Services – 10
- Cost Proposal – 3
- Alternative Technical Proposals – none, since no points were specified
- Exceptions – 2 (specific to the number and materiality of exceptions)
- Environmental Enhancements – 2

The Cost Proposal criterion was the only one where the “reasonableness” and “competitiveness” sub-criteria were used. Actually, the Cost Proposal criterion specified three sub-criteria, as follows: “reasonableness of cost proposals,” “competitiveness of cost proposals,” and “value to member agencies.”

The achievable evaluation points for Cost Proposals were split equally between reasonableness/competitiveness/value by each Evaluation Committee member.

As it relates to the Facility Operations RFP, this Finding is also factually incorrect. The scoring of the Cost Proposals did, in fact, separately account for reasonableness and competitiveness.

5. *Neither the individual members of the Evaluation Committee nor the individual members of the Selection Committee were required to report how many of the overall points assigned to each criterion were based on “reasonableness” or “competitiveness.”*

Response: (Respondent agrees partially with this Finding.)

This statement is primarily incorrect. As stated above, only the Cost Proposal criterion was the only one where the specific “reasonableness” and “competitiveness” and “value” sub-criteria were used in the Collection Services RFP. Roughly 90% of the evaluation points were reported by the Committees

The Evaluation Committee provided the Selection Committee and SBWMA Board information on exactly how many of the overall points were assigned to each criterion, by each evaluator. This information was provided to the San Mateo County Civil Grand Jury.

The following additional information was also provided to the Grand Jury: “...Allied submitted the lowest cost proposal and was awarded the maximum points from each evaluator for [Cost Proposal] sub-criterion #2 ‘Competitiveness of Cost Proposals,’ however, the proposal lost points based on the ‘Reasonableness’ and ‘Value’ sub-criteria as compared to the other proposers and was ranked second overall in the Cost Proposal criteria behind Norcal.”

As it relates to the Facility Operations RFP, the scoring of the proposals did, in fact, separately account for reasonableness, competitiveness and value.

6. *The South Bayside Waste Management Authority's (SBWMA) consultant reported that Norcal's references in San Jose were not checked.*

Response: (Respondent agrees partially with this Finding.)

This statement is partially correct. R3 Consulting was charged with making the reference checks and despite attempting to contact San Jose representatives in accordance with the reference checks protocol used, they were unable to do so in order to include a reference from San Jose in the analysis. This does not mean that Norcal's experience in San Jose was not discussed and included in the evaluation of proposals. In fact, one of the primary attributes in selecting R3 Consulting to assist the SBWMA was the firm's direct experience with two recent RFP processes and contract negotiations in San Jose. This information was also provided to the Civil Grand Jury. In fact, letters from San Jose staff were also shared with the Grand Jury that documented the City's appreciation for all Norcal had done for the community.

The implication that Norcal's experience in San Jose was overlooked is without merit. The five members of the Evaluation Committee have a combined 120 years of recent experience in this industry in the Bay Area and large roll-outs of service are highly publicized, especially as noted, those that have problems. In addition, the knowledge and experience of this group, specific to the situation with Norcal in San Jose, was shared with the Selection Committee.

7. *South Bay Recycling (SBR) was the only proposer that did not provide for on-site management in its original cost proposal.*

Response: (Respondent disagrees with this Finding.)

This statement is incorrect. SBR proposed that the executive and financial management of the Shoreway facility would be directed from its headquarters and that all operations management functions would be completed by local Shoreway-based managers. While the type of management structure proposed by SBR is not unusual in municipal proposals, it was deemed inappropriate for the Shoreway operation and was rejected by SBWMA. The SBWMA directed SBR to add the cost of local executive management to its cost proposal.

8. *SBR has asked the SBWMA to cover \$1.2 million for mistakes and omissions in its original proposal.*

Response: (Respondent disagrees with this Finding.)

This statement is incorrect. While SBR did submit a revised cost proposal in late 2008 following requests from the Evaluation Committee for additional information, some of the cost changes were SBWMA directed. The Evaluation Committee was concerned by the increases and the limited explanation and justification offered by the company for some of the revised cost proposal items. After several rounds of questions between the SBWMA and SBR, the SBWMA received sufficient detail from the company to understand the reasons for company's proposed increase in costs. The cost changes fell into three categories: A.) operating costs changes that were directed by the SBWMA, B.) cost changes that were the results of proposer error or oversight, and C.) cost changes that were not discussed or approved by the SBWMA. The cost changes that were "directed by the SBWMA" are changes that the SBWMA feels are essential to providing the proper level of service and management required for this service area.

The March 18, 2009 Evaluation Committee report further stated that, "If SBR is selected as the facility operator, the final decision for SBR to operate the Shoreway facility should be predicated upon successful negotiation of a MRF sorting system equal to or less than the cost proposed by the company." The SBWMA is in current negotiations with SBR for the final agreement that is subject to approval by the SBWMA Board.

9. *(Listed as a second #8 in the Report) It appears that the SBWMA did not give sufficient consideration to SBR's notices of violation in the operation of its Southern California operations.*

Response: (Respondent disagrees with this Finding.)

This statement is factually incorrect. The cited notices were investigated, analyzed, evaluated, and the company's initial and final scoring was downgraded due to these notices. Further, SBWMA staff continues to monitor monthly inspection activities at the Community Recycling facility per the direction of the SBWMA Board.

10. *The Grand Jury could not confirm that the proposals were adequately evaluated or reflected a thorough analysis of the proposal content and contractor background.*

Response: (Respondent disagrees with this Finding.)

The SBWMA and member agencies went to great lengths to ensure that open, transparent, competitive and effective procurement processes were pursued.

As we shared with the Grand Jury, during the proposal evaluation process, all of the proposers were interviewed, numerous site visits were conducted by the respective RFPs Evaluation Committee members; a thorough litigation history review and analysis was conducted by outside counsel; and, each proposer provided public presentations in support of its proposal, which were also made available to all interested parties on the SBWMA website. After an exhaustive proposals review and evaluation process by both the Evaluation and Selection Committees which required hundreds of hours to complete, recommendations were presented to the SBWMA Board as to the selection of the future collection services and facility operations providers, and the recommendations to select Norcal and SBR were then presented to the Member Agencies for consideration.

11. *SBWMA Executive Director chaired three of the four Evaluation and Selection Committees until removed from the Shoreway Facility Contract Selection Committee by the Chairman of the SBWMA Board.*

Response: (Respondent agrees partially with this Finding.)

While this statement is accurate, it is misleading in that the statement does not disclose what the role of the Executive Director was as chairman. As chairman, the Executive Director's role was primarily an administrative one that consisted of setting committee meetings, setting agenda, etc. All evaluations of the proposals were done independently by the individual committee members separate from the committee meetings. The evaluations and scoring were done blindly by each committee member without any influence by the Chairman. The SBWMA has no reason to believe the Executive Director exerted undue influence on the process, and the Grand Jury Report did not identify any specific instances of concern in this regard.

12. *The SBWMA Executive Director solicited emails from active proposers, asking them to attest to the integrity of the RFP process.*

Response: (Respondent agrees with this Finding.)

This statement is correct.

13. *No elected officials are on SBWMA's Board of Directors.*

Response: (Respondent agrees partially with this Finding.)

This statement is correct and reflects the desire of a 2/3 majority of the SBWMA's Member Agencies. Any decision to amend the JPA regarding the constitution of Board members is not a decision for the Board, but for the elected officials of the Member Agencies pursuant to Sec. 17.1 of the JPA agreement. There has never been a positive response from the Member Agencies to change the Board composition. In 2005, several of the powers of the Board were moved to the Member Agencies (such as approving any Franchise agreement for Operation of the Transfer Station, or for SBWMA bonding and financing decisions).

The JPA was also amended in 2005 to provide for specific City Manager or other entity staff members to be designated for the Board to both provide for specific qualified staff members and also to have a consistent group of staff members attending as Board members. The Member Agencies had to vote on the Amended JPA Agreement, and did so in 2005, approving it by a 2/3 vote. In doing so, the Member Agency governing bodies (e.g., city councils) rejected the notion of elected officials being on the Board as a minority of the JPA Members had requested.

Subsequently the issue has been raised by the Board of Supervisors to the Member Agencies and by one of the other JPA Members, and received no support. From the standpoint of the SBWMA Board, it is not its decision but one for the governing bodies of the Members of the JPA and it will of necessity go along with what those bodies decide under the terms of the JPA to do.

CONCLUSIONS

The 2008-2009 San Mateo County Civil Grand Jury concludes that the SBWMA did not follow its stated goal to “conduct the RFP process with integrity and transparency.” The Grand Jury has no opinion on which contractors should have been selected. However, the Grand Jury has no confidence in the RFP processes by which the Collections Services Contractor and the Shoreway Master Plan Facility Contractor were selected.

The Grand Jury further concludes that:

- 1. The structure of the Evaluation and Selection Committees lent itself to the appearance of undue influence.*
- 2. Whether or not elected officials from the member agencies are on the SBWMA Board of Directors, these elected officials are ultimately responsible for all actions taken by the SBWMA.*
- 3. After four years of preparation, staff time, and consultant fees, the RFP process was poorly executed.*

Response – Conclusions #1 & #3:

Conclusions 1 and 3 are unfounded, and the SBWMA strongly disagrees with the statements. The SBWMA and Member Agencies went to great lengths to ensure that open, transparent, competitive and effective procurement processes were pursued.

The SBWMA and its Member Agencies initiated the Collection Services and Facility Operations Services request for proposals (RFP) process in July 2005 to plan future programs and services, and select future contractors. The decision to proceed with the RFP process was made in concurrence by all 12 Member Agencies of the SBWMA. One of the primary reasons was the fact that none of the existing contracts for Collection Services and Facility Operations Services had ever been subject to a competitive procurement/review process. Another reason was the declining performance of the incumbent collection/operator contractor.

It should be noted that the contract with the SBWMA to operate the Shoreway facility and the twelve individual contracts with the Member Agencies to provide Solid Waste collection services represent perhaps the largest exclusive contracts of their nature in the country. As such, this process has been closely monitored and highly anticipated by many in the solid waste industry.

Feedback received from many Member Agencies and other jurisdictions praised the SBWMA RFP process as being one of the most thorough they had ever seen. Most importantly, the RFP process was lauded by the proposers and other stakeholders. It was only after the release of the selection results that a few of the companies who were not selected began questioning the process and the results. This is an unfortunate outcome of many public solid waste procurement processes – and one that is not unique to the SBWMA. It is perhaps not totally unexpected in light of the significance of some of these contracts and efforts and costs expended by the proposing companies.

The SBWMA’S RFP process entailed a four-year period for planning, soliciting, evaluating and selecting the future contractors to ensure that the Member Agencies’ staff and elected officials, potential proposers, other stakeholders and the public had multiple opportunities for review and input. The SBWMA’s goal was to select the best companies through a detailed and open evaluation process of the responses that could provide the desired services in the most cost-effective and environmentally superior manner. The SBWMA strongly believes this goal was achieved with the two companies selected.

To ensure that the RFP process for both services was conducted with integrity and transparency, input was solicited from elected officials, potential proposers, consultants and other stakeholders on draft copies of the RFP documents. The final RFPs issued incorporated this valuable input, and each was a comprehensive document that clearly and concisely detailed the rights reserved by the SBWMA and Member Agencies, and the future companies, how the evaluations would proceed, the make-up of the evaluation teams, the specific evaluation criteria and distribution of evaluation points, and specifically how items such as exceptions or alternative proposals were to be submitted and the implications for not complying with these requirements.

The RFPs were issued in November 2007 after a thorough review and approval process that included a governing body resolution from each SBWMA Member Agency. A pre-proposal meeting was attended by all proposers. Several necessary addenda were subsequently issued providing clarifications and improvements to the RFP processes. Four responses to the Collection Services RFP and seven to the Facility Operations RFP were received in March 2008. During the proposal evaluation process, all of the proposers were interviewed and numerous site visits conducted by the respective RFPs Evaluation Committee members. A thorough litigation history review and analysis was conducted by outside counsel. Each proposer provided public presentations in support of its proposals.

The RFPs prescribed that an Evaluation Committee and Selection Committee for the Collection Services procurement, and a separate Evaluation Committee and Selection Committee for the Facility Operations Services would be created to review and evaluate the proposals. SBWMA purposefully created two separate committees for each RFP comprised of different individuals to ensure a checks-and-balance approach to selecting the next service providers. Once again, it is important to note that these documents were vetted over several months and ultimately approved via resolution by each governing body of the SBWMA Member Agencies.

The Evaluation Committees' role was to conduct a detailed evaluation of the proposals, rank proposals, and provide comparative descriptions of the proposals. The Selection Committees were tasked with reviewing the proposals and the evaluation summary information presented by their respective Evaluation Committee, requesting additional data and analysis as necessary, and developing their recommendations for consideration by the SBWMA Board. All four committees were provided with clear guidelines on how to proceed with the evaluations and scoring. These guidelines were based on the detailed criteria and maximum scoring that was prescribed in the RFP documents for the proposers to ensure that the evaluations were independent, thorough and fair.

The SBWMA Board was tasked with reviewing the Selection Committees' separate recommendations for Collection Services and Facility Operations Services and either approving the recommended companies or proceeding with different options. Once approved by the Board, there was a final opportunity to review the RFP process and SBWMA's recommendations when they were presented to each Member Agencies' governing body for consideration and approval.

In addition, the City of San Mateo retained an independent consultant to review the Collection Services RFP evaluations of two proposals to ensure they were done appropriately. The independent consultant's findings concurred with the recommendation for the future service

provider and stated that the evaluations were appropriately executed and fair. The report specifically stated the following:

- “The selection process provided multiple opportunities for each of the Proposers to provide details on their proposal.
- The Evaluation Committee members rated the proposals independently, not in a group setting.
- The Evaluation Committee did not come to agreement before the scores were tallied.
- When the scores were compared, each of the evaluators had ranked each of the Proposers in the same order.
- The Cost Proposals were fairly evaluated. The evaluation of cost not only evaluated the base fee, but also the reasonableness of the amount.
- The process for the evaluation of the proposals was fair.
- The evaluation of the proposals was fair.”

In conclusion, this exhaustive four-year process yielded two top-rated companies that met the goals and objectives of the RFP process as established by the SBWMA and its Member Agencies in a manner that was fair and with no undue influence.

Response – Conclusion #2:

The SBWMA Board strongly concurs with this conclusion. The SBWMA JPA agreement defers all significant decisions affecting ratepayers to the governing bodies of the Member Agencies, e.g. setting collection rates, authorizing franchises and approving the Shoreway operation contract.

ADDENDUM 2 CORRECTIONS AND COMMENTS TO THE REPORT

The following are corrections and comments regarding factual matters and comments in the Grand Jury Report contained in the “Background” section.

Comment #1

Page 1 – “Background” section

The quoted text from the Collection Services RFP after the statement “*The stated goals of the SBWMA during the RFP process were*” is partially incorrect. The bolded and underlined phrase below is not included in the RFP.

"Integrity, Competition in Selection Process, and Industry-Standard Contract Terms

- *Conduct the RFP process with integrity and transparency*
- *Maintain the association of Member Agencies*
- *Select contractors that meet Member Agency and SBWMA needs*
- *Enter into contracts with fair terms and conditions*
- *Set high performance standards and use incentives/ disincentives to achieve standards related to:*
 - *Collection quality*
 - *Customer service*
 - *Diversion from landfill disposal*
 - ***Deliver high quality cost-effective services to customers***
- *Stimulate competition among proposing companies"*

Comment #2

In addition, this quote reflects section 1.3.1 in its entirety which is found in section 1.3 “SBWMA Goals and Objectives.” However, this is not all of the goals and objectives listed in the RFP as the Grand Jury report states. The Grand Jury report omits subsection 1.3.2, as follows:

1.3.2 Cost-Effective Programs

- Cost
 - Provide cost-effective operations
 - Minimize fiscal impact on ratepayers
- Service
 - Emphasize innovative, responsive management
 - Ensure consistent, reliable and high quality service
- Conserve and protect resources/assets
 - Minimize impacts on air, water, and natural resources
 - Encourage highest and best use of recycled materials
 - Handle as much material locally as possible
 - Meet or exceed AB 939’s 50% diversion mandate
 - Protect the SBWMA’s investment in the Shoreway facility
- Community benefits
 - Continue programs and services that work well
 - Demonstrate proactive waste reduction/recycling philosophy
 - Include involvement of local recyclers/reuse
 - Support local market development where possible

- Educate the public
- Educate and involve the community
- Integrate collection services with SBWMA facilities
- Flexibility of collection methods

Comment #3

Page 2 – “Background” section

The Grand Jury report states:

“The SBWMA was first formed in 1982 as the South Bayside Transfer Station (SBTSA) Joint Powers Authority (JPA). Its purpose was to consolidate local collection services and address the need for coordinated municipal efforts to manage solid waste disposal, ensuring that its 12 member agencies (Atherton, Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, Redwood City, San Carlos, San Mateo, West Bay Sanitation District, and unincorporated portions of San Mateo County) would collectively have lower collection and solid waste management costs. The SBWMA has delivered the lowest garbage rates in the Bay Area. A key consideration for managing costs was the construction of the transfer station in San Carlos in 1984, which is the only such facility in central San Mateo County. Browning Ferris Industries (BFI) built and operated the facility from its inception until the SBTSA purchased the transfer station and adjacent Material Recycling Facility (MRF) from BFI in 1999.”

The statement above does not accurately capture all of the history of the organization. The SBTSA (South Bayside Transfer Station Authority) was formed in 1982 by the same agencies that are a party to the South Bayside Waste Management Authority JPA. Its initial purpose was “to provide an adequate flow of solid waste to the San Carlos Transfer Station to assure the then owner/operator BFI-San Mateo that it would recover its investment in the facility. The SBTSA JPA actually expired by its own terms as a JPA in 2002. The SBWMA was formed in Dec. 9, 1999 by the former SBTSA members, “ for the joint ownership, financing, administration, review, monitoring, enforcement, and reporting of Solid Waste, Recyclable Material, and Plant Material Collection activities in the Service Area.” The SBWMA was formed concurrently with the acquisition by the SBWMA in March 2000 of the Transfer Station and Recyclery properties from BFI-San Mateo. The SBWMA JPA Agreement was amended by a First Amendment and Restatement in 2005.

As stated above, the SBWMA issued bonds and purchased the Transfer Station and the Recyclery properties from BFI-San Mateo in March 2000. At the time of sale, BFI obtained an Agreement from the SBWMA to operate the facilities without a Request for Proposals (RFP) process, dated March 1, 2000. The initial term of that agreement was to December. 31, 2006, and was extended, again without an RFP process, to December 31, 2010. At the same time, effective March 2000, BFI obtained new Franchise Agreements individually with the 12 Member Agencies, without an RFP process, and those Franchise agreements were also extended by the Member Agencies, without an RFP, to December 31, 2010.

Comment #4

Page 2 – “Background” section

The Grand Jury report states:

“Since the inception of the JPA, one company, Allied, previously known as BFI, operated both the collection services and the disposal services of solid waste. The current SBWMA contract with Allied is due to expire on January 1, 2011.”

The second sentence requires clarification. First, it implies that Allied has contracts with the SBWMA for both collection services and “the disposal services of solid waste” (assuming the latter refers to the company’s contract with the SBWMA to operate the Shoreway Facility). However, the company does not and never has had a contract with the SBWMA for collection services, as each individual member agency contracts directly with the company for these services.

In addition, the current contracts are set to expire on December 31, 2010.

Comment #5

Page 2 – “*Selecting the Collection Services Contract*” section

The Grand Jury report states:

“1. The proposals for collection services were submitted to the SBWMA for review and recommendation. After the SBWMA recommendation was made, each member agency was to negotiate an individual contract with the recommended provider, depending on the agency's individual needs.”

The second sentence of this statement is incorrect. The RFP prescribed that after evaluation of the proposals and approval of a recommendation by the SBWMA Board, each Member Agency would then be provided the opportunity to consider the recommendation. The RFP specifically addresses this in section 1.2.1, Member Agency Roles and Commitment to the Process, as follows:

“The SBWMA JPA does not bind Member Agencies to follow the recommendations of the SBWMA Board regarding selection of collection contractors.”

Comment #6

Page 2 – “*Selecting the Collection Services Contract*” section

The Grand Jury report states:

“2. There would be a one-year truing up period...”

This statement is incorrect. There is no “truing up period.” The RFP and Collection Agreement prescribe a process by which contractors proposed costs are adjusted based on indices and equitable adjustments are made based on changes in customer services levels from the 2008 data included in the RFP to more current data to when the new contract will take effect.

Comment #7

Page 2 – “*Selecting the Collection Services Contract*” section

The Grand Jury report states:

“3. All proposers were required, when preparing their proposals, to use the same operational assumptions for key items such as residential cart sizes, use of new collection vehicles for core services, and use of new commercial collection containers. This requirement was for the purpose of obtaining comparable cost proposals from proposers. Member agencies retain the right to establish cart sizes for residents, use of used equipment, etc., as part of the final negotiated scope of services and costs with their selected contractor.”

The RFP did not require proposers to use the same operational assumptions. Each proposer was to apply its own operational assumptions and business practices in order to allow each company’s own unique competitive advantage to shine. The RFP required proposers to describe their own unique operational assumptions including: “routing strategy,” “productivity assumptions,” and “collection methodology” (source: Section 5.5 of the Collection Services RFP).

Specifically, the RFP did require proposers to base their costs on purchase of new collection trucks and containers, as set forth in section 5.5 of the RFP. However the number and type of both collection vehicles and carts was not prescribed in the RFP, as follows:

“Number of and description of the collection vehicles to be utilized (e.g. vehicle description, manufacturer and model number, cost, capacity, age, lease or ownership arrangements, etc.). **New vehicles are required for residential and MFD/Commercial/Member Agency collection services.** (This requirement is primarily to ensure that comparable cost proposals are submitted. Member Agencies reserve the right to allow the contractor to provide used collection vehicles.) **New or used vehicles may be used for on-call collection services, drop box service, and support vehicles.**

Manufacturer’s specifications of containers to be utilized. **New Carts shall be provided for SFD and new or used containers (i.e., carts, bins and drop boxes) may be provided for MFD/Commercial/Member Agency customers. It is anticipated that the current franchised hauler will negotiate with the selected proposer(s) to transfer ownership of all MFD commercial containers if the current hauler is not selected. However, proposers must base proposals on the assumption that new carts, bins and drop boxes will be purchased.** (This requirement is primarily to ensure that comparable cost proposals are submitted. Member Agencies reserve the right to allow the contractor to provide used MFD commercial containers/bins.)”

Comment #8

Page 2 – “*Selecting the Collection Services Contract*” section

The Grand Jury report states:

“4. The proposers will be held to their bid assumptions during the contract. For example, if a company states that the price of gas is \$ 2.50 a gallon in its bid, and the price of gas goes up, the base contractual obligation will not change. Fluctuations are limited to some CPI-type index. Presumably, the company will buy, or has bought, oil futures that secure the price.”

This statement is not accurate. Proposers needed to indicate how much money they would spend in 2011 on diesel fuel as stated in 2008 dollars. This number would be increased annually by a specific fuel index published by the federal government.

Comment #9

Page 3 – “*Selecting the Collection Services Contract*” section

The Grand Jury report states:

“6. In order to submit a proposal, the competitors had to agree not to appeal the process.”

This statement is not incorrect. The only conditions on participation by proposers in the RFP process were related to the submittal requirements specified in the RFP that included attending the pre-proposal conference, making a public presentation, facilitating site visits upon request, and submitting the required documents. In fact, the RFP was silent on the issue of an appeal process which is standard practice for procurements of this type. A survey of 44 other California jurisdictions that issued similar RFPs in recent years revealed that only two had bid protest provisions in their RFP. Again, the SBWMA RFP was silent on the issue of protesting the process. However, since no binding recommendation would arise from the RFP process, it was clear from

the beginning that any proposer choosing to protest the process would have ample opportunity when the individual member agencies considered the recommendation resulting from the RFP process.

Comment #10

Page 3 – “*Selecting the Collection Services Contract*” section

The Grand Jury report states:

“8. The new contract was designed for ease of oversight.”

This statement is incorrect. The new collection services franchise agreement(s) are written to be comprehensive with a high degree of clarity to ensure minimal opportunity for disputes. In addition, the new services are more complex than the current services, the reporting requirements are significantly expanded and improved, as are the public education and outreach requirements, liquidated damages, and the performance incentives and disincentives provisions are also new. In fact, the new franchise agreements are significantly more complex and oversight or management of these agreements will be more arduous than the current agreements which are lacking in numerous respects. In addition, the relationship of one company providing the collection services and another operating the facility where the materials are to be delivered, also increases the complexity of the agreements and management requirements.

One area of the franchise agreements that is significantly improved with regard to “oversight,” is in the area of compensation paid to the contractor. The current cost-plus form of compensation that applies to the agreements with Allied is time-consuming and costly, and the results are unpredictable with regard to the amount of compensation due to Allied annually, that in turn results in uncertainty in rates. The new compensation adjustments are highly formulaic and will be done in house by the SBWMA, thus saving approximately \$200,000 in consultant fees annually. In addition, the fixed price compensation model which the new contracts are based on will result in predictable rate increases.

Comment #11

Page 3 – “*Selecting the Collection Services Contract*” section

The Grand Jury report States:

“9. In the current SBWMA contract, Allied collects the garbage and also operates the Shoreway Facility where the garbage is sorted and processed. In the new contract, the operation of the collection and processing will be split between two separate companies.”

It should be clarified that each Member Agency has an individual franchise. Technically, garbage is not sorted, it is transferred to a landfill. Recyclable materials are sorted and processed.

Comment #12

Page 3 – “*Selecting the Collection Services Contract*” section

On page 3, the Grand Jury report states:

10. The collection company can increase its profit by lowering costs and meeting a specified diversion percentage. The facility operator can increase its profit by increasing revenues from recyclables and is dependent on the collector to bring recyclables to the facility in good condition.

The first sentence may prove to be correct; however, the two separate components of it need to be put in context. The idea that the company can “increase its profit by lowering costs” is certainly

correct. However, the franchise agreement is extremely comprehensive in scope and the penalties are severe for non-compliance in providing the required high level of services or for lapses in service.

The idea that the company can increase its profit by “meeting a specified diversion percentage” is correct; however, this statement requires clarification. The incentive payment for increasing diversion is related to an increase in overall diversion. Decreases in both commercial sector and residential sector diversion will result in disincentive payments from contractor to the agencies. Once again, the future system that will be put in place emphasizes the SBWMA and its Member Agencies commitment and the value these communities place on diversion of solid waste from landfill, reduction in greenhouse gas emissions, and the true environmental leadership that is being pursued.

Comment #13

Page 3 – “*Evaluation and Selection Committees*” section

The Grand Jury report states:

“The SBWMA divided the judging process for the Collections Services Contract into two committees: an Evaluation Committee and a Selection Committee. The Evaluation Committee analyzed and scored the proposals. The Selection Committee considered the recommendations of the Evaluation Committee and selected a Collection Services Contractor.”

The first sentence implies that the SBWMA unilaterally “divided the judging process” into two committees and the second and third sentences wholly discounted the process and actual roles and responsibilities of the Evaluation and Selection Committees. The RFP clearly prescribed how and by whom the proposals would be evaluated and the roles and responsibilities of both committees in subsections 6.1-3 of the RFP, as follows:

“6.1.1 Evaluation and Selection Process

An Evaluation Team and Selection Committee will be assembled by the SBWMA and Member Agencies. The Evaluation Team, which may include industry consultants, other industry experts, and Member Agency and SBWMA staff, will conduct a detailed evaluation of the proposals, rank proposals, and provide comparative descriptions of the proposals. The SBWMA Executive Director, with assistance from Evaluation Team as needed, will present the evaluation results to the Selection Committee.

The Selection Committee will likely include: SBWMA staff, SBWMA Board Members, and high-level Member Agency staff. The Selection Committee will review the proposals and the evaluation summary information presented by the Evaluation Team, request additional data and analysis as necessary, and develop its recommendation for consideration by the SBWMA Board for collection services for the North and South Districts.

The SBWMA Board will review the Selection Committee’s recommendation and approve that recommendation or form an alternative recommendation. The SBWMA Board recommendation and a final evaluation report will then be presented to the Member Agencies for approval. Ultimately, each Member Agency will select the collection Contractor to serve its community.

Member Agencies will have the right to act in the best interest of its’ residents and businesses, including the right to select a proposal that, in its opinion,

best meets the community's needs even if the proposal is not recommended by the Selection Committee and/or the SBWMA Board.

6.1.2 Evaluation Team

As described above, the Evaluation Team will facilitate the evaluation process by providing technical support and an evaluation of proposals to the Selection Committee. The Evaluation Team will perform the following tasks:

- Review all proposals received for compliance
- Prepare a comparative summary of proposals
- Rate proposals using a quantitative method based on the criteria presented in Section 6.2 (or other criteria as directed by the Selection Committee)
- Analyze financial capabilities of companies
- Conduct reference checks
- Evaluate reasonableness and competitiveness of cost proposals
- Request clarification information from the proposer
- Attend and participate in the proposer interviews and site visits
- Rank proposals using the established evaluation criteria
- Provide further assistance to the SBWMA Executive Director and Selection Committee as requested

6.1.3 Selection Committee

The role of the Selection Committee is anticipated to involve:

- Reviewing all proposals
- Reviewing, adjusting (if appropriate), and approving the proposal rankings presented by the Evaluation Team
- Requesting clarification information of the proposer
- Attending and participating in the proposer interviews and site visits
- Recommending award of the collection contracts for the North and South Districts
- Presenting their recommendation and evaluation report to the SBWMA Board for consideration

During the process, proposer will be required to attend interviews, allow site visits, and give presentations to the SBWMA and/or Member Agencies.”

Comment #14

Page 4 – “*How the Proposal was Scored*” section

The Grand Jury report states:

“The Evaluation Committee evaluated and numerically scored the companies' proposals. The ratings from the evaluators were compiled and discussed during several Evaluation Committee meetings to determine a preliminary ranking of the proposals based solely on the evaluation criteria.”

The first sentence is correct while the second is not. The Evaluation Team did thoroughly evaluate the proposals, conduct interviews and site visits, and numerically score the proposals based on the criteria and specific sub-criteria prescribed in section 6.2 of the RFP (below). However, the evaluators did not meet and compile and discuss the ratings. The ratings were done independently and compiled by one member of the Evaluation Team. No other members of the Evaluation Team

were privy to how the other members scored the proposals. This confidentiality in scoring proposals was maintained to ensure a fair process. While the Evaluation Team did meet to discuss the merits and shortcomings of the proposals and numerous other aspects of the evaluation (including sharing their own relevant industry related experiences with these and other companies and procurements), the individual specific scoring was not discussed.

6.2 Evaluation Criteria

Proposals will be numerically scored and ranked using the criteria and weighting described in this section. The scores assigned will reflect the extent to which criteria is fulfilled relative to other proposals. Furthermore, scores will reflect the benefits to the entire SBWMA service area or service District as a whole, rather than individual benefits to each Member Agency. The evaluation criteria and maximum score that can be achieved for each criterion is presented in Table 6-1.

**Table 6-1
Evaluation Criteria and Maximum Evaluation Score**

Criteria	Maximum Evaluation Score
Responsiveness to RFP	Pass/fail
Company qualifications and experience	150
Proposal for collection services (Includes both Core and Optional Services)	150
Cost proposal (Includes both Core and Optional Services)	200
Alternative technical proposals	<i>Score, if any, to be determined (SBWMA and Member Agencies are not obligated to evaluate alternative proposals)</i>
Other matters of concern to the SBWMA Board and Member Agencies' Council/Boards	<i>To be determined if additional criteria are added</i>
Number and Materiality of Exceptions	50
Environmental Enhancements	50
Total Maximum Score	600

Member Agencies reserve the right to act in the best interest of its' residents and businesses, including the right to reject a proposal that is given the highest quantitative scoring in the evaluation process if the proposal is not in the best interest of residents and businesses. The potential factors that may be considered by the Evaluation Team when developing the score for each criterion are presented below.

6.2.1 Responsiveness (Pass/Fail)

Proposer must be fully compliant with the RFP and procurement procedures as demonstrated by submittal of all elements required by Sections 3 and 5; full completion of all cost proposal forms required in Section 5.6; compliance with process guidelines presented in Section 4; and adherence to the code of conduct signed by the proposer.

6.2.2 Company's Qualifications and Experience (150 points)

1. Collection Experience. Demonstrated experience of company providing the requested or similar services to other jurisdictions. If the proposer is a joint venture, demonstrated experience of parties working together.
2. Service Initiation Experience. Demonstrated experience of company's ability to implement new collection services and new franchise agreements and obligations that are similar to the SBWMA's services in comparable sized communities.
3. Management and Customer Service Systems. Demonstrated capabilities of the company's existing management and customer service systems' abilities to track and monitor contract compliance, quality of collection service, and call center responsiveness and to report data required by the Collection Agreement. In the event the company proposes use of a new or modified system, the extent to which such system has the potential to meet the SBWMA and Member Agency needs and contract requirements will be evaluated.
4. Key Personnel Qualifications. Extent and relevance of the qualifications and experience of key personnel proposed for the transition team and on-going management of the SBWMA collection operations.
5. Past Performance Record. Review of company's history with litigation and regulatory action (e.g., nature of past and pending civil, legal, regulatory, and criminal actions; history and nature of payments of liquidated damages); regulatory compliance related to equipment and facilities including compliance with land use permits, storm water discharge permits, state highway requirements, etc.).
6. Financial Stability. Financial strength and ability of company to acquire equipment and provide financial assurance of performance based on review of its audited financial statements and its proposed financing plan and the relationship of the SBWMA contract to the company's total annual revenues.
7. Jurisdiction Satisfaction. Satisfaction of company's references with the services received in the past 10 years (including, but not limited to, implementation, customer service, call center, billing, payment of fees, reporting, and the handling of contractual issues).

6.2.3 Proposal for Collection Services (150 points)

1. Collection Approach – Reasonableness and reliability of the proposed collection methods (e.g., technology, equipment, and containers); reasonableness of productivity and operating assumptions (i.e., number of routes, route drivers, route hours, stops per route, and other operating statistics), if applicable; and reasonableness of assumptions.
2. Diversion Ability – The nature, reliability, and innovation of proposed diversion programs and potential of such programs to divert solid waste from landfill disposal.
3. Public Education and Promotion Program – Compatibility of the proposed education program, staffing level, and program ideas with the needs of the SBWMA and Member Agencies and the requirements of the Collection Agreement; and, the quality of public education samples relative to other proposers.
4. Customer Service – Compatibility of customer service approach, staffing levels, and training programs and capabilities of the call center and customer service software system with the needs of the SBWMA and Member Agencies and the requirements of the Collection Agreement.

5. Billing System – Compatibility of billing approach, procedures for handling customers, and coordination plans with Member Agencies who perform some or all of the billing activities.
6. Facilities for Equipment, Maintenance, and Administration. Compatibility of plan for providing the facilities needed for equipment storage and parking, maintenance, and administration. Level of assurance provided, if any, with regard to site acquisition and timely development of necessary facilities.
7. Implementation Plan - Reasonableness of implementation schedule and ability to meet deadlines (e.g., reasonableness of equipment procurement schedules, implementation staffing levels, new corporation or maintenance yard development, and contingency plans).
8. Potential Collection Impacts. Compatibility of plans for vehicle compliance with State of California Air Resources Board rules; ability to respond to issues identified during the environmental review, compliance, and permitting process associated with the development of new facilities (if any are to be developed), and hauling impacts (in terms of total annual miles traveled compared to others) related to distance between vehicle maintenance and parking facilities and Shoreway facility.
9. Additional Member Agency Services. Reasonableness and reliability of proposed collection methods, technology, equipment, and containers; reasonableness of productivity and operating assumptions (i.e., number of routes, route drivers, route hours, stops per route, and other operating statistics) for:
 - a. San Mateo County service area
 - b. Atherton
 - c. Hillsborough
 - d. Redwood City
 - e. Burlingame
 - f. Foster City
 - g. City of San Mateo
10. Other Proposed Services. Compatibility of other services proposed by company as per Section 3.15 of this RFP.

6.2.4 Cost Proposal (200 points)

1. Reasonableness of Cost Proposals. Logical relationship between proposed costs and operational assumptions for the base cost proposal and the cost proposal for additional Member Agency services.
2. Competitiveness of Cost Proposals. Cost competitiveness relative to other proposals.
3. Value to Member Agencies. The level of value provided given the relative cost for that service.

6.2.5 Alternative Technical Proposals (Maximum Score, if any, to be determined)

SBWMA and Member Agencies are not obligated to evaluate or select alternative proposals. Alternative proposals will be considered by the SBWMA and Member Agencies if the SBWMA and Member Agencies conclude, in their sole discretion, that the alternative proposals warrant evaluation and analysis. Such evaluation will consider the reasonableness and reliability of proposed collection methods, technology, equipment, and containers; and the reasonableness of productivity and operating assumptions (i.e., number of routes, route drivers, route hours, stops per route, and other operating statistics).

At the SBWMA's and/or Member Agencies' option, the reasonableness and competitiveness of one or more alternative proposal(s) may be evaluated.

6.2.6 Number and Materiality of Exceptions (50 points)

The number, nature and materiality of exceptions to the model Collection Agreement (Attachment 2) will be taken into account in evaluating proposals.

6.2.7 Environmental Enhancements (50 points)

Proposals that include Environmental Enhancements including, but not limited to those specified in Section 3.16.3 of this RFP, may be eligible to receive additional evaluation points. Proposed Environmental Enhancements that address the following will be eligible to receive points:

1. Mitigating Environmental Impacts. Reducing or minimizing the negative environmental impacts associated with providing collection services (e.g., air and water impacts, depletion of natural resources).
2. Recycled Materials. Ensuring the highest and best use of recycled materials and the highest feasible quantity of recycled content is achieved.”

Comment #15

Page 4 – “How the Proposal was Scored” section

The Grand Jury report states:

“Each evaluation criterion was divided into two parts: a "competitive" part and a "reasonableness" part. In determining the "reasonableness" points of a proposer's cost proposal, equipment selection, labor, and operating assumptions were to be "considered against industry standards" and against other proposals. The point allocation process was described by Grand Jury witnesses as "highly theoretical and subjective," with a potential for a limitless amount of "theoretical points" being combined with "actual competitive points" by the individual Evaluation Committee members, up to the maximum score in each Evaluation Criteria category. Neither the individual members of the Evaluation Committee nor the Selection Committee were required to report how many overall points assigned to each criterion were based on "reasonableness" or "competitiveness."”

While the terms “reasonableness” and “competitiveness” were specifically prescribed in five (5) of the twenty-four (24) sub-criteria, it is incorrect to state that “Each evaluation criteria was divided into two parts: a "competitive" part and a "reasonableness" part.”

In addition, it is incorrect to state that the scoring process was “highly theoretical” or that there was a “potential for a limitless amount of theoretical points being combined with actual competitive points...” The five primary criterions contained numerous sub-criteria and points were achieved or deducted based on the company’s strengths or weaknesses for each relative to the other proposals.

Comment #16

Page 4 – “How the Proposal was Scored” section

The Grand Jury report states:

“The Grand Jury received a paper titled "Solid Waste Management-A Guide for Competitive Contracting for Collection" written by a SBWMA consultant and was told that it was the guideline for the RFP.”

In 1996, JM Sloan co-authored “Solid Waste Management – A Guide for Competitive Contracting for Collection”. The paper was published as a part of a policy series of the Reason Foundation – Privatization Center. While JM Sloan, of Sloan Vazquez, LLC, is a consultant to SBWMA, Mr. Sloan’s consultation was specifically limited to the Facility Operations RFP, and not the Collection

Services RFP. While Mr. Sloan supports the general principles set forth in the paper, he did not submit the paper to the SBWMA, nor was he asked to provide input to the development of the Collection RFP.

To emphasize, the paper was neither offered by SBWMA consultants, nor used by the SBWMA as the guideline for the RFP.

Comment #17

Page 5 – “*How the Proposal was Scored*” section

The Grand Jury report states:

“On August 28, 2008, Norcal was chosen by the SBWMA to be awarded the Collection Services Contract for the ten-year period from 2011 to 2021.”

The SBWMA Board of Directors did pass a motion to approve the Selection Committee recommendation to select Norcal as the future collection services provider. The Board recommended presenting this selection to the individual governing bodies of the respective Member Agencies for consideration of awarding a contract. Only the governing bodies of the Member Agencies can award a Collection Services franchise within their jurisdiction.

Comment #18

Page 5 – “*Cost Evaluation*” section

The Grand Jury report states:

“The SBWMA and consultants entered the cost information provided by each of the four proposers into a Comprehensive Cost Proposal Summary. That summary was used to compare and evaluate their “competitiveness.” The final proposed costs for servicing the entire SBWMA jurisdiction are summarized in item four of Table 1.”

The first sentence is correct, while the second and third are not. The Cost Proposal Summary was used as a tool to evaluate the cost proposals with respect to all three Cost Proposal sub-criteria, including Reasonableness of Cost Proposals, Competitiveness of Cost Proposals, and Value to Member Agencies. At no point was the summary solely used, as all of the Evaluation Team members thoroughly vetted all aspects of all cost forms submitted by the proposers. The third sentence is incorrect since “Table 1” in the report reflects scores achieved and does not provide information on cost (“*the final proposed costs for servicing the entire SBWMA jurisdiction*”).

What is also important to note is that Allied was awarded the most points for competitiveness of its cost proposal since the company submitted the lowest cost proposal.

Comment #19

Page 5 – “*Cost Evaluation*” section

The Grand Jury report states:

“The SBWMA was informed by Allied that its costs were lower because, as a large company, it had the potential advantage of hedging fuel costs.”

At no time during the proposals evaluation process did Allied disclose any information on its local or corporate fuel purchasing practices that suggested that it had a potential advantage of hedging fuel costs.

Comment #20

Page 5 – “Cost Evaluation” section

The Grand Jury report states:

“Also, due to Allied's size, the company that supplies new bins had agreed to roll out the bins to residents free of charge.”

This statement is incorrect. During the discovery question and answer process in evaluating proposals, Allied was asked by the SBWMA about where the cost to assemble and distribute bins was located in the cost forms submitted, and the company responded by stating that: *“The assembly and delivery cost is included in our base cost per container, located on Form #4.”* (Allied response #34, letter dated 04/15/08).

Comment #21

Page 7 - “Environmental Enhancements & Other Considerations” section

Footnote number 4 states:

“No mention was made of an opt-in proprietary program called Recyclebank, implemented successfully in Delaware and Philadelphia and awarded by the United Nations, that would supply Recyclebank's dollars to incent household recycling; <http://www.huliq.com/1/80048?un-program-spotlights-recycle-bank>”

The information submitted by Allied pertaining to its RecycleBank program was not compliant with the RFP. Awarding or subtracting points for an alternative program that was not submitted in compliance with the RFP requirements would have compromised the fundamental due diligence of ensuring a fairly managed competitive procurement.

Comment #22

Page 7 – “SBWMA’s Due Diligence Process” section

The Grand Jury report states:

“The Grand Jury asked the SBWMA Board members who were on the Selection Committee if they were aware of Norcal's previous, well-publicized history in the City of San Jose (San Jose) and San Bernardino County. SBWMA reported that Norcal's problematic history was discussed. However, many of the SBWMA Board members mentioned they had no knowledge of these discussions. During a Menlo Park City Council meeting, the SBWMA consultant, who was tasked to verify the competitors' references, publicly testified that he phoned San Jose to confirm Norcal's recommendations, but he never followed-up. During interviews, the Grand Jury learned that the SBWMA consultant worked in a consulting firm that helped create the RFP for waste management collection services in 2000 for San Jose and their subsequent RFPs after Norcal's problems were revealed. This consultant and his partner were on the SBWMA Evaluation Committee.”

All proposers were required to submit detailed information about contract issues and litigation in their proposals, as well as additional information requested during the evaluation process. This included contract issues and litigation related to Norcal’s contracts in San Jose and San Bernardino County. All of this information was taken into careful consideration during the evaluation and selection process.

Two members of the Evaluation Team had firsthand knowledge of Norcal’s and Green Waste Recovery’s (one of the partners in BEST) operational performance and contract compliance in the City of San Jose. This was shared and discussed, and further taken into consideration during the evaluation and selection process.

In fact, both principals of R3 consulting (Ric Hutchinson and Richard Tagore-Irwin) were key members on the primary consultant teams that worked on San Jose's last two RFPs for collection services in 2000 and 2006. The scope of their prior work for San Jose included RFP development, evaluation of proposals, facilitation of proposals scoring, and final contract negotiation and program implementation. This experience in San Jose was one of the key attributes that set the R3 consultant team apart from the others that responded to the SBWMA's competitive procurement request for qualifications for RFP consultant services.

Upon release of the recommendation to select Norcal as the next service provider, one of the proposing companies asserted that: "Over the course of the contract [between Norcal and San Jose] these problems exacerbated to a level that caused the City of San Jose to not offer an automatic extension of the contract to Norcal and put there [their – San Jose] collection and recycling services out to bid."

To which, the SBWMA responded with the following:

"This assertion is not true given the following information:

- Norcal held separate contracts with the City of San Jose for collection of recycling and garbage, and collection of yard trimmings and street sweeping.
- Norcal did in fact receive an automatic extension offer for yard trimmings/street sweeping on December 21, 2005 (refer to **Exhibit D** – letter from San Jose City Manager to Norcal).
- Norcal did not receive an automatic extension offer for recycling and garbage collection service on December 21, 2005, due to Section 2.02 of the collection agreement that conditioned an automatic extension based upon meeting certain diversion requirements (i.e., processing of collected recyclables at the materials recovery facility (MRF) (refer to **Exhibit E** – letter from San Jose City Manager).
- Lastly, a letter from San Jose staff was issued to Norcal on October 17, 2005 (**refer to Exhibit F**) which invited Norcal to make a written proposal to the City of San Jose for consideration regarding the potential extension of the agreement for recycling and garbage collection and conveying that the City's rationale for not providing an extension offer was due to issues related to not meeting diversion requirements at the processing facility (owned and operated by California Waste Solutions),..."

Comment #23

Page 7 – "SBWMA's Due Diligence Process" section

The Grand Jury report states:

"The 2004-2005 Santa Clara County Civil Grand Jury Report stated, 'That the [San Jose] Mayor's June 26, 2000 recommendation of Norcal to the Council describes Norcal's history and serious legal problems. The history also discusses San Bernardino County's lawsuit against Norcal alleging bribery, fraud, and unjust enrichment. An 18-month jail sentence for a Norcal employee, who admitted taking bribes and a \$6.5 million settlement payment by Norcal to San Bernardino County were also discussed.' The 2008-2009 San Mateo County Civil Grand Jury could not determine if the Selection Committee were aware of these issues or explored them or other issues in any depth. Further, there is no evidence that the SBWMA did a diligent search of the other proposers that might have influenced the selection."

Regarding the last sentence, the SBWMA's outside counsel performed a thorough litigation review and the results of this review and follow-up research was shared with the Selection Committee. This information was provided to the Grand Jury.

Comment #24

Page 12 – “SBWMA’s Due Diligence Process” section

The Grand Jury report states:

“The Grand Jury learned that SBR planned to run the Shoreway Facility as a ‘satellite’ operation from its headquarters in Los Angeles. At what point the SBWMA discovered this fact is not clear to the Grand Jury. SBR expects to receive additional funds annually from SBWMA because of its ‘miscalculations and omissions.’ The Grand Jury has learned, subsequent to SBR’s selection as Shoreway Operations Contractor, that it renegotiated, on May 19, 2009, to decrease its recycling revenue guarantee to \$6.75 million. However, SBWMA is still in deliberations with SBR and has not established a final amount to operate the Shoreway Facility.”

SBR proposed that the executive and financial management of Shoreway would be directed from their headquarters and that all operations management functions would be completed by local Shoreway-based managers. While the type of management structure proposed by SBR is not unusual in municipal proposals, it was deemed inappropriate for the Shoreway operation and was rejected by SBWMA. The SBWMA directed SBR to add the cost of local executive management to their cost proposal.

Comment #25

Page 12 – “SBWMA’s Due Diligence Process” section

The Grand Jury report states:

“On March 29, 2009, HBC wrote a letter to the SBWMA contesting its basis for the selection of SBR. (see Attachment 1)”

The referenced letter was written by a competitor/proposer that was not recommended to receive the contract. The letter contained no new information, and nothing that had not been made public in the Evaluation and Selection Committee reports. Each of the competitor’s points had already been fully investigated, analyzed, evaluated and were already reflected in the scoring of the proposals. The SBWMA prepared and transmitted a full response to the competitor/proposer’s letter.

Comment #26

Page 12 – “SBWMA’s Due Diligence Process” section

The Grand Jury report states:

“Additionally, the Grand Jury learned from different sources that there is concern about ongoing problems with Community Recycling, one of the two SBR partners. The Local Enforcement Agency for Los Angeles has issued forty-two outstanding Notices of Violations to Community Recycling Sun Valley Recycling and Transfer operations. Twenty-six of the violations concern permitting. Community Recycling is operating without the correct permit. The other sixteen violations are for vector, bird and animal control; training; hazardous, liquid, or special waste containment; scavenging; traffic control; cleaning; reporting; and load checking. In addition, on February 26, 2009, during a SBWMA Board meeting, a member of the Teamsters Union distributed a letter from Teamster’s Local 396 of Southern California. The letter stated the union had ‘major labor problems’ and ‘horrible working conditions’ with Community Recycling. SBR claims it has good union relationships.”

Each of the points listed in this paragraph were fully investigated, analyzed, evaluated, by the Evaluation and Selection Committees and reflected in the scoring of the proposals. All of the

findings by the Evaluation Committee related to these issues were discussed by the Selection Committee, presented to the SBWMA, and discussed in open public meetings.

The bulk of the violations were related to permit conditions surrounding of Community Recycling's facility in Sun Valley, California. This facility has been operated for over 20 years and predates many of the current regulations pertaining to solid waste facilities. These historical "permit issues" will not be a factor in a contractor's operations of the SBWMA's Shoreway facility.

Also, given that Potential Industries (the other partner in SBR) has a clean operating history, the Selection Committee was confident that the company understands and will live up to the high standards required by the SBWMA. In addition, the SBWMA agreement with SBR will include provisions to both define and enforce "good housekeeping." According to a March 18, 2009 Selection Committee report, "The Selection Committee is comfortable that SBR can and will operate the Shoreway facility at the level expected by SBWMA staff and our Member Agencies."

In addition, the SBWMA continues to monitor Community Recycling's on-going environmental records for its other facilities to ensure they are making the necessary improvements.

Comment #27

Page 12 – "SBWMA's Management Conduct" section

The Grand Jury report states:

"Allied was one of the proposers that submitted for the contract to haul garbage and run the Shoreway Facility. The decision to recommend either HBC or SBR to operate the Shoreway Facility in August 2008 meant that Allied's bid to operate the Shoreway Facility was rejected. Shortly after its bid was rejected, Allied submitted an alternative proposal to the SBWMA that addressed the ever-increasing cost proposed by the SBWMA to build the new Shoreway Facility. The request to consider this alternate proposal for building the MRF was denied by the SBWMA, due to what the SBWMA had described as 'non-compliance with the RFP requirements.' The denial prompted Allied to contact the press and city council members for a hearing."

It should be noted that Allied Waste's retrofit proposal dated August 26, 2008 was submitted outside of the RFP process, and was released to the media prior to the Board's receipt of the document.

The August, 2008 retrofit proposal was thoroughly evaluated by the SBWMA and its consultant, Sloan Vazquez, LLC. Consultants prepared analysis that demonstrated that the retrofit plan included many shortcomings including the fact that while it required lower capital cost, it would add over \$35 million in additional operating costs over the 10-year term of the contract. An analysis of Allied's pro forma costs did not include items such as profit, interest and depreciation. In addition, the plan did not address life-cycle costs and seismic concerns, costs for upgrading the existing MRF building to comply with new universal building codes and ADA requirements, among others. Lastly, the plan disregarded the product quality standard or residue standards set by the SBWMA in the RFP, resulting in a risk of lower commodity revenue.

In public meetings, the SBWMA Board concluded that Allied's retrofit plan did not merit abandonment of the RFP process, including implementation of the Shoreway Master Plan.

Comment #28

Page 13 – “SBWMA’s Management Conduct” section

The Grand Jury report states:

“With this email, the copy of a newspaper article about Allied (see Attachment 2) was also sent to the proposers. The newspaper article contained controversial information about Allied, as admitted to by staff in a SBWMA meeting on August 28, 2008. Allied’s lawyer attempted to elicit an apology from the executive at a SBWMA Board meeting, but the apology was denied on the grounds that it was not legally necessary.”

This matter has been legally settled with Allied, pursuant to a confidential written settlement that resolves use of plant material delivered to Newby Island by the SBWMA.

Comment #29

Page 14 – “SBWMA Hires External Consultant” section

The Grand Jury report states:

“The consultant’s analysis was based primarily on interviews with the committee members, not on written documents. He found that the RFP evaluators submitted combined scores, which did not distinguish the point allocation between what were “competitiveness” points and what were ‘reasonableness’ points in the RFP scoring process.”

This statement is incorrect with regards to the Collection Services RFP. The SBWMA did not hire an external consultant. The City of San Mateo retained an independent consultant to review the Collection Services RFP evaluations of the proposals to ensure they were done appropriately. The independent consultant’s findings concurred with the recommendation for the future service provider and stated that the evaluations were appropriately executed and fair. The report specifically stated the following:

- “The selection process provided multiple opportunities for each of the Proposers to provide details on their proposal.
- The Evaluation Committee members rated the proposals independently, not in a group setting.
- The Evaluation Committee did not come to agreement before the scores were tallied.
- When the scores were compared, each of the evaluators had ranked each of the Proposers in the same order.
- The Cost Proposals were fairly evaluated. The evaluation of cost not only evaluated the base fee, but also the reasonableness of the amount.
- The process for the evaluation of the proposals was fair.
- The evaluation of the proposals was fair.”

As it relates to the Facility Operations RFP, this statement is also factually incorrect. No consultant interviewed the evaluators. The scoring of the proposals did, in fact, separately account for reasonableness and competitiveness.

**APPROVED BY
BOARD OF SUPERVISORS**

SEP 29 2009

**CLERK OF BOARD
BY *Maria L. P. [Signature]* DEPUTY**



**COUNTY OF SAN MATEO
Inter-Departmental Correspondence**

County Manager's Office

DATE: September 3, 2009
BOARD MEETING DATE: September 29, 2009
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: None

TO: Honorable Board of Supervisors
FROM: David S. Boesch, County Manager
SUBJECT: 2008-09 Grand Jury Response

RECOMMENDATION:

Accept this report containing the County's responses to the following 2008-09 Grand Jury reports:

1. Trash Talk: Rethinking the Waste Management RFP Process by the South Bayside Waste Management Authority, and
2. Who's Watching Mid Coast Television (MCTV)

BACKGROUND/DISCUSSION:

The County is mandated to respond to the Grand Jury within 90 days from the date that reports are filed with the County Clerk and Elected Officials are mandated to respond within 60 days. To that end, attached is the County's response to the Grand Jury report on the Waste Management RFP Process by the South Bayside Waste Management Authority and Who's Watching MCTV both issued on July 10, 2009.

Acceptance of this report contributes to the Shared Vision 2025 outcome of a Collaborative Community by ensuring that all Grand Jury findings and recommendations are thoroughly reviewed by the appropriate County departments and that, when appropriate, process involvements are made to improve the quality and efficiency of services provided to the public and other agencies.



Trash Talk: Rethinking the Waste Management RFP Process by the South Bayside Waste Management Authority

Findings:

Staff is in general agreement with the Grand Jury's findings with the exception of the Findings listed below. Several of the responses below reference specific material prepared by the SBWMA Board, which are available on the SBWMA website (www.rethinkwaste.org) in their entirety. The specific sections or pages referred to below have been attached to this response for ease of reference.

Finding 4: In the evaluation process, the "reasonableness" points were not distinguished from the "competitiveness" points.

Response: Disagree. The "RFP for Collection Services" dated November 1, 2007 specified five (5) criteria that were used by the Selection Committee to evaluate the RFPs (sections 6.1 and 6.2). The "reasonableness" criteria was adequately addressed by the Selection Committee in the "SBWMA Collection Services RFP-Selection Committee Report: Evaluation and Scoring of Proposals" (pgs. 5-7, section 3.2) dated August 21, 2008.

Finding 5: Neither the individual members of the Evaluation Committee nor the individual members of the Selection Committee were required to report how many of the overall points assigned to each criterion were based on "reasonableness" or "competitiveness".

Response: Agree in part. The SBWMA staff reports titled "Collection Services" and "Facility Operations Services" reported the Evaluation Committee scores as a group; however, the individual Evaluation Committee and Selection Committee members' overall point ratings were included in the reports. The recommendations of both committees were consistent with each other.

Finding 6: The South Bayside Waste Management Authority's (SBWMA) consultant reported that Norcal's reference in San Jose was not checked.

Response: Agree in part. The Grand Jury Report indicates that SBWMA's consultant reported at a Menlo Park City Council meeting that effort was made to contact the City of San Jose; however, follow-up was not made. Staff was not present at the City of Menlo Park meeting and cannot confirm this statement. Although SBWMA's consultant may not have spoken directly with the City of San Jose, the experience that the City of San Jose had with Norcal Waste System ("Recology") was thoroughly discussed by both the Evaluation and Selection Committees.

Finding 7: South Bay Recycling (SBR) was the only proposer that did not provide for on-site management in its original cost proposal.

Response: Disagree. The original South Bay Recycling (SBR) proposal indicated that the operations management would occur at the site by a senior operations manager. SBWMA deemed this level of management to be inadequate, and required SBR to also assign executive and financial managers to this site instead of having these functions performed from their off-site headquarters.

Finding 8: SBR has asked the SBWMA to cover \$1.2 million for mistakes and omissions in its original proposal.

Response: Agree in part. SBR's proposal was evaluated positively by both the Evaluation and Selection Committees. Throughout the negotiation process, it was determined that SBR made errors in their cost estimates and were requested to modify their on-site management plan. At the direction of the SBWMA, SBR provided a revised proposal in late 2008 that addressed both of these issues. Cost is one of the eight evaluation criteria used in the Evaluation Committees recommendations. The \$1.2 million dollar figure is the sum of SBWMA-directed changes and also addresses SBR assumption errors.

Finding 9: It appears that SBWMA did not give sufficient consideration to SBR's notices of violation in the operation of its Southern California operations.

Response: Disagree. SBWMA contacted SBR and the County of Los Angeles' Local Enforcement Agent (LEA) to discuss and review the stated violations. These violations were taken into consideration during the evaluation and selection process. This issue was also discussed in depth at SBWMA board meetings on several occasions.

Finding 10: The Grand Jury could not confirm that the proposals were adequately evaluated or reflected a thorough analysis of the proposal content and contractor background.

Response: Disagree. The SBWMA and member agencies went to great lengths to ensure that open, transparent, competitive and effective procurement processes were pursued. The SBWMA staff reports relating to the RFPs for "Collection Services" and "Facility Operation Services" were extremely detailed in terms of the evaluation criteria used to select and recommend contractors for both services.

The SBWMA staff report for the August 28, 2008 board meeting included the six evaluation criteria categories that were considered during the evaluation and selection process for the Collection Service proposal review process. The evaluation processes was detailed in the, "SBWMA Collection Services RFP, Selection Committee Report: Evaluation and Scoring of Proposals", dated August 21, 2008 (sections 3.1 and 4.1-4.5). This addresses the evaluation and selection process for all RFP responses.

The March 18, 2009 Evaluation Committee Report titled "Facility Operations Selection" directly addresses the evaluation and selection process for the two short listed RFP responders, SBR and Hudson Baylor. This report provides a point-by-point analysis of nine (9) critical criteria between these two RFP responses (pgs. 2-12).

Recommendations:

The Grand Jury recommends that the South Bayside Waste Management Authority (SBWMA) and its Board and designate elected officials of the 12-member agencies [Atherton, Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, Redwood City, San Carlos, San Mateo, West Bay Sanitation District, and the San Mateo County Board of Supervisors (on behalf of the unincorporated portions of San Mateo County)] should:

- 1. Meet and reconsider pending contracts with Norcal and South Bay Recycling in light of information contained in this Grand Jury report.**

Response: Disagree. Both contracts were extensively reviewed, evaluated and considered at multiple SBWMA board meetings, which are public meetings, during the past 18 months. The SBWMA board voted to award the Collection Services contract to Norcal Waste System ("Recology") on August 28, 2008 by a 9-0-2-1 (yes-no-abstain-absent) vote. The County of San Mateo was one of the nine member agencies that voted in favor of the recommendation. The SBWMA Facilities Operations contract was awarded to SBR by the SBWMA board on April 23, 2009 by a 10-2-0-0 (yes-no-abstain-absent) vote. The County of San Mateo was one of the two member agencies that voted in opposition on this item.

Member agencies have the ability to select a different Collection Service Provider, however, the County of San Mateo voted in favor of the Collection Service Provider recommended through the RFP process.

- 2. In future Request for Proposal processes:**

- a. Clearly define and objectively and consistently apply the evaluation criteria.**

Response: Agree. This recommendation should be implemented as the Request for Proposal processes should be clearly defined, objective, and utilize consistent evaluation criteria.

- b. Provide for an appeals process before the final contracts are signed.**

Response: Agree in part. This recommendation may be implemented when appropriate. It is typical for County RFP's to include an appeal or a protest process. However, the RFP was a collaborative process, and it is

understood that some agencies do not include appeals or protests as a part of their RFPs.

c. Assure the proposers that alternate proposals will be considered.

Response: Agree in part. This recommendation can be implemented in future RFP processes, if and when the type of services being selected warrants alternate proposals.

d. Ensure that representatives from other jurisdictions are participants on the committees.

Response: Agree in part. This recommendation can be implemented, however, it is unclear whether the Grand Jury is suggesting that representatives from the SBWMA member agencies, or members of jurisdictional agencies outside of the SBWMA participate on the committees. It is preferred a review of proposals adequately involve a sufficient number of member agencies with subject matter expertise to ensure objective results.

e. Ensure that no one individual chair both committees.

Response: Agree in part. This recommendation can be implemented; however, it may depend upon the specific circumstances and whether it is more appropriate to have different individuals chair each committee.

3. Amend the Joint Powers Authority Agreement to include elected officials from member agencies onto the SBWMA Board of Directors.

Response: Agree. This recommendation could be implemented as the Joint Powers Authority Agreement includes provisions that allow for modification to the Agreement that stipulates participation by member agencies. The County of San Mateo supports further discussion that would provide the SBWMA with greater participation from elected officials during future decision-making processes.

Attachments:

"RFP for Collection Services", Sections 6.1 and 6.2, dated November 1, 2007

"SBWMA Collection Services RFP-Selection Committee Report: Evaluation and Scoring of Proposals", Section 3.2 (pgs. 5-7), and Sections 3.1 and 4.1- 4.5, dated August 21, 2008

"Facility Operations Services" (pgs. 2-12), dated March 18, 2009

JCP:AMS:JL

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F- 243 (2)

Who's Watching MCTV?

Findings:

Staff is in general agreement with the Grand Jury's findings.

Recommendations:

The Grand Jury recommends to the San Mateo County Board of Supervisors and the City Council of the City of Half Moon Bay that they each:

1. **Communicate and coordinate any agreements with Mid-Coast Television (MCTV) in order to speak with one voice in contractual and oversight matters.**

Response: Agree, however, the recommendation requires further review and evaluation of both agreements with MCTV to determine the differences between the agreements and whether there would be any benefit gained from having similar agreements between MCTV and each jurisdiction. Additionally, the City and the County have separate agreements with Comcast containing different elements and requirements that may preclude implementation of identical agreements with MCTV.

2. **Join with MCTV to create a strategic plan that improves the quality and relevance of service.**

Response: Agree in part. This recommendation can be implemented should MCTV embark on creating a strategic plan. The County is willing to be an active participant in a strategic planning process and offer input during the planning process. However, MCTV should take the lead on any strategic planning effort.

3. **Initiate with MCTV a process of improvement based on community surveys and public input. The bylaws of MCTV should be adjusted to codify these reforms.**

Response: Agree in part. The recommendation to initiate surveys and public input, as well as, modifying the MCTV's bylaws could be implemented, but the County can only assist MCTV in obtaining feedback and suggestions from their viewers. The County can offer suggestions to the bylaws in terms of community surveys or public input components; however, the MCTV Board is the entity responsible for revising and adopting bylaws.

4. **Encourage MCTV to seek out, foster, and broadcast new locally created programming. The agencies should consider Public, Educational, and Services (PEG) Station guidelines as a minimum-programming standard.**

Response: Agree. The recommendation for MCTV to broadcast recent and locally created programming can be valuable to the viewers; however, even programs that are not locally created can be very valuable to MCTV's viewers. The MCTV website contains information and requirements for programming that is submitted to MCTV, which could be recent and locally created. It appears that MCTV does not preclude programming contributions produced locally, but does specify that the submittals will be viewed by MCTV prior to being aired on the station. MCTV's viewers can also benefit by programming produced by other PEG channels or nonprofit organizations that provide appropriate programming for PEG channels. There are many important messages and information that have been produced by other entities that may have great value to MCTV viewers. This appears to be an affordable option for a PEG station of this size with limited revenue. The County can work with MCTV to ensure they are aware of specific programming that may have value to their viewers and encourage that the programs be aired on the station.

5. Work with MCTV to identify and develop new funding sources so that MCTV may carry out its mission more effectively.

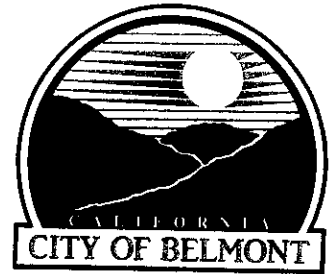
Response: Agree. The recommendation for MCTV to identify and develop new funding sources is important, particularly in light of the other options available to television watchers that do not rely on cable. The existing franchise agreement between the County and Comcast allows for PEG Capital funding. The Board of Supervisors previously approved an allocation of this funding to MCTV and they have been reimbursed appropriately for PEG Capital expenses in connection with the Board's approval and the franchise agreement. The County can provide input to MCTV in regards to funding options, but this is a challenge that many PEG channels face and work to solve in various ways.

6. Direct MCTV to publicly announce and invite the public to participate in its Board meetings

Response: Agree. The MCTV Board meetings are open to the public, however, notification of the meeting dates and times could be improved to potentially increase the number of meeting attendees. Staff was unable to find information on the MCTV website regarding the MCTV Board Members, scheduled meetings, agendas, meeting minutes, or existing bylaws. The website could be a valuable and visible place to post this type of information to keep the public informed of MCTV Board activities and bylaw requirements.

October 6, 2009

Honorable George A. Miram
Judge of the Superior Court
Hall of Justice
400 County Center; 2nd Floor
Redwood City, CA 94063-1655



Re: City of Belmont, CA Response to Grand Jury Report Entitled "Trashtalk: Rethinking the Waste Management RFP Process by the South Bayside Waste Management Authority (SBWMA) Report"

Dear Honorable George A. Miram:

In accordance with the letter of instructions dated July 10, 2009 from Court Executive Officer John C. Fitton, this letter and the enclosed public staff reports from the City of Belmont and SBWMA is the City of Belmont's official response to the above referenced Grand Jury report.

The City Council of the City of Belmont considered this matter at public City Council meetings on July 28, 2009 and September 22, 2009. At the September 22, 2009 meeting, the City Council approved a motion (Attachment A) concurring with the recommendations in the City public report (Attachment B), the SBWMA staff report and authorized the City Manager to send this letter. As described in the City of Belmont report, the City generally concurs with the public response of the South Bayside Waste Management Authority Board dated July 28, 2009 and included herein (Attachment C) with the exception of comment #13, "*No Elected Officials are on SBWMA's Board of Directors*" (*Governance Structure of the SBWMA*" on page 14 of the Grand Jury Report/Findings on page 16). The SBWMA response on this comment can be found on page 4 of their July 28, 2009 letter to you. It reads as follows:

"This recommendation is one for consideration by the individual governing bodies of the JPA Member Agencies which have sole authority to amend the JPA agreement. The last restatement of the JPA agreement in 2005 confirmed Member Agencies intent to continue to appoint staff to the SBWMA Board. Action: The SBWMA Board lacks legal authority to take action on this recommendation. However, the Board will review the responses to the Report from the Member Agencies and if sufficient support (8 or more Agencies) is indicated, the Board will facilitate the preparation and circulation of an appropriate amendment to the JPA Agreement."

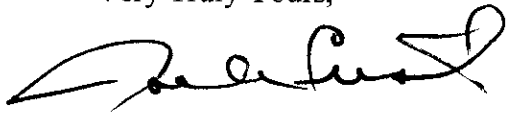
Belmont takes exception to this response. This City has long advocated for having elected officials on the SBWMA Board rather than appointed officials. The SBWMA response to this Grand Jury finding is illogical. On the one hand it says we, SBWMA, have no authority to act and then in the next sentence, it says it will act if it sees an expression of interest from 2/3 of the member agencies. Belmont thinks the SBWMA

staff and Board should affirmatively prepare a staff report and resolution or resolutions for each member agency's City Council or governing board to consider. SBWMA staff should take this question of elected officials on the board, yes or no, to each of the twelve member agencies for consideration. On all other important matters, that is exactly what the SBWMA staff does. They prepare model staff reports and resolutions and support member agency staff in placing these policy reports before each governing board of elected officials. Failing to do so on this important governance matter makes it very difficult, if not impossible, for individual advocates such as Belmont to have the matter considered formally.

On all other Grand Jury findings, the City of Belmont concurs with the July 28, 2009 SBWMA response.

Feel free to contact me at 650-595-7408 should you or your Grand Jury staff have questions.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Jack R. Crist". The signature is fluid and cursive, with a large initial "J" and "C".

Jack R. Crist
City Manager

cc: City Council of the City of Belmont
SBWMA Executive Director Kevin McCarthy

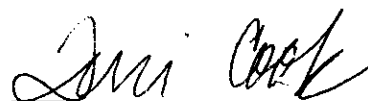
Attachments:

- A. City Council Motion dated September 22, 2009
- B. City of Belmont staff report on the San Mateo County Civil Grand Jury Report 2009 - "Trashtalk: Rethinking the Waste Management RFP Process by the South Bayside Waste Management Authority"
- C. SBWMA letter response to the Honorable Judge Miram dated July 28, 2009

Attachment A

I, Terri Cook, City Clerk of the City of Belmont, California, do hereby certify that by a vote taken September 22, 2009, the Belmont City Council unanimously approved the filing of the City of Belmont's response to the Grand Jury Report Entitled "Trashtalk: Rethinking The Waste Recommendation RFP Process by the South Bayside Waste Management Authority", as presented.

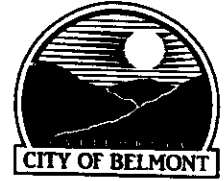
DATE: Oct. 7, 2009



Terri Cook
Belmont City Clerk

Attachment B

City of Belmont staff report of September 22, 2009
on the San Mateo County Civil Grand Jury Report 2009 -
“Trashtalk: Rethinking the Waste Management RFP Process by the
South Bayside Waste Management Authority”



Staff Report

RESPONSE TO GRAND JURY REPORT ENTITLED "TRASHTALK: RETHINKING THE WASTE RECOMMENDATION RFP PROCESS BY THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY (SBWMA)"

Honorable Mayor and Council Members

Summary

The SBWMA Board of Directors approved a response to the grand jury dated July 23, 2009. A copy of the complete text of the SBWMA response is attached to this report. The twelve member agencies of SBWMA are also required by state law to provide a response by October 8, 2009.

This report provides the City Council with a suggested response to the San Mateo County Court Executive Officer.

Background

The SBWMA is a twelve member agency joint powers authority, of which Belmont is a member, and whose purposes include owning the Shoreway Recycling & Disposal Center (SRDC) and assisting member agencies with solid waste management issues.

SBWMA manages portions of the solid waste and recycling collection franchise agreements entered into by the member agencies. Currently, each member agency holds a franchise agreement with Allied Waste for collection services which expires December 31, 2010 while the SBWMA holds an agreement with Allied Waste for the operation of the SRDC which also expires December 31, 2010. Beginning January 1, 2011, the collection franchise will shift to NorCal/Recology and the SRDC operations to South Bay Recycling.

On July 10, 2009, the San Mateo County Civil Grand Jury issued a report which contains a series of findings, conclusions and recommendations called "TRASHTALK: Rethinking the Waste Management RFP Process by the South Bayside Waste Management Authority (**Exhibit A**). The July 10th report included recommendations to:

- a) Reconsider the pending contracts with NorCal (Recology) and South Bay Recyclery (SBR); and
- b) Amend the Joint Powers Agreement to include elected officials on the board; and
- c) Correct what the Grand Jury considered defects or flaws in the SBWMA RFP process.

On July 23, 2009 the SBWMA Board of Directors approved a written response to the Civil Grand Jury. Both the July 10th Grand Jury report and the July 23rd SBWMA response are attached to this report. The July 23rd SBWMA staff report indicates:

- a) The Agency Executive Committee and legal counsel “does not believe it would be appropriate, nor legally advisable, to go back to square one of the RFP process.” As was pointed out in previous reports, Belmont conducted a parallel RFP process and independently selected NorCal/Recology as the collection service provider
- b) The Agency will take the Grand Jury recommendation under consideration on future RFP processes.
- c) Any JPA amendment to add elected officials is the sole jurisdiction of the member agencies and not the SBWMA Board. *The response to this recommendation was the one exception Belmont staff takes to the SBWMA response.*
- d) The SBWMA Executive committee “noted disagreement in whole or in part with many of the findings and attempted to explain the correct facts and workings of the RFP process in its response.” (Addendum 1)
- e) The Executive Committee indicated “it became apparent that it should also respond to correct the record being made by the Grand Jury Report in its background section, primarily as it discussed the RFP process (Addendum 2).

Discussion

Belmont City staff generally concurs with the response developed and approved by the SBWMA staff and Board (Exhibit B).

Belmont staff's position is based on the professional judgment that while the Grand Jury report made critical assertions, it generally did not support them with facts that could be the basis for reconsideration of previous approvals and actions. The SBWMA has spent several years working on these two RFP processes, and they have for the most part been very public and transparent. The process was competitive. Belmont participated in this process. Twelve member agencies have been required by a 2/3 vote to ratify SBWMA recommendations before the fact. Time is of the essence as the existing franchise agreement expires in sixteen months. Belmont conducted an independent RFP process for the collection services vendor and came to the same conclusion as SBWMA. The Shoreway project bids have been awarded resulting in over a \$ 9 million project cost savings when compared to the engineers project cost estimate. Twelve member agencies are now negotiating new franchise agreements with NorCal.

Staff recommends the City Council approve by resolution a response similar to the SBWMA response with one exception regarding elected officials on the SBWMA Board of Directors. Belmont City Council policy direction has been to advocate for an SBWMA Board comprised of elected officials. The Grand Jury made this recommendation and the SBWMA adopted response was as follows:

“This recommendation is one for consideration by the individual governing bodies of the JPA Member Agencies which have sole authority to amend the JPA agreement. The last restatement of the JPA Agreement in 2005 confirmed Member Agencies’ intent to continue to appoint staff to the SBWMA Board.”

Belmont staff believes a more responsible and appropriate response would be something like this:

“The governing board of appointed officials will facilitate reconsideration of this issue by the twelve member agencies’ governing boards by taking a policy report to each agency for consideration by its governing board.”

At the July 23rd SBWMA Board meeting the Belmont SBWMA Board member made a motion to this effect, but a substitute motion expressing the adopted language was approved instead.

General Plan/Vision Statement

Investment in a modernized solid waste collection system and the recycling facility will promote increased recycling of renewable resources in our community and throughout the Peninsula. Our actions today preserve and enhance Belmont’s beauty to make it even lovelier for future generations.

Fiscal Impact

There is no fiscal impact associated with the grand jury response or this report.

Public Contact

- a) Posting of City Council agenda
- b) Posting of this staff report on the City website

Recommendation

Adopt the attached resolution authorizing the City Manager to transmit a letter of response to the Superior Court Executive Officer concurring with the SBWMA response as amended by this staff report regarding elected officials on the board.

Alternatives

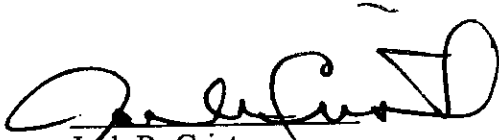
1. Council could elect to amend the response.

Attachments

- A. Resolution
- B. SBWMA staff report dated July 23, 2009
- C. Exhibit A-Grand Jury Report dated July 10, 2009
- D. Exhibit B-SBWMA Letter to Presiding Judge George A. Miram

- E. Addendum 1-Findings and Conclusions
- F. Addendum 2- Corrections and Comments to the Report (by SBWMA)
- G. Exhibit C-Superior Court letter of instruction dated July 10, 2009

Respectfully submitted,



Jack R. Crist
City Manager

Staff Contact:
Jack Crist, City Manager
650-595-7408
jcrist@belmont.gov

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT AUTHORIZING THE CITY MANAGER TO TRANSMIT A LETTER OF RESPONSE TO THE GRAND JURY REPORT ENTITLED "TRASHTALK: RETHINKING THE WASTE MANAGEMENT RFP PROCESS BY THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY;" GENERALLY CONCURRING WITH THE SOUTH BAYSIDE WASTE MANAGEMENT RESPONSE DATED JULY 23, 2009, WITH ONE EXCEPTION RELATED TO TREATMENT OF THE ISSUE OF ELECTED OFFICIALS ON THE SBWMA BOARD OF DIRECTORS

WHEREAS, the 2009 San Mateo Civil Grand Jury filed a report on July 10, 2009 entitled "TRASHTALK: Rethinking the Waste Management RFP Process by the South Bayside Waste Management Authority" (Exhibit A) which contains findings and recommendations pertaining to the South Bayside Waste Management Authority; and

WHEREAS, The City of Belmont is a member of the twelve member Agency South Bayside Waste Management Authority; and

WHEREAS, the Belmont City Council has received a staff report dated September 22, 2009 transmitting the South Bayside Waste Management Authority (SBWMA) response to the Civil Grand Jury (Exhibit B); and,

WHEREAS, the Belmont City staff generally concurs, with one exception, with the SBWMA response; and

WHEREAS, the City of Belmont has conducted its own concurrent and independent RFP process, including several public hearings on the matter, for selection of a new Solid Waste Collection Franchisee.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Belmont that the City Manager of the City of Belmont is hereby authorized to submit to the San Mateo Superior Court Executive Officer the City Council report associated with this resolution along with a transmittal letter explaining Belmont's general concurrence with the SBWMA response dated July 24, 2009; and

BE IT FURTHER RESOLVED that as explained in this associated staff report, the City of Belmont's transmittal letter will take one exception to the SBWMA Grand Jury response related to the issue of how Belmont would prefer to address having elected officials on the SBWMA Board of Directors.

* * * * *

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the City of Belmont at a regular (or special, if appropriate) meeting thereof held on (date of meeting) by the following vote:

AYES, COUNCILMEMBERS: _____

NOES, COUNCILMEMBERS: _____

ABSTAIN, COUNCILMEMBERS: _____

ABSENT, COUNCILMEMBERS: _____

CLERK of the City of Belmont

APPROVED:

MAYOR of the City of Belmont



RethinkWaste

South Bayside Waste Management Authority

STAFF REPORT

To: SBWMA Board Members
From: Robert J. Lanzone, General Counsel
Date: July 23, 2009 Board Meeting
Subject: Consideration of Response to the San Mateo County Civil Grand Jury Report Entitled "TRASHTALK: Rethinking the Waste Recommendation RFP Process by the South Bayside Waste Management Authority."

Recommendation

It is recommended that the SBWMA Board of Directors discuss the Report, **Exhibit A** hereto, and the Draft Response (the letter to the Presiding Judge of the Civil Grand Jury), **Exhibit B** hereto, provide input, and authorize the Board Chair to send the Board's Response to the Presiding Judge of the Civil Grand Jury.

Background

On July 10, 2009, the San Mateo County Civil Grand Jury issued a Report which contains a series of findings, conclusions and recommendations called "TRASHTALK: Rethinking the Waste Management RFP Process by the South Bayside Waste Management Authority" (the Report). Upon receipt of this Report, a committee was appointed by the acting Chair, which consisted of Bob Lanzone, General Counsel; Kevin McCarthy, the Executive Director; Martha DeBry, Chair; and Brian Moura, Vice Chair. The Committee worked diligently to prepare a Response to the Report for the Board for the meeting of July 23, 2009. The Committee had assistance from SBWMA staff.

Response to the Report's Recommendations

The Response replies to specifically the suggested three (3) Recommendations contained in the Report:

1. Reconsider the pending contracts with Norcal (Recology) and South Bay Recyclery (SBR).
2. In future RFPs consider several (5) matters in the process.
3. Amend the JPA agreement to include elected officials on the SBWMA Board.

The Response indicates the following with respect to the Report's Recommendations:

1. Reconsider Pending Contracts:

The agreements negotiated with Norcal and SBR must still be reviewed and approved by the Board and by the Member Agencies. We do not believe it would be appropriate, nor legally advisable, to go back to square one of the RFP process. Effectively the comments and concerns in the Report will be considered along with this Response (and the responses of the Member Agencies) by the Board and the Member Agencies in their consideration of the respective agreements with Norcal and SBR.

2. Consider suggested matters in conducting future RFP processes:

While our Response clearly differs with some of the recommended actions, they can all be presented, along with our Response, to future SBWMA Boards and Member Agencies for consideration whenever in the future another RFP process is conducted.

3. Amend the JPA Agreement to provide for Elected Officials to be on the Board:

Our Response indicates that under the JPA Agreement, Section 17.1, any JPA amendment is the sole jurisdiction of the Member Agencies and not the Board.

Response to the Report's Findings and Conclusions (Addendum 1)

The Committee has responded in detail to the Report's Findings and Conclusions set forth in **Addendum 1** (Response to the Report's Findings and Conclusions) to the letter to Judge Miram. All but one of the Findings relate to the RFP process. The Committee noted disagreement in whole or in part with many of the Findings and attempted to explain the correct facts and workings of the RFP process in its Response. Finding #13 related to elected officials not being on the SBWMA Board. We indicated the Finding was correct and explained the background of Member Agencies' prior consideration of the issue in adopting the JPA Agreement in December 1999, and adopting the First Amended and Restated JPA Agreement in 2005.

Response to the Report's Background Information (Addendum 2)

As the Committee went through the Report it became apparent that it should also respond to correct the record being made by this Report in its Background Section, primarily as it discussed the RFP process.

Addendum 2 (Corrections and Comments to the Report) contains factual corrections and comments related to matters contained in the Background section of the Report.

Conclusion:

The Report has been sent to each of the SBWMA Member Agencies with a request from the court for each to respond to the Report. Each Agency Member may respond in any way it chooses. It is the Committee's position that the Response from the SBWMA Board may be used by any Member Agency and referred to by reference for its response, or as part of its response.

The Response complies with the requested format for a response as set forth in the letter of July 10, 2009 (**Exhibit C** hereto) from the Superior Court's Executive offices.

In conclusion, it is recommended that the Board proceed to approve its Response as contained in **Exhibit B** to the Report and authorize the Chair to sign and send the Response to the court.

Attachments:

- Exhibit A – Grand Jury Report
- Exhibit B – Draft Response Letter from Board Chair
- Addendum 1 – Response to Findings & Conclusions
- Addendum 2 – Corrections & Comments to Report
- Exhibit C – Judge Miram Letter



Issue | Background | Findings | Conclusions | Recommendations | Responses | Attachments

TRASHTALK: Rethinking the Waste Management RFP Process by the South Bayside Waste Management Authority

Issue

Did the South Bayside Waste Management Authority follow its stated goal to “conduct the RFP process with integrity and transparency” for the Collection Services Contractor and the Facility Operations Contractor?

Background

South Bayside Waste Management Authority’s Request For Proposal Goals

In July 2005, five years before the contract with Allied Waste (Allied) was due to expire, the South Bayside Waste Management Authority (SBWMA) initiated two Requests For Proposals (RFP). The RFP process involved a four-year period for planning, soliciting and evaluating proposals, and selecting and negotiating with the selected contractors, and a one and one half year implementation period leading to commencement of services on or before January 1, 2011.

The stated goals of the SBWMA during the RFP process were:

- “Integrity, Competition in Selection Process, and Industry-Standard Contract Terms
- Conduct the RFP process with integrity and transparency
 - Maintain the association of Member Agencies
 - Select contractors that meet Member Agency and SBWMA needs
 - Enter into contracts with fair terms and conditions
 - Set high performance standards and use incentives/disincentives to achieve standards related to:
 - Collection quality
 - Customer service
 - Diversion from landfill disposal
 - Deliver high quality cost-effective services to customers
 - Stimulate competition among proposing companies”

The South Bayside Waste Management Authority

The SBWMA was first formed in 1982 as the South Bayside Transfer Station (SBTSA) Joint Powers Authority (JPA). Its purpose was to consolidate local collection services and address the need for coordinated municipal efforts to manage solid waste disposal, ensuring that its 12 member agencies (Atherton, Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, Redwood City, San Carlos, San Mateo, West Bay Sanitation District, and unincorporated portions of San Mateo County) would collectively have lower collection and



RECEIVED

JUL 8 2009

BELMONT CITY MANAGER

TRASHTALK:

Rethinking the Waste Management RFP Process by the South Bayside Waste Management Authority

Issue

Did the South Bayside Waste Management Authority follow its stated goal to “conduct the RFP process with integrity and transparency” for the Collection Services Contractor and the Facility Operations Contractor?

Background

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Area. A key consideration for managing costs was the construction of the transfer station in San Carlos in 1984, which is the only such facility in central San Mateo County. Browning Ferris Industries (BFI) built and operated the facility from its inception until the SBTSA purchased the transfer station and adjacent Material Recycling Facility (MRF) from BFI in 1999.

Since the inception of the JPA, one company, Allied, previously known as BFI, operated both the collection services and the disposal services of solid waste. The current SBWMA contract with Allied is due to expire on January 1, 2011. In anticipation of the contract's expiration, the SBWMA decided to initiate an RFP process for collections services and facility operations for the next ten years to:

1. Introduce a single-stream recycling system to increase the use of recyclables and divert garbage from the landfills and
2. Execute the new Shoreway Master Plan Facility (Shoreway Facility), which includes a transfer station, MRF, and Environmental Educational Center; and

The SBWMA has stated that the Collection Services Contract will be one of the largest in the United States.

Selecting the Collection Services Contractor

1. The proposals for collection services were submitted to the SBWMA for review and recommendation. After the SBWMA recommendation was made, each member agency was to negotiate an individual contract with the recommended provider, depending on the agency's individual needs.
2. There would be a one-year truing up period, after which "the adjustment to costs is objectively based on CPI-type indices. The only other adjustment, besides the annual index based adjustments, to a proposer's cost is related to service level changes for the Collection Agreement. Since the RFP stated that certain assumptions must be used by all proposers, there are two cost adjustments, one for 2011 and another in 2013, for changes in service levels from the RFP data to actual data [e.g., the number of single family accounts, commercial bin lifts and drop box pulls, requiring the driver to get out of the truck]. The process to adjust for service level changes is also objectively prescribed in the Agreement. No adjustments to costs to reflect changes in service levels shall be made after the change made in 2013, when setting compensation for 2013 and beyond."
3. All proposers were required, when preparing their proposals, to use the same operational assumptions for key items such as residential cart sizes, use of new collection vehicles for core services, and use of new commercial collection containers. This requirement was for the purpose of obtaining comparable cost proposals from proposers. Member agencies retain the right to establish cart sizes for residents, use of used equipment, etc., as part of the final negotiated scope of services and costs with their selected contractor.
4. The proposers will be held to their bid assumptions during the contract. For example, if a company states that the price of gas is \$ 2.50 a gallon in its bid, and the price of gas goes

up, the base contractual obligation will not change. Fluctuations are limited to some CPI-type index. Presumably, the company will buy, or has bought, oil futures that secure the price.

5. For collective bargaining agreement (CBA) employees, labor and benefit costs would be adjusted to reflect the CBA pay and benefit rates for the Rate Year during the term of the CBA contracts in effect at the start of the Agreement. Both a worker-retention and prevailing-wage clause would be in the contract, but no labor-peace clause was included.
6. In order to submit a proposal, the competitors had to agree not to appeal the process.
7. Alternate proposals were allowed, but the SBWMA was not required to consider them.
8. The new contract was designed for ease of oversight.
9. In the current SBWMA contract, Allied collects the garbage and also operates the Shoreway Facility where the garbage is sorted and processed. In the new contract, the operation of the collection and processing will be split between two separate companies.
10. The collection company can increase its profit by lowering cost and meeting a specified diversion percentage. The facility operator can increase its profit by increasing revenues from recyclables and is dependent on the collector to bring recyclables to the facility in good condition.

The Evaluation Process For Selecting A Collection Services Contractor

On November 1, 2007, the SBWMA released the Collection Services Contract RFP to select the contractor to serve the SBWMA service area. By the March 11, 2008 deadline for submission of proposals, the SBWMA received four proposals from companies qualified to provide the collection services described in the RFP.

The four competitors for the Collection Services Contract were:

1. Allied Waste Services of San Mateo County (Allied)
2. Bayside Environmental Services & Transfer (BEST), a joint venture of Peninsula Sanitary Group, South San Francisco Scavenger Company, Green Waste Recovery and Zanker Road Resource Management
3. Norcal Waste Systems of San Mateo County (Norcal), an Employee Stock Ownership Plan (ESOP)
4. Republic Services of California, Inc. (Republic)

Evaluation and Selection Committees

The SBWMA divided the judging process for the Collections Services Contract into two committees: an Evaluation Committee and a Selection Committee. The Evaluation Committee analyzed and scored the proposals. The Selection Committee considered the recommendations of the Evaluation Committee and selected a Collection Services Contractor.

The Evaluation Committee was chaired by the SBWMA Executive Director and also included the SBWMA Recycling Programs Manager, the SBWMA Finance Manager, a representative from a nearby regional waste management district, and two consultants, who were partners in the same consulting firm.

The Selection Committee consisted of six SBWMA Board member representatives and included the SBWMA Board Chairman, who chaired the Selection Committee.

How the Proposal was Scored

The Evaluation Committee evaluated and numerically scored the companies' proposals. The ratings from the evaluators were compiled and discussed during several Evaluation Committee meetings to determine a preliminary ranking of the proposals based solely on the evaluation criteria.

Each evaluation criterion was divided into two parts: a "competitive" part and a "reasonableness" part. In determining the "reasonableness" points of a proposer's cost proposal, equipment selection, labor, and operating assumptions were to be "considered against industry standards" and against other proposals. The point allocation process was described by Grand Jury witnesses as "highly theoretical and subjective," with a potential for a limitless amount of "theoretical points" being combined with "actual competitiveness points" by the individual Evaluation Committee members, up to the maximum score in each Evaluation Criteria category. Neither the individual members of the Evaluation Committee nor the Selection Committee were required to report how many overall points assigned to each criterion were based on "reasonableness" or "competitiveness."

The Grand Jury received a paper titled "Solid Waste Management—A Guide for Competitive Contracting for Collection" written by a SBWMA consultant and was told that it was the guideline for the RFP.¹ Addressing "reasonableness," the paper states, "The municipality may choose to give each of the selection criteria equal consideration or to weight the factors in accordance with specific interests of the community. If the selection criteria are to be weighted, the municipality should precisely state the 'weighting formula.'" The criteria for judging contractors qualifications included:

- "Experience providing like services – The municipality may not wish to risk contracting with an inexperienced company. Most municipalities prefer to have contractors that have experience providing similar services and a good track record with favorable references.
- Legal encumbrances – Cities need to know with whom they are doing business. Are there financial or character issues regarding the company that has been determined in a court of law?
- Labor issues –This includes union and non-union lawsuits, for example. Does the company have a good relationship with its employees?"

¹ "Solid-Waste Management" – A Guide for Competitive Contracting for Collections –August 1996, p.7; Scarlett, Lynn; Sloan, J.M.

Members of the Evaluation Committee independently analyzed and scored the proposals. The results were jointly discussed at four separate meetings with the Selection Committee. The Selection Committee unanimously approved the Evaluation Committee's recommendation to select Norcal. On August 28, 2008, Norcal was chosen by the SBWMA to be awarded the Collection Services Contract for the ten-year period from 2011 to 2021.

Each Evaluation Committee member individually reviewed and scored each evaluation criterion based on a maximum allowed score for each category. The total maximum score was 3,000 points. Table 1 shows the Evaluation Criteria, the maximum allowed scores for each criterion and the actual scores as totaled from individual evaluations.

Cost Evaluation

Cost for services was worth 33% of the total evaluation, more than any other criterion. The SBWMA and consultants entered the cost information provided by each of the four proposers into a Comprehensive Cost Proposal Summary. That summary was used to compare and evaluate their "competitiveness." The final proposed costs for servicing the entire SBWMA jurisdiction are summarized in item four of Table 1.

Table 1: Proposer Evaluation Score² for Collections Services Contract

	EVALUATION CRITERIA	MAX EVALUATION	SCORE				
				ALLIED	BEST	NORCAL	REPUBLIC
1	RESPONSIVENESS TO RFP	PASS/FAIL	N/A	P	P	P	P
2	COMPANY'S QUALIFICATIONS AND EXPERIENCE	750	25%	551	665	647	661
3	PROPOSAL FOR COLLECTION SERVICES INCLUDES CORE AND OPTIONAL SERVICES	750	25%	453	638	653	51
4	COST PROPOSAL	1,000	33.30%	802	719	884	649
5	ENVIRONMENTAL ENHANCEMENTS AND OTHER CONSIDERATIONS	250	8.30%	40	190	225	40
6	NUMBER AND MATERIALTY OF EXCEPTIONS	250	8.30%	250	215	250	20
	TOTAL POINTS	3000	100%	2096	2427	2659	1421
	PERCENT OF TOTAL AWARDED			69.70%	80.90%	88.60%	62.60%
	RANKING			3	2	1	4

In Table 2, the following cost summaries were used to compare the four proposers' costs to evaluate their "competitiveness." SBWMA gave Allied fewer points based on the Evaluation Committee's subjective "reasonableness" determination. The SBWMA was informed by Allied that its costs were lower because, as a large company, it had the potential advantage of hedging fuel costs. Also, due to Allied's size, the company that supplies new bins had agreed to roll out

² All the tables are from the SBWMA selection committee reports, although the tables are arranged differently in this report.

the bins to residents free of charge. Additionally, personnel and equipment were already in place because they were the present operators.

Table 2: Cost Summaries

ACTUAL COSTS	<u>Allied</u>	<u>BEST</u>	<u>Norcal</u>	<u>Republic</u>
TOTAL ANNUAL COST	\$44,949,227	\$52,165,632	\$46,239,552	\$63,811,856
TOTAL OPERATING COST	\$43,502,035	\$49,717,944	\$44,470,447	\$61,433,400
TOTAL CAPITAL AND STARTUP	\$53,052,230	\$78,910,864	\$58,518,543	\$63,782,666

Cost Proposal Appraisal by the SBWMA

On August 28, 2008, when Norcal was selected to be the Collection Services Contractor, the following explanation was presented:

“Norcal: Awarded the most points for its cost proposal due to the strength of its cost proposal in both competitiveness and reasonableness.

Allied: Awarded the second most points for its cost proposal primarily due to submitting the lowest cost proposal; however, the company lost considerable points based on reasonableness. The company’s proposal based many costs on its ability to get a rolling start as the incumbent service provider; thus, according to the SBWMA report, various costs were omitted from its proposal.

BEST: Awarded the third most points for its cost proposal, primarily due to the high overall cost proposed. BEST’s capital and start-up costs (i.e. \$78.9 million) were significantly higher than the other proposers: 49% above Allied, 35% above Norcal, and 24% above Republic.

Republic: Awarded the fewest points for its cost proposal because it had the highest overall annual cost, and many costs, according to the Evaluators, ‘simply weren’t competitive.’”³

Environmental Enhancements & Other Considerations

Table 1 above shows that the Environmental Enhancements accounted for 8.3% of the total score.

SBWMA concluded the following about each company in that category:

³ SBWMA Collection Services RFP, Selection Committee Report: Evaluation and Scoring of Proposals, August 21, 2008

Norcal: [awarded 225 points]

The proposal included Environmental Enhancements such as: use of B40 fuel (i.e., 40% biodiesel), regular carbon footprint monitoring and reporting, use of hybrid trucks for route supervisors, and incorporating green building design practices and standards at its facilities.

BEST: [awarded 190 points]

The company is committed to using the highest percentage of biodiesel fuel available. The company will use hybrid vehicles for its route supervisors.

Allied: [awarded 40 points]

The Environmental Enhancements proposed include continuing the current practice of using B20 fuel (i.e., 20% biodiesel) in its collection fleet. In addition, the company provided an Alternative Proposal to operate CNG [Compressed Natural Gas] collection trucks for its collection fleet at an additional capital cost of approximately \$6 million.⁴

Republic: [awarded 40 points]

None specifically noted or called out in the proposal.”⁵

SBMWA's Due Diligence Process

The Grand Jury asked the SBWMA Board members who were on the Selection Committee if they were aware of Norcal's previous, well-publicized history in the City of San Jose (San Jose) and San Bernardino County. SBMWA reported that Norcal's problematic history was discussed. However, many of the SBWMA Board members mentioned they had no knowledge of these discussions. During a Menlo Park City Council meeting, the SBWMA consultant, who was tasked to verify the competitors' references, publicly testified that he phoned San Jose to confirm Norcal's recommendations, but he never followed-up. During interviews, the Grand Jury learned that the SBWMA consultant worked in a consulting firm that helped create the RFP for waste management collection services in 2000 for San Jose and their subsequent RFPs after Norcal's problems were revealed. This consultant and his partner were on the SBWMA Evaluation Committee.

The 2004-2005 Santa Clara County Civil Grand Jury Report stated, “That the [San Jose] Mayor's June 26, 2000 recommendation of Norcal to the Council describes Norcal's history and serious legal problems. The history also discusses San Bernardino County's lawsuit against Norcal alleging bribery, fraud, and unjust enrichment. An 18-month jail sentence for a Norcal employee, who admitted taking bribes and a \$6.5 million settlement payment by Norcal to San Bernardino County were also discussed.” The 2008-2009 San Mateo County Civil Grand Jury could not determine if the Selection Committee were aware of these issues or explored them or other issues in any depth. Further, there is no evidence that the SBWMA did a diligent search of the other proposers that might have influenced the selection.

⁴ No mention was made of an opt-in proprietary program called Recyclebank, implemented successfully in Delaware and Philadelphia and awarded by the United Nations, that would supply Recyclebank's dollars to incent household recycling; <http://www.huliq.com/1/80048?un-program-spotlights-recycle-bank>

⁵ SBWMA Collection Services RFP, Selection Committee Report: Evaluation and Scoring of Proposals, August 21, 2008

Selecting the Shoreway Facility Operations Contractor

On November 1, 2007, SBWMA released an RFP for operation of the Shoreway Facility. By the March 4, 2008 deadline, SBWMA received seven proposals.

The seven competitors for the Shoreway Facility Operations contractor were:

1. Allied Waste Systems of San Mateo County (Allied)
2. Bayside Environmental Services & Transfer (BEST), a joint venture of Peninsula Sanitary Group, South San Francisco Scavenger Company, Green Waste Recovery and Zanker Road Resource Management
3. Greenstar, LLC (Greenstar)
4. Hudson Baylor Corp (HBC) with Waste Solutions Group (WSG)
5. Norcal Waste Systems of San Mateo County (Norcal)
6. Republic Services, Inc. (Republic)
7. South Bay Recycling, LLC (SBR), a joint venture of Community Recycling & Resource Recovery and Potential Industries

The Evaluation Process for Selecting the Shoreway Facilities Operations Contractor

The SBWMA divided the judging process for the Shoreway Facility Operations Contract into two committees: an Evaluation Committee and a Selection Committee. The Evaluation Committee analyzed and scored the proposals. The Selection Committee considered the recommendations of the Evaluation Committee and selected a Shoreway Facility Operations Contractor.

On April 23, 2009, SBWMA selected SBR as the Shoreway Facilities operator.

Evaluation Committee and Selection Committee

The SBWMA divided the judging process for the Shoreway Facility Operations Contract into two committees: an Evaluation Committee and a Selection Committee. The Evaluation Committee analyzed and scored the proposals. The Selection Committee considered the recommendations of the Evaluation Committee and selected a Shoreway Facility Operations Contractor.

Members of the Evaluation Committee independently analyzed and scored the proposals. The results were jointly discussed at three separate meetings with the Selection Committee. The Selection Committee unanimously approved the Evaluation Committee's recommendation to short list SBR and HBC/WSG.

On April 23, 2009, SBWMA selected SBR as the Shoreway Facility operator.

How the Proposal was Scored

The Evaluation Committee members numerically scored proposing companies using the evaluation criteria and the weighting described in the RFP. The Evaluation Committee

envisioned a short-list being developed prior to technical interviews. All seven proposers participated in the technical interview and presentation process.

Each Evaluation Committee member individually reviewed and scored each evaluation criterion based on a maximum allowed score for each category. The total maximum score was 500 points. Table 3 shows the Evaluation Criteria, the maximum allowed scores for each criterion, and the actual scores as totaled from individual evaluations. The Table also illustrates the SBWMA's point evaluation score of each firm's qualifications, technical proposal, cost proposal, and other considerations.

The results were jointly discussed at three separate meetings with the Selection Committee. At the last meeting on June 25, 2008, the Selection Committee unanimously approved the Evaluation Committee's recommendation to short list SBR and HBC/WSG.

Table 3: Proposer Evaluation Score for the Facility Operations Contract

	CRITERIA	MAX SCORE	<u>Allied</u>	<u>BEST</u>	<u>Greenstar</u>	<u>HBC</u>	<u>Norcal</u>	<u>Republic</u>	<u>SBR</u>
1	Responsiveness to RFP	Pass/Fail	P	P	P	P	P	P	P
2	Company's Qualifications & Experience	100	81.5	88	73.5	85.8	84.5	74.5	84
3	Cost Proposal	100	81.8	70.4	64.9	79.1	72	62	86
4	SRDC Operations Proposal MRF Design, & Installation	100	67.8	80	64.5	87.3	75.5	63.8	86
5	Start-up Proposal	75	58.5	65.3	63	68.6	61.9	65.3	59.6
6	Materials Marketing Plan	75	62.5	60.8	42.8	66	60.8	55.9	74.3
7	Environ. Enhancements	25	15	15	15	10	22.5	10	18.8
8	Number & Materiality of Exceptions	25	25	25	0	25	25	0	22.5
	TOTAL SCORE	500	392	405	324	422	402	332	431
	<u>RANKING</u>		<u>5</u>	<u>3</u>	<u>7</u>	<u>2</u>	<u>4</u>	<u>6</u>	<u>1</u>

The scores assigned to each of the proposal's criteria reflect the extent to which the proposer fulfills the requirements of the evaluation criteria and meets the needs of the SBWMA relative to the other competitors. Each evaluator reviewed each of the proposals and cost information using a set of established criteria.

SBWMA's Recommendation for Shoreway Facility Operator

Based on a review of the seven proposals submitted, technical interviews, site visits, follow-up questions and answers, and reference checks and litigation review, the Selection Committee, which was chaired by the SBWMA's Executive Director, initially recommended that SBR and HBC be short listed for negotiations to determine the selected facility operations contractor.

The Selection Committee announced that SBR, a joint venture of Community Recycling & Resource Recovery and Potential Industries and HBC (with Waste Solutions Group) stood clearly apart from the other five proposers for the following reasons (as quoted from the SBWMA Selection Committee report of July 17, 2008):

- “The entirety of their responses (original proposals, written answer to technical questions, and technical interview performance) was the most thorough and complete.
- These companies offer a combination of experience, technical capability, and pricing that set them apart from the rest of the field. These two firms had the two lowest overall cost proposals.
- These two firms are the two most qualified single stream MRF operators and offer the best commodity marketing capabilities. This is critical given the growing importance of commodity revenues to fund SBWMA operations.
- Each of the two firms stand out financially with HBC offering the highest commodity revenue guarantee at \$10.1 million and SBR offering the lowest overall cost proposal.
- Each firm has a strong plan for increasing diversion at the transfer station and unique attributes to their proposed transfer station operations. HBC put together the most innovative base proposal for transfer station diversion, while SBR offers the highest payloads and lowest cost transfer operation.”

Operating Costs

The scores for the operating cost proposals were considered 20% of the total possible points. SBR’s original operating cost proposal was \$4.2 million less per year than the next lowest proposal.

Table 4: Annual Operating Costs Including Interest (as of July 24, 2008)

	Proposed Annual Cost to SBWMA
Allied	\$15,870,629
BEST	\$17,703,982
Greenstar	\$16,599,003
HBC	\$15,216,385
Norcal	\$17,549,549
Republic	\$19,775,788
SBR	\$11,648,528

Cost Evaluation Explanations

SBWMA stated:

1. South Bay was ranked highest by virtue of the lowest overall cost proposal at \$11.6 million. South Bay's scoring was reduced somewhat on 'reasonableness' due to the Evaluation Committee's concerns regarding their extremely low transportation costs and management/administration staffing levels.
2. Allied was ranked second due to its low overall cost, third lowest overall at \$ 15.9 million, and lowest total capital cost for the MRF equipment and installation at \$15.2 million.
3. Hudson Baylor was ranked third due to its low overall cost, second lowest overall at \$15.2 million, and the highest commodity revenue guarantee at \$10.1 million. Their scoring was reduced somewhat on "reasonableness" due to proposing the highest capital cost for MRF equipment and installation at \$19.8 million.
4. & 5. Norcal and BEST were ranked fourth and fifth, respectively, due to their high overall costs. Both had the highest costs for the transfer station operations, and Norcal had the second highest MRF costs. These firms' overall costs are \$6 million and \$6.1 million, respectively, higher than SBR.
6. Greenstar had the fourth lowest overall cost at \$16.6 million but was scored even lower due to the 'reasonableness' evaluation of their transfer station and transport costs.
7. Republic was ranked lowest on cost because, by far, they had the highest overall cost at \$19.8 million. Their proposed costs simply weren't competitive, and in several cases, for MRF costs and transport costs, their costs were considered unreasonable."⁶

Table 5: Recycling Revenue Guarantee

	COMMODITIES GUARANTEE	REVENUE SHARE
Allied	\$6,750,000	80/20
BEST	\$8,500,000	75/25
Greenstar	\$6,750,000	75/25
HBC	\$10,100,000	75/25
Norcal	\$8,000,000	75/25
Republic	\$6,750,000	75/25
SBR	\$7,250,000	75/25

⁶ SBWMA Facility Operations RFP, Selection Committee Report: Evaluation and Scoring of Proposals, July 17, 2008

Commodities Guarantee

Commodity sales, along with tipping fees, are SBWMA's main sources of revenue. Tipping fees are the charges levied upon a ton of waste, which is delivered to various landfills, depending on the waste category. The guarantees, offered by proposers that they will deliver a set commodity amount, is as crucial as operating costs to the SBWMA. Commodities are recyclables. They consist of aluminum cans that can be turned into the state for CRV funds, glass sold to bottlers, paper and cardboard sold to overseas mills. Commodity prices have been historically high in the last few years, but market prices fell dramatically in October 2008, making commodity guarantees questionable.

SBWMA's Due Diligence Process

The Grand Jury learned that SBR planned to run the Shoreway Facility as a "satellite" operation from its headquarters in Los Angeles. At what point the SBWMA discovered this fact is not clear to the Grand Jury. SBR expects to receive additional funds annually from SBWMA because of its "miscalculations and omissions." The Grand Jury has learned, subsequent to SBR's selection as Shoreway Operations Contractor, that it renegotiated, on May 19, 2009, to decrease its recycling revenue guarantee to \$6.75 million. However, SBWMA is still in deliberations with SBR and has not established a final amount to operate the Shoreway Facility.

On March 29, 2009, HBC wrote a letter to the SBWMA contesting its basis for the selection of SBR. (see Attachment 1)

Additionally, the Grand Jury learned from different sources that there is concern about ongoing problems with Community Recycling, one of the two SBR partners. The Local Enforcement Agency for Los Angeles has issued forty-two outstanding Notices of Violations to Community Recycling Sun Valley Recycling and Transfer operations. Twenty-six of the violations concern permitting. Community Recycling is operating without the correct permit. The other sixteen violations are for vector, bird and animal control; training; hazardous, liquid, or special waste containment; scavenging; traffic control; cleaning; reporting; and load checking. In addition, on February 26, 2009, during a SBWMA Board meeting, a member of the Teamsters Union distributed a letter from Teamster's Local 396 of Southern California. The letter stated the union had "major labor problems" and "horrible working conditions" with Community Recycling. SBR claims it has good union relationships.

SBWMA's Management Conduct

Allied was one of the proposers that submitted for the contract to haul garbage and run the Shoreway Facility. The decision to recommend either HBC or SBR to operate the Shoreway Facility in August 2008 meant that Allied's bid to operate the Shoreway Facility was rejected. Shortly after its bid was rejected, Allied submitted an alternative proposal to the SBWMA that addressed the ever-increasing cost proposed by the SBWMA to build the new Shoreway Facility. The request to consider this alternate proposal for building the MRF was denied by the SBWMA, due to what the SBWMA had described as "non-compliance with the RFP requirements." The denial prompted Allied to contact the press and city council members for a hearing.

In response to letters and articles questioning the RFP process, the SBWMA Executive Director solicited letters attesting to the transparency and integrity of the RFP process from proposers actively competing for an SBWMA contract. The email request, dated August 23, 2008, is quote below:

“Subject: Special request

Hello. Im sure you all saw the articles friday in three different papers re: Allied’s desperate plea for consideration of their alternative proposal. Allied’s intentions are quite clear: they want the results of both procurements thrown out and for cities to negotiate a package deal to keep them as the hauler and shoreway opearator.

Given the above, i have a special and awkward request to make: can....write a letter stating that, while you are certainly disappointed wth the results and you not being selected, you feel the rfp processes were conducted professionally, thoroughly, and with the highest level of transparency and integrity. Can you write this letter? If so, can you email a signed copy to me by monday morning? My intent would be to attach this to my response. Im making a similar request of [other proposers].

If one of you can call me on my cell this weekend to confirm if you can meet this special request. My cell no is..... Thanks for the consideration.”

With this email, the copy of a newspaper article about Allied (see Attachment 2) was also sent to the proposers. The newspaper article contained controversial information about Allied, as admitted to by staff in a SBWMA meeting on August 28, 2008. Allied’s lawyer attempted to elicit an apology from the executive at a SBWMA Board meeting, but the apology was denied on the grounds that it was not legally necessary. (see Attachment 3)

One proposer refused to comply with the Executive Director’s request to validate the fairness of the RFP process. Instead, he sent a copy of the Executive Director’s email to a member of the San Mateo County Board of Supervisors, who in turn publicized it to the press and to the elected officials of the member agencies. The Executive Director learned of this, and on August 28, in the San Mateo Library, during a SBWMA Board meeting break, confronted said proposer with vulgar language.

As a result of the events, the following actions were taken by the SBWMA Board of Directors to curtail the Executive Director’s power as quoted in a letter from the Chairman of the SBWMA Board to a San Mateo County Supervisor dated September 4, 2008. An excerpt of the letter follows:

1. “The Executive Director will no longer participate as a member of the Facility Operations Contractor Selection Committee;
2. The Executive Committee (Chair or Vice Chair of SBWMA Board) will review and approve direct correspondence with proposers or the member agencies regarding the selection process;

3. The Executive Committee's role in contract negotiations with the shortlisted Facility Operations firms will be increased to provide direct oversight of the process;"

SBWMA Hires External Consultant

The consultant's analysis was based primarily on interviews with the committee members, not on written documents. He found that the RFP evaluators submitted combined scores, which did not distinguish the point allocation between what were "competitiveness" points and what were "reasonableness" points in the RFP scoring process.

Governance Structure of the SBWMA

The Joint Powers Agreement (JPA) for the SBWMA defines the governance structure of the organization. Section 8.1 of the current SBWMA JPA states:

"The SBWMA shall be governed and administered by a Board of Directors composed of one Director from each Member. The Board shall exercise all powers and authority on behalf of the SBWMA. Each member must select its Director or the Director's designee alternate from among the following positions:

- a. County, District, City or Town Manager or the equivalent position.
- b. County, District, City or Town Assistant Manager or the equivalent position.
- c. Finance Director or Assistant Finance Director or the equivalent position.
- d. Public Works Director or Assistant Public Works Director or Environmental Programs Manager or equivalent position."

Since its inception, the SBWMA Governing Board has been comprised of "agency staff members." The original and subsequent versions of the JPA provided that each member shall designate one Director from among the positions or their designate: City/County Manager, City/County Assistant Manager, Finance Director, Director of Public Works. There is no provision in the current JPA that authorizes an elected official to serve as a member of the SBWMA Governing Board.

When a restated JPA was presented to the Board of Supervisors in late 2005, it deferred approval of the new JPA until it could learn the answers to questions that had been raised by other members. One concern was the City Council of Belmont's suggestion that the membership of the SBWMA Governing Board should permit elected officials to serve on the Governing Board. SBWMA responded that the JPA governance benefited from the technical expertise of staff and that although the SBWMA Board had considered the possibility of adding elected members to its Governing Board, it had decided to "leave the SBWMA board membership the way it has been since the organization's inception."

Section 17.1 of the restated JPA provides that "subject to all legal obligations of the SBWMA, this Agreement may be amended by one or more supplemental agreements executed by a vote of two thirds (2/3) of all Equity and Non-Equity members of the SBWMA." Such an amendment would be required to allow elected officials to serve on the SBWMA Board.

When the Grand Jury questioned board members as to why elected officials were excluded from the SBWMA Board, the Grand Jury learned that board members had asked some council members about serving and the council members showed no interest. A SBWMA Board member mentioned that (s)he acts as a buffer between the council members and the public. However, city council members from different member agencies within the SBWMA jurisdiction contacted the Grand Jury during the course of this investigation and informed the Grand Jury that it was their goal to get elected officials onto the SBWMA Board. These council members testified that they would be actively pursuing such a goal and have wanted to be on the SBWMA Board for a number of years. When a member agency's staff attends a SBWMA Board meeting, there is a cost and a loss of work hours incurred by member cities.

Investigation

The 2008-2009 San Mateo County Civil Grand Jury interviewed South Bayside Waste Management Authority (SBWMA) Board members, staff members, Requests For Proposal competitors, city council members, consultants, and attorneys. The Grand Jurors read numerous SBWMA reports, SBWMA meeting minutes, newspaper articles, in addition to visiting websites. Jurors attended SBWMA meetings, member agency meetings and watched tapes of SBWMA and city council meetings.

Findings

The 2008-2009 San Mateo County Civil Grand Jury found that:

1. In the proposal process, the requirement that all proposers use the same operational assumptions to obtain comparable costs was useful to evaluators but does not apply to the actual costs and contracts that the individual member agencies can negotiate.
2. The process allowed for alternative proposals, yet they were not required to be considered.
3. As a condition of participation, proposers had to agree not to appeal decisions.
4. In the evaluation process, the "reasonableness" points were not distinguished from the "competitiveness" points.
5. Neither the individual members of the Evaluation Committee nor the individual members of the Selection Committee were required to report how many of the overall points assigned to each criterion were based on "reasonableness" or "competitiveness."
6. The South Bayside Waste Management Authority's (SBWMA) consultant reported that Norcal's references in San Jose were not checked.
7. South Bay Recycling (SBR) was the only proposer that did not provide for on-site management in its original cost proposal.

8. SBR has asked the SBWMA to cover \$1.2 million for mistakes and omissions in its original proposal.
8. It appears that SBWMA did not give sufficient consideration to SBR's notices of violation in the operation of its Southern California operations.
10. The Grand Jury could not confirm that the proposals were adequately evaluated or reflected a thorough analysis of the proposal content and contractor background.
11. SBWMA Executive Director chaired three of the four Evaluation and Selection Committees until removed from the Shoreway Facility Contract Selection Committee by the Chairman of the SBWMA Board.
12. The SBWMA Executive Director solicited emails from active proposers, asking them to attest to the integrity of the RFP process.
13. No elected officials are on SBWMA's Board of Directors.

Conclusions

The 2008-2009 San Mateo County Civil Grand Jury concludes that the SBWMA did not follow its stated goal to "conduct the RFP process with integrity and transparency." The Grand Jury has no opinion on which contractors should have been selected. However, the Grand Jury has no confidence in the RFP processes by which the Collections Services Contractor and the Shoreway Master Plan Facility Contractor were selected.

The Grand Jury further concludes that:

1. The structure of the Evaluation and Selection Committees lent itself to the appearance of undue influence.
2. Whether or not elected officials from the member agencies are on the SBWMA Board of Directors, these elected officials are ultimately responsible for all actions taken by the SBWMA.
3. After four years of preparation, staff time, and consultant fees, the RFP process was poorly executed.

Recommendations

The 2008-2009 San Mateo County Civil Grand Jury recommends that the South Bayside Waste Management Authority (SBWMA) and its Board and designated elected officials of the 12-member agencies [Atherton, Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, Redwood City, San Carlos, San Mateo, West Bay Sanitation District, and the San Mateo County Board of Supervisors (on behalf of the unincorporated portions of San Mateo County)]:

1. Meet and reconsider pending contracts with Norcal and South Bay Recycling in light of the information contained in this Grand Jury report.
2. In future Request For Proposal processes:
 - a. Clearly define and objectively and consistently apply the evaluation criteria,
 - b. Provide for an appeals process before the final contracts are signed,
 - c. Assure the proposers that alternative proposals will be considered,
 - d. Ensure that representatives from other jurisdictions are participants on the committees, and
 - e. Ensure that no one individual chair both committees.
3. Amend the Joint Powers Authority Agreement to include elected officials from member agencies onto the SBWMA Board of Directors.

Attachment 1

March 23, 2009

Hilary Gans
South Bayside Waste Management Authority
610 Elm St. Suite 202
San Carlos, CA 94070

RE: Evaluation and Selection Committee Reports

Dear Hilary:

Hudson Baylor strongly disagrees with the Staff recommendation in the recently issued Evaluation and Selection Committee reports, and with the basis for the recommendation. We believe that the facts, as laid out in your report, and as further elaborated below, should lead to your choice of Hudson Baylor to operate the Shoreway Environmental Center. As stated in your report, the decision is based solely on your calculation of the cost differences between our proposal and SBR's. We want to provide you and the local elected officials with a more accurate and factual analysis with updated information.

To summarize, we are confident that our commodity sales structure will generate a minimum of **\$700,000 in incremental revenue** to the Authority; that our transfer station diversion plan will generate at least **\$200,000 in cost avoidance**, and that a fair presentation of our labor position results in at least **\$800,000 of cost equalization**. In total, the swing in benefits to the SBWMA and its member cities is **at least \$1.7 million in HBC's favor**.

Commodity sales can be a complicated issue, but the numbers under this contract are straightforward. SBR clearly provided a formula to you within the last several weeks, tying their prices to OBM LA Export prices (an indicator that has only included ONP Export since January 2009). We provided a comparable formula tied to OBM SF High prices in our original bid. Our formula is OBM SF High +\$10. Analyzing the worksheet titled "Exhibit B" in the report package results in SBR's formula being approximately OBM LA Export Average -\$18.50 (its formula appears to have several moving components, but the example shown calculates to \$18.50 below).

The table shown in *Exhibit 1* in the appendix to this letter outlines the result of the two formulas applied to the February 7 OBM data used in SBR's example (leaving aside any floor price issues for the moment). HBC's formula actually results in *higher* revenue for the same tons. Applying this formula to the first quarter of 2009 (the only time that it is possible to apply SBR's formula) results in HBC generating an incremental \$57,000 in sales revenue in the quarter, or approximately \$225,000 annualized. Assuming that we are over the revenue guarantee, this would generate an incremental \$170,000 to SBWMA.

Moreover, we learned that SBR now has a floor pricing arrangement to cover half the fiber volume at the MRF. HBC, as you know, has an agreement with ACN that provides floor pricing for *all* fiber tons (as well as for plastics). Up to this point, we and ACN have not divulged the prices for proprietary and competitive reasons. However, with the recommendation report out, ACN has now agreed to let us disclose that our floor prices for fiber (ONP and OCC) are 00per ton. We are providing these floor prices at this time so we can further explain our position to

SBWMA decision makers with regard to material sales revenue. We do request that these floor prices are kept confidential.

As our floor prices are currently higher than the formula or market, we would be selling at our floor price today when markets are down. The table in *Exhibit 2* of the appendix to this letter shows our floor price revenue, compared with SBR's floor price revenue (same tons as in prior table). We note that for SBR, we used their floor prices for half the volume (since that is their guarantee), and their formula for the remainder of the volume. This results in \$78,442 higher revenues per month with the HBC floors, which annualizes to \$941,302 in higher sales. Assuming that we are over any guarantee levels, this would result in approximately **\$706,000 in incremental revenue to SBWMA.**

We have consistently explained to you that we felt that the Authority's analysis was lacking in understanding our ability to market material, and these figures demonstrate that either using our floor prices, or using our representative formulas, **HBC will generate higher revenues for SBWMA.**

Finally, we appreciate the kind words in the Staff report with regard to the "well thought out and innovative approach" to HBC and WSG's transfer station diversion program. The original evaluation report said that WSG offered an "excellent transfer station operation plan to maximize diversion and improve operational efficiencies". We believe that this transfer station incentive program will conservatively return **up to \$200,000 or more** in incremental revenue to the Authority. An example of this calculation is included in *Exhibit 3* in the appendix to this letter.

Adding these up, it appears that there is in fact a cost advantage for HBC over SBR. We find it unfortunate that the reports issued by the Authority reflect the opposite conclusion.

We trust that the SBWMA and its member cities will accept the above facts in the constructive spirit in which they are being offered. We want to make sure that elected and appointed representatives of the SBWMA member cities and County ultimately make a fair and informed decision for their ratepayers. We continue to look forward to work with you for the very best operation of the Shoreway facility.

Sincerely,

Scott Tenney
President
Hudson Baylor Corporation

Attachment 2

Yard waste wasted

Comments

Aug 4, 2008 6:00 AM (327 days ago) by Mike Rosenberg, The Examiner

SEE HOW THIS STORY DEVELOPED

EMAIL STORY

PRINT STORY

» 327 days ago: Yard waste wasted «

Related Topics: San Mateo County



(Juan Carlos Pometta Betancourt/Special to The Examiner)

Down in the dumps: The South Bayside Waste Management Authority is asking Allied Waste to pay back residents for composting services it allegedly did not provide.

San Mateo County (Map, News) -

The money and work of environmentally minded Peninsula residents have been partially wasted after Allied Waste garbage trucks were found to have dumped tons of recyclable material into a landfill, authorities said recently.

Allied Waste, which provides garbage services from Burlingame to the southern San Mateo County border, has dumped up to 64,722 tons of plant materials into the Ox Mountain landfill near Half Moon Bay during the last four years, according to the South Bayside Waste Management Authority.

Allied is contractually obligated to send the yard trimmings to its Newby Island compost site in Milpitas so the material can be recycled and used in local gardens and agriculture.

Now the South Bayside Waste Management Authority, which oversees Allied in San Mateo County, has demanded the garbage company pay back its residents between \$560,000 and \$1.8 million for the composting services. Allied Waste charges residents a fee for composting plants from yard trimmings. The exact fine would depend on the precise number of tons Allied did not divert to composting.

SBWMA board member Diane Dryer said neglecting to compost yard trimmings increases local greenhouse gas emissions.

"It would probably be a good idea to think about banning plant materials altogether from landfills due to the global warming problems," Dryer said.

If Allied refuses to pay, the SBWMA said it would seek legal action based on the contract violation.

"This material was set out for recycling and it was put in a landfill. It's a breach of public trust," said Hilary Gans, SBWMA's facility operations contract manager.

To conduct the investigation, the SBWMA in April hired Walnut Creek-based consulting agency HF&H, which presented a nine-page report on the accusations to the group's board of directors recently.

Evan Boyd, Allied Waste's general manager for the county, admitted some of the plant material did end up in the landfill but argued the SBWMA's numbers may be inflated a little bit.

Boyd acknowledged his company dumped 14,159 tons of plants into a landfill in 2005 and 2006. He said his company faced an unusual situation those years, due to the relocation and shrinking of their compost pad. Allied contacted the SBWMA board about the infractions but the two could not reach a solution, he said.

"We've got to sit down and figure out if there's going to be a compromise made," Boyd said.

Despite the controversy, Boyd said the two groups still have a decent working relationship. The dispute between Allied and SBWMA comes as the two prepare to part ways on the local recycling center, a \$15 million contract.

Allied, which has operated the county's Shoreway Recycling and Disposal Center in San Carlos, will be let go by the SBWMA when its contract expires at the end of 2010.

mrosenberg@sfxaminer.com

Uncovering the compost

The South Bayside Waste Management Authority has demanded that Allied Waste pay back residents for composting service payments after Allied was found to have dumped recyclable material into landfills.

64,722 Plant tons dumped into landfill that should have been composted

14,159 Plant tons Allied admitted it dumped into landfill

4 Years Allied dumped plants into landfill

2 Years Allied admitted it dumped plants into landfill

\$560,000 to \$1.8 million Fine levied on Allied Waste

12 County cities or agencies that supplied the plant material

Source: South Bayside Waste Management Authority, Allied Waste

Attachment 3

ROBERT J. LANZONE
JEAN B. SAVAREE
MARC L. ZAFFERANO
GREGORY J. RUBENS
LINDA J. NOESKE
*Certified Specialist, Family Law
The State Bar of California
Board of Legal Specialization

KATHLEEN A. KAHE
KATE D. KOBYRZEWA

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MICHAEL AARONSON
(1910-1988)
KENNETH M. DICKERSON
(1926-2008)
MELVIN E. COHN
(Superior Court Judge/Retired)
OF COUNSEL

September 2, 2008.

Jeff Andrews
c/o Allied Waste
6800 Koll Center Parkway, Suite 320
Pleasanton, CA 94566

Re: HFH Consultants Composting Compliance Review

Dear Mr. Andrews:

We represent the South Bayside Waste Management Authority (SBWMA) and have been asked to respond to your letter of August 27, 2008 to Kevin McCarthy the Executive Director of SBWMA.

Your letter addresses a staff report and information presented to the Board of Directors of the SBWMA at a public meeting on July 24, 2008. As your attorneys will confirm, statements made by public officials and their representatives at a public meeting are excepted from the rules with respect to so called defamatory statements or communications made "in any other official proceeding authorized by law". California Civil Code Section 47 (b). It is well established in California law that statements made in the course of local government proceedings are privileged. Therefore, the statements made in the SBWMA staff report of July 24, 2008, and made at the public meeting of July 24, 2008 are privileged communications and not subject to the rules of defamation. The fact that a newspaper may have published articles about statements or reports made at the meeting is not relevant here.

Further, the comments made with respect to the City of Milpitas and use of its plant materials as ADC, were corrected, at the meeting of July 24, 2008, on the record, by the representative from HFH Consultants. With respect to comments made as to Allied's contract compliance with the City of Fremont and use of its plant material as ADC, we understand that the issue is still pending.

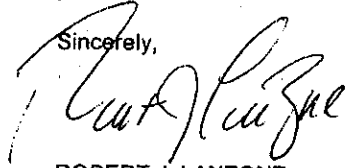
At this point in time, while we will look into the matter further, we will not be

Jeff Andrews
c/o Allied Waste
September 4, 2008
Page 2

complying with your request for "an immediate and final retraction" of statements and reports made at the July 24, 2008 meeting.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. Lanzone". The signature is written in a cursive style with a large initial "R".

ROBERT J. LANZONE

RJL:jm
cc: Kevin McCarthy, Executive Director, SBWMA



RethinkWaste

South Bayside Waste Management Authority

DRAFT RESPONSE

July 24, 2009

Honorable George A. Miram
Judge of the Superior Court
400 County Center, 2nd Floor
Redwood City, CA 94063-1655

Re: San Mateo County Civil Grand Jury Report 2009 – SBWMA RFP Process

Dear Judge Miram:

The following is the response of the Board of Directors of the South Bayside Waste Management Authority (SBWMA) to the above referenced Report by the 2008-2009 San Mateo County Civil Grand Jury. This response was approved by the Board at a public meeting held on July 23, 2009. We have responded directly to the Recommendations of the Civil Grand Jury in this letter, and address the Findings and Conclusions in the attached Addendum 1, and the facts/comments in the Background Section in Addendum 2.

I - Initial Comments

The SBWMA's goal for the RFP process was to select the best companies through a detailed and open evaluation process of the responses that could provide the desired services in the most cost-effective and environmentally superior manner. We believe that goal was accomplished. In selecting Norcal (now known as Recology) and South Bay Recycling (SBR) for consideration by the Member Agencies as the future service providers, the SBWMA did exactly as it had promised it would do through the RFP process - select the highest-rated, best firm for each service.

The SBWMA went through a very thorough and intensive process in developing, issuing and evaluating the RFPs for both the collection services and facility operations services. The RFPs clearly prescribed the proposal requirements, evaluation process and scoring system. This process took place over a four-year period to ensure that the SBWMA Member Agencies' staff and elected officials, potential proposers, other stakeholders and the public had multiple opportunities for review and input. SBWMA Board of Directors, potential proposers, consultants, legal counsel and other stakeholders helped develop and write the RFPs, selection criteria and the scoring system before the RFPs were issued. There were no objections to the RFPs received from the proposers until the recommendations for the selected companies were announced. The City of San Mateo retained an independent consultant to review the Collection Services RFP evaluations of the proposals to ensure they were done appropriately. The independent consultant's findings concurred with the recommendation for the future service provider and stated that the evaluations were appropriately executed and fair.

Honorable George A. Miram
Judge of the Superior Court
July 24, 2009
Page 2.

The RFP process has been vetted before all 12 SBWMA Member Agencies. Member Agencies will have additional opportunities for review as the final agreements proposed for Norcal for the Collection Franchise and SBR for the Operations Agreement come before them for approval.

II. Response to Recommendations

"The 2008-2009 San Mateo County Civil Grand Jury recommends that the South Bayside Waste Management Authority (SBWMA) and its Board and designated elected officials of the 12-member agencies [Atherton, Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, Redwood City, San Carlos, San Mateo, West Bay Sanitation District, and the San Mateo County Board of Supervisors (on behalf of the unincorporated portions of San Mateo County)]:

1. *Meet and reconsider pending contracts with Norcal and South Bay Recycling in light of the information contained in this Grand Jury report."*

Response:

Each of the two RFPs, one for collection services and another for facility operations, included key milestones to allow for Member Agency input and action. All governing boards of Member Agencies will be asked to give consideration to their individual franchise agreements for collection, and the agreement for the operation of Shoreway Environmental Center over the coming months, as prescribed in the RFP process. To date, ten of the Member Agencies, representing 85.6% of the Solid Waste tonnage in the SBWMA service area, have already considered and approved the Selection of Norcal (now known as Recology) as their future franchised hauler for solid waste, recyclables and organics. These votes of the Member Agencies have led to the preparation and negotiation of lengthy Franchise Agreements with Norcal to be considered individually by each Member Agency over the next few months, a process that began with these 10 Agencies in March 2009. The Town of Atherton also gave direction to its City Manager on July 15, 2009 to proceed with informal negotiations with Norcal. A JPA Member Agency is free to contract with any company it wants for collection. All documentation related to the RFP process, including vendor responses are available to Member Agencies for additional evaluation. The SBWMA will cooperate with any Member Agency that wishes to reevaluate responses to the RFP process.

The SBWMA Board at its July 23, 2009 Board considered approval of an Agreement with South Bay Recycling (SBR) to operate the Shoreway facility. As approved, it will be presented to the governing bodies of the Member Agencies for review and approval pursuant to Section 7.1.1 of the JPA Agreement. The SBR Operators agreement needs 2/3 of the Member Agencies to approve it.

Action:

The recommendation will effectively be implemented during finalization of the RFP process.

- "2. *In future Request For Proposal processes:*
a. *Clearly define and objectively and consistently apply the evaluation criteria,"*

Response:

The SBWMA did clearly define evaluation criteria, and to the extent practical provided objective guidelines for the application of evaluation criteria. We believe that the two concurrent RFP processes, one for collection services and another for facility operations, were both conducted professionally and thoroughly. The Evaluation and Selection Committees for each RFP meticulously followed and implemented the evaluation processes spelled out in the respective RFPs.

- "b. Provide for an appeals process before the final contracts are signed,"*

Response:

A survey of 44 other California jurisdictions that issued similar RFPs in recent years revealed that only two had bid protest provisions in their RFPs. Since these two RFPs are not Public Works "bid" type procurements, inclusion of an appeals process is not standard practice. In fact, the SBWMA RFP processes afforded stakeholders multiple opportunities to comment on the RFP documents. In addition, since the recommendations resulting from the RFP processes are made via publicly noticed SBWMA Board meetings and later considered at individual Member Agency meetings, there have been multiple opportunities for public input from companies that participated in the RFP processes and/or other interested parties. In fact, this is what has happened since September 2008 as dozens of public meetings have been held by the SBWMA Board and Member Agencies and many RFP participants voiced their opinions regarding the RFP recommendations. Lastly, the RFP process as proposed by the SBWMA was reviewed in advance by potential proposers and none commented on the lack of an appeals process or requested such a process.

In summary, every decision made regarding issuance of the RFPs, Member Agency participation in the RFP processes, recommendations resulting from the RFP processes, Member Agency consideration of the recommendations, and Member Agency approval of the recommendations via authorizing the SBWMA to prepare a contract in the case of Facility Operations or executing their own contract for Collection Services has been or will be done at publicly noticed meetings.

- "c. Assure the proposers that alternative proposals will be considered,"*

Response:

The RFPs did provide assurance that alternative proposals would be considered if submitted in compliance with the RFP. The submittal of an alternative proposal was to be treated with the same guidelines as a base proposal, which required evaluation if submitted in accordance with the RFP documents. Both RFPs addressed the submittal of alternative proposals in the same manner. During the RFP process one alternative proposal was submitted by Allied Waste and given consideration. The alternative proposal provided incomplete information, and was not responsive to the RFP. Following legal review, it was determined that the SBWMA had no legal obligation to evaluate the Allied alternative proposal as it was

submitted because it did not comply with the RFP cost and exception requirements. Nevertheless, the SBWMA actually accorded the lone alternative more consideration than legally required.

Had the SBWMA proposal evaluation process blindly included review of alternative proposals submitted not in compliance with the RFP documents or during the proposal submission period, the fundamental premise of ensuring a fair, non-biased and transparent procurement would have been compromised.

"d. Ensure that representatives from other jurisdictions are participants on the committees, and"

Response

This recommendation is unclear as to the whether the Grand Jury is recommending representatives from SBWMA Member Agencies are participants in the committees or representatives from outside of the SBWMA are participants. The RFP process did include representatives from the Member Agencies. The Evaluation and Selection Committees for both the Collection Services and Facility Operations RFPs were comprised of different SBWMA Board members, and all of the Member Agencies were represented on the PAF and PAC committees.

If the intent of the recommendation is to include representatives from non-SBWMA jurisdictions, we cannot understand why they should have any decision-making authority in a local RFP process. We know of no other jurisdictions that follow such a process.

"e. Ensure that no one individual chair both committees."

Response:

This recommendation will be considered.

Action (Applies to Responses to Recommendation #2, including items a-e):

At such time as there is a future RFP process for either franchise agreement, the concerns of the Civil Grand Jury Report will be taken into consideration by the SBWMA. This holds true for each of the successive recommendations in this section regarding future RFP processes. A future RFP process may not occur for ten (10) years.

"3. Amend the Joint Powers Authority Agreement to include elected officials from member agencies onto the SBWMA Board of Directors."

Response:

This recommendation is one for consideration by the individual governing bodies of the JPA Member Agencies which have sole authority to amend the JPA agreement. The last restatement of the JPA agreement in 2005 confirmed Member Agencies' intent to continue to appoint staff to the SBWMA Board.

Action:

The SBWMA Board lacks legal authority to take action on this recommendation.

Honorable George A. Miram
Judge of the Superior Court
July 24, 2009
Page 5.

III. Response to Findings and Conclusions (See attached Addendum 1)

IV. Response to Background (Facts and Comments) (See attached Addendum 2)

As can be seen from our Initial Comments, the Board firmly believes the RFP process used was professionally implemented, was fully vetted to the proposers, the SBWMA Member Agencies, and the public, and resulted in recommendations of the best firms for Collection Services and for Operation of the Facilities.

Thank you for your consideration.

Very truly yours,

Martha DeBry
SBWMA Board Chair

Attachments:

Addendum 1
Addendum 2

ADDENDUM 1 FINDINGS AND CONCLUSIONS

FINDINGS

The 2008-2009 San Mateo County Civil Grand Jury found that:

1. *In the proposal process, the requirement that all proposers use the same operational assumptions to obtain comparable costs was useful to evaluators but does not apply to the actual costs and contracts that the individual member agencies can negotiate.*

Response: (Respondent disagrees with this Finding.)

Proposers were not required to use the same operational assumptions. To ensure a comparable analysis of cost proposals and ensure a fair cost evaluation process, proposers were required to base their cost proposals on purchasing new collection trucks and containers. Since the \$50+ million in capital equipment would primarily consist of trucks and containers, allowing proposers to include a myriad of different scenarios for the key capital purchases would certainly have resulted in apples-to-oranges cost proposals that could not be fairly compared against one another. The policy decision to require that cost proposals to include all new vehicles and containers was made in 2006 by the Process and Contracts Committee consisting of representatives from several Member Agencies. The RFP required that a Contractor is held to all operational assumptions and costs included in its proposal. If a Member Agency chooses to deploy used vehicles or equipment, then this would be negotiated by that specific agency. Specifically, Section 5.5 of the RFP, states in relevant part:

“New vehicles are required for residential and MFD/Commercial/Member Agency collection services. (This requirement is primarily to ensure that comparable cost proposals are submitted. Member Agencies reserve the right to allow the contractor to provide used collection vehicles.) New or used vehicles may be used for on-call collection services, drop box service, and support vehicles.”

Lastly, it is important to note that drafts of the RFP and contract documents were submitted to the proposers for their review and comment several months prior to the official release of the RFP and none objected to these cost provisions.

2. *The process allowed for alternative proposals, yet they were not required to be considered.*

Response: (Respondent agrees partially with this Finding.)

The statement is correct but requires that it be framed in the proper context. Section 6.2.5 of the RFP, in part, states: “SBWMA and Member Agencies are not obligated to evaluate or select alternative proposals. Alternative proposals will be considered by the SBWMA and Member Agencies if the SBWMA and Member Agencies conclude, in their sole discretion, that the alternative proposals warrant evaluation and analysis.”

In addition, the RFP explicitly required proposers to state exceptions to the collection agreement attached to the RFP and support any alternative proposal, as follows:

“Each exception or alternative must be presented separately by stating the specific exception or alternative, the suggested changes, if any, to the program or services related to the exception or

alternative, and the reason for the proposed exception or alternative. Proposers may submit suggested changes in the Collection Agreement language related to the exception or alternative, and the specific dollar change in each of the affected cost items, as proposed by the Proposer in response to this RFP, that would take place if the exception or alternative was accepted by the Member Agency. Proposers should note that if exceptions are taken, all required information as set forth above must be submitted. Exceptions taken or alternatives provided, without providing the required information will not be considered.”

Despite a follow-up request from the collection services RFP Evaluation Committee, Allied Waste Services of San Mateo County failed to provide the information required to have its alternative proposal comply with the RFP submittal requirements.

The SBWMA determined that Allied’s alternative proposal resulted in a complete abandonment of the competitive RFP process initiated by the SBWMA for both the collection contracts and the Shoreway facility operations. Lastly, in light of the fundamental incompatibility between the alternative proposal and the contract process envisioned in the two RFPs, and the lack of any detailed explanation of how the compensation arrangements in the collection contracts would actually operate (despite providing Allied ample opportunity and encouragement to provide this information), the Evaluation Committee could have omitted any reference to the Allied alternative proposal in its report to the Selection Committee. However, the Evaluation Committee did address the alternative proposal, noting that:

- Allied did not provide a cost estimate for the Recycle Bank program.
- Allied had not provided any detail about how the key compensation provisions in the collection contracts would have to be rewritten to accommodate the plan suggested in the alternative proposal.

Following legal review, it was determined that the SBWMA had no legal obligation to evaluate the Allied alternative proposal as submitted.

3. *As a condition of participation, proposers had to agree not to appeal decisions.*

Response: (Respondent disagrees with this Finding.)

This statement is incorrect. The only conditions on participation by proposers in the RFP process were related to the submittal requirements specified in the RFP that included attending the pre-proposal conference, making a public presentation, facilitating site visits upon request and submitting the required documents. In fact, the RFPs were silent on the issue of an appeal process because appeals are not standard practice for procurements of this type. A survey of 42 other California jurisdictions that issued similar RFPs in recent years revealed that only two had bid protest provisions in their RFP. Again, the SBWMA RFP was silent on the issue of protesting the process. However, since no binding recommendation would arise from the RFP process, it was clear from the beginning that any proposer choosing to protest the process would have ample opportunity when the SBWMA Board and individual Member Agencies considered the recommendation resulting from the RFP process.

4. *In the evaluation process, the “reasonableness” points were not distinguished from the “competitiveness” points.*

Response: (Respondent disagrees with this Finding.)

This statement is incorrect. The Collection Services RFP specified five criteria that contained 24 distinct and specific sub-criteria, as follows:

- Qualifications and Experience – 7
- Proposal for Collection Services – 10
- Cost Proposal – 3
- Alternative Technical Proposals – none, since no points were specified
- Exceptions – 2 (specific to the number and materiality of exceptions)
- Environmental Enhancements – 2

The Cost Proposal criterion was the only one where the “reasonableness” and “competitiveness” sub-criteria were used. Actually, the Cost Proposal criterion specified three sub-criteria, as follows: “reasonableness of cost proposals,” “competitiveness of cost proposals,” and “value to member agencies.”

The achievable evaluation points for Cost Proposals were split equally between reasonableness/competitiveness/value by each Evaluation Committee member.

As it relates to the Facility Operations RFP, this Finding is also factually incorrect. The scoring of the Cost Proposals did, in fact, separately account for reasonableness and competitiveness.

5. *Neither the individual members of the Evaluation Committee nor the individual members of the Selection Committee were required to report how many of the overall points assigned to each criterion were based on “reasonableness” or “competitiveness.”*

Response: (Respondent agrees partially with this Finding.)

This statement is primarily incorrect. As stated above, only the Cost Proposal criterion was the only one where the specific “reasonableness” and “competitiveness” and “value” sub-criteria were used in the Collection Services RFP. Roughly 90% of the evaluation points were reported by the Committees

The Evaluation Committee provided the Selection Committee and SBWMA Board information on exactly how many of the overall points were assigned to each criterion, by each evaluator. This information was provided to the San Mateo County Civil Grand Jury.

The following additional information was also provided to the Grand Jury: “...Allied submitted the lowest cost proposal and was awarded the maximum points from each evaluator for [Cost Proposal] sub-criterion #2 ‘Competitiveness of Cost Proposals,’ however, the proposal lost points based on the ‘Reasonableness’ and ‘Value’ sub-criteria as compared to the other proposers and was ranked second overall in the Cost Proposal criteria behind Norcal.”

As it relates to the Facility Operations RFP, the scoring of the proposals did, in fact, separately account for reasonableness, competitiveness and value.

6. *The South Bayside Waste Management Authority's (SBWMA) consultant reported that Norcal's references in San Jose were not checked.*

Response: (Respondent agrees partially with this Finding.)

This statement is partially correct. R3 Consulting was charged with making the reference checks and despite attempting to contact San Jose representatives in accordance with the reference checks protocol used, they were unable to do so in order to include a reference from San Jose in the analysis. This does not mean that Norcal's experience in San Jose was not discussed and included in the evaluation of proposals. In fact, one of the primary attributes in selecting R3 Consulting to assist the SBWMA was the firm's direct experience with two recent RFP processes and contract negotiations in San Jose. This information was also provided to the Civil Grand Jury. In fact, letters from San Jose staff were also shared with the Grand Jury that documented the City's appreciation for all Norcal had done for the community.

The implication that Norcal's experience in San Jose was overlooked is without merit. The five members of the Evaluation Committee have a combined 120 years of recent experience in this industry in the Bay Area and large roll-outs of service are highly publicized, especially as noted, those that have problems. In addition, the knowledge and experience of this group, specific to the situation with Norcal in San Jose, was shared with the Selection Committee.

7. *South Bay Recycling (SBR) was the only proposer that did not provide for on-site management in its original cost proposal.*

Response: (Respondent disagrees with this Finding.)

This statement is incorrect. SBR proposed that the executive and financial management of the Shoreway facility would be directed from its headquarters and that all operations management functions would be completed by local Shoreway-based managers. While the type of management structure proposed by SBR is not unusual in municipal proposals, it was deemed inappropriate for the Shoreway operation and was rejected by SBWMA. The SBWMA directed SBR to add the cost of local executive management to its cost proposal.

8. *SBR has asked the SBWMA to cover \$1.2 million for mistakes and omissions in its original proposal.*

Response: (Respondent disagrees with this Finding.)

This statement is incorrect. While SBR did submit a revised cost proposal in late 2008 following requests from the Evaluation Committee for additional information, some of the cost changes were SBWMA directed. The Evaluation Committee was concerned by the increases and the limited explanation and justification offered by the company for some of the revised cost proposal items. After several rounds of questions between the SBWMA and SBR, the SBWMA received sufficient detail from the company to understand the reasons for company's proposed increase in costs. The cost changes fell into three categories: A.) operating costs changes that were directed by the SBWMA, B.) cost changes that were the results of proposer error or oversight, and C.) cost changes that were not discussed or approved by the SBWMA. The cost changes that were "directed by the SBWMA" are changes that the SBWMA feels are essential to providing the proper level of service and management required for this service area.

The March 18, 2009 Evaluation Committee report further stated that, "If SBR is selected as the facility operator, the final decision for SBR to operate the Shoreway facility should be predicated upon successful negotiation of a MRF sorting system equal to or less than the cost proposed by the company." The SBWMA is in current negotiations with SBR for the final agreement that is subject to approval by the SBWMA Board.

9. *(Listed as a second #8 in the Report) It appears that the SBWMA did not give sufficient consideration to SBR's notices of violation in the operation of its Southern California operations.*

Response: (Respondent disagrees with this Finding.)

This statement is factually incorrect. The cited notices were investigated, analyzed, evaluated, and the company's initial and final scoring was downgraded due to these notices. Further, SBWMA staff continues to monitor monthly inspection activities at the Community Recycling facility per the direction of the SBWMA Board.

10. *The Grand Jury could not confirm that the proposals were adequately evaluated or reflected a thorough analysis of the proposal content and contractor background.*

Response: (Respondent disagrees with this Finding.)

The SBWMA and member agencies went to great lengths to ensure that open, transparent, competitive and effective procurement processes were pursued.

As we shared with the Grand Jury, during the proposal evaluation process, all of the proposers were interviewed, numerous site visits were conducted by the respective RFPs Evaluation Committee members; a thorough litigation history review and analysis was conducted by outside counsel; and, each proposer provided public presentations in support of its proposal, which were also made available to all interested parties on the SBWMA website. After an exhaustive proposals review and evaluation process by both the Evaluation and Selection Committees which required hundreds of hours to complete, recommendations were presented to the SBWMA Board as to the selection of the future collection services and facility operations providers, and the recommendations to select Norcal and SBR were then presented to the Member Agencies for consideration.

11. *SBWMA Executive Director chaired three of the four Evaluation and Selection Committees until removed from the Shoreway Facility Contract Selection Committee by the Chairman of the SBWMA Board.*

Response: (Respondent agrees partially with this Finding.)

While this statement is accurate, it is misleading in that the statement does not disclose what the role of the Executive Director was as chairman. As chairman, the Executive Director's role was primarily an administrative one that consisted of setting committee meetings, setting agenda, etc. All evaluations of the proposals were done independently by the individual committee members separate from the committee meetings. The evaluations and scoring were done blindly by each committee member without any influence by the Chairman. The SBWMA has no reason to believe the Executive Director exerted undue influence on the process, and the Grand Jury Report did not identify any specific instances of concern in this regard.

12. *The SBWMA Executive Director solicited emails from active proposers, asking them to attest to the integrity of the RFP process.*

Response: (Respondent agrees with this Finding.)

This statement is correct.

13. *No elected officials are on SBWMA's Board of Directors.*

Response: (Respondent agrees partially with this Finding.)

This statement is correct and reflects the desire of a 2/3 majority of the SBWMA's Member Agencies. Any decision to amend the JPA regarding the constitution of Board members is not a decision for the Board, but for the elected officials of the Member Agencies pursuant to Sec. 17.1 of the JPA agreement. There has never been a positive response from the Member Agencies to change the Board composition. In 2005, several of the powers of the Board were moved to the Member Agencies (such as approving any Franchise agreement for Operation of the Transfer Station, or for SBWMA bonding and financing decisions).

The JPA was also amended in 2005 to provide for specific City Manager or other entity staff members to be designated for the Board to both provide for specific qualified staff members and also to have a consistent group of staff members attending as Board members. The Member Agencies had to vote on the Amended JPA Agreement, and did so in 2005, approving it by a 2/3 vote. In doing so, the Member Agency governing bodies (e.g., city councils) rejected the notion of elected officials being on the Board as a minority of the JPA Members had requested.

Subsequently the issue has been raised by the Board of Supervisors to the Member Agencies and by one of the other JPA Members, and received no support. From the standpoint of the SBWMA Board, it is not its decision but one for the governing bodies of the Members of the JPA and it will of necessity go along with what those bodies decide under the terms of the JPA to do.

CONCLUSIONS

The 2008-2009 San Mateo County Civil Grand Jury concludes that the SBWMA did not follow its stated goal to “conduct the RFP process with integrity and transparency.” The Grand Jury has no opinion on which contractors should have been selected. However, the Grand Jury has no confidence in the RFP processes by which the Collections Services Contractor and the Shoreway Master Plan Facility Contractor were selected.

The Grand Jury further concludes that:

- 1. The structure of the Evaluation and Selection Committees lent itself to the appearance of undue influence.*
- 2. Whether or not elected officials from the member agencies are on the SBWMA Board of Directors, these elected officials are ultimately responsible for all actions taken by the SBWMA.*
- 3. After four years of preparation, staff time, and consultant fees, the RFP process was poorly executed.*

Response – Conclusions #1 & #3:

Conclusions 1 and 3 are unfounded, and the SBWMA strongly disagrees with the statements. The SBWMA and Member Agencies went to great lengths to ensure that open, transparent, competitive and effective procurement processes were pursued.

The SBWMA and its Member Agencies initiated the Collection Services and Facility Operations Services request for proposals (RFP) process in July 2005 to plan future programs and services, and select future contractors. The decision to proceed with the RFP process was made in concurrence by all 12 Member Agencies of the SBWMA. One of the primary reasons was the fact that none of the existing contracts for Collection Services and Facility Operations Services had ever been subject to a competitive procurement/review process. Another reason was the declining performance of the incumbent collection/operator contractor.

It should be noted that the contract with the SBWMA to operate the Shoreway facility and the twelve individual contracts with the Member Agencies to provide Solid Waste collection services represent perhaps the largest exclusive contracts of their nature in the country. As such, this process has been closely monitored and highly anticipated by many in the solid waste industry.

Feedback received from many Member Agencies and other jurisdictions praised the SBWMA RFP process as being one of the most thorough they had ever seen. Most importantly, the RFP process was lauded by the proposers and other stakeholders. It was only after the release of the selection results that a few of the companies who were not selected began questioning the process and the results. This is an unfortunate outcome of many public solid waste procurement processes – and one that is not unique to the SBWMA. It is perhaps not totally unexpected in light of the significance of some of these contracts and efforts and costs expended by the proposing companies.

The SBWMA’S RFP process entailed a four-year period for planning, soliciting, evaluating and selecting the future contractors to ensure that the Member Agencies’ staff and elected officials, potential proposers, other stakeholders and the public had multiple opportunities for review and input. The SBWMA’s goal was to select the best companies through a detailed and open evaluation process of the responses that could provide the desired services in the most cost-effective and environmentally superior manner. The SBWMA strongly believes this goal was achieved with the two companies selected.

To ensure that the RFP process for both services was conducted with integrity and transparency, input was solicited from elected officials, potential proposers, consultants and other stakeholders on draft copies of the RFP documents. The final RFPs issued incorporated this valuable input, and each was a comprehensive document that clearly and concisely detailed the rights reserved by the SBWMA and Member Agencies, and the future companies, how the evaluations would proceed, the make-up of the evaluation teams, the specific evaluation criteria and distribution of evaluation points, and specifically how items such as exceptions or alternative proposals were to be submitted and the implications for not complying with these requirements.

The RFPs were issued in November 2007 after a thorough review and approval process that included a governing body resolution from each SBWMA Member Agency. A pre-proposal meeting was attended by all proposers. Several necessary addenda were subsequently issued providing clarifications and improvements to the RFP processes. Four responses to the Collection Services RFP and seven to the Facility Operations RFP were received in March 2008. During the proposal evaluation process, all of the proposers were interviewed and numerous site visits conducted by the respective RFPs Evaluation Committee members. A thorough litigation history review and analysis was conducted by outside counsel. Each proposer provided public presentations in support of its proposals.

The RFPs prescribed that an Evaluation Committee and Selection Committee for the Collection Services procurement, and a separate Evaluation Committee and Selection Committee for the Facility Operations Services would be created to review and evaluate the proposals. SBWMA purposefully created two separate committees for each RFP comprised of different individuals to ensure a checks-and-balance approach to selecting the next service providers. Once again, it is important to note that these documents were vetted over several months and ultimately approved via resolution by each governing body of the SBWMA Member Agencies.

The Evaluation Committees' role was to conduct a detailed evaluation of the proposals, rank proposals, and provide comparative descriptions of the proposals. The Selection Committees were tasked with reviewing the proposals and the evaluation summary information presented by their respective Evaluation Committee, requesting additional data and analysis as necessary, and developing their recommendations for consideration by the SBWMA Board. All four committees were provided with clear guidelines on how to proceed with the evaluations and scoring. These guidelines were based on the detailed criteria and maximum scoring that was prescribed in the RFP documents for the proposers to ensure that the evaluations were independent, thorough and fair.

The SBWMA Board was tasked with reviewing the Selection Committees' separate recommendations for Collection Services and Facility Operations Services and either approving the recommended companies or proceeding with different options. Once approved by the Board, there was a final opportunity to review the RFP process and SBWMA's recommendations when they were presented to each Member Agencies' governing body for consideration and approval.

In addition, the City of San Mateo retained an independent consultant to review the Collection Services RFP evaluations of two proposals to ensure they were done appropriately. The independent consultant's findings concurred with the recommendation for the future service

provider and stated that the evaluations were appropriately executed and fair. The report specifically stated the following:

- “The selection process provided multiple opportunities for each of the Proposers to provide details on their proposal.
- The Evaluation Committee members rated the proposals independently, not in a group setting.
- The Evaluation Committee did not come to agreement before the scores were tallied.
- When the scores were compared, each of the evaluators had ranked each of the Proposers in the same order.
- The Cost Proposals were fairly evaluated. The evaluation of cost not only evaluated the base fee, but also the reasonableness of the amount.
- The process for the evaluation of the proposals was fair.
- The evaluation of the proposals was fair.”

In conclusion, this exhaustive four-year process yielded two top-rated companies that met the goals and objectives of the RFP process as established by the SBWMA and its Member Agencies in a manner that was fair and with no undue influence.

Response – Conclusion #2:

The SBWMA Board strongly concurs with this conclusion. The SBWMA JPA agreement defers all significant decisions affecting ratepayers to the governing bodies of the Member Agencies, e.g. setting collection rates, authorizing franchises and approving the Shoreway operation contract.

ADDENDUM 2 CORRECTIONS AND COMMENTS TO THE REPORT

The following are corrections and comments regarding factual matters and comments in the Grand Jury Report contained in the “Background” section.

Comment #1

Page 1 – “Background” section

The quoted text from the Collection Services RFP after the statement “*The stated goals of the SBWMA during the RFP process were*” is partially incorrect. The bolded and underlined phrase below is not included in the RFP.

“Integrity, Competition in Selection Process, and Industry-Standard Contract Terms

- *Conduct the RFP process with integrity and transparency*
- *Maintain the association of Member Agencies*
- *Select contractors that meet Member Agency and SBWMA needs*
- *Enter into contracts with fair terms and conditions*
- *Set high performance standards and use incentives/ disincentives to achieve standards related to:*
 - *Collection quality*
 - *Customer service*
 - *Diversion from landfill disposal*
 - ***Deliver high quality cost-effective services to customers***
- *Stimulate competition among proposing companies”*

Comment #2

In addition, this quote reflects section 1.3.1 in its entirety which is found in section 1.3 “SBWMA Goals and Objectives.” However, this is not all of the goals and objectives listed in the RFP as the Grand Jury report states. The Grand Jury report omits subsection 1.3.2, as follows:

1.3.2 Cost-Effective Programs

- Cost
 - Provide cost-effective operations
 - Minimize fiscal impact on ratepayers
- Service
 - Emphasize innovative, responsive management
 - Ensure consistent, reliable and high quality service
- Conserve and protect resources/assets
 - Minimize impacts on air, water, and natural resources
 - Encourage highest and best use of recycled materials
 - Handle as much material locally as possible
 - Meet or exceed AB 939’s 50% diversion mandate
 - Protect the SBWMA’s investment in the Shoreway facility
- Community benefits
 - Continue programs and services that work well
 - Demonstrate proactive waste reduction/recycling philosophy
 - Include involvement of local recyclers/reuse
 - Support local market development where possible

- Educate the public
- Educate and involve the community
- Integrate collection services with SBWMA facilities
- Flexibility of collection methods

Comment #3

Page 2 – “Background” section

The Grand Jury report states:

“The SBWMA was first formed in 1982 as the South Bayside Transfer Station (SBTSA) Joint Powers Authority (JPA). Its purpose was to consolidate local collection services and address the need for coordinated municipal efforts to manage solid waste disposal, ensuring that its 12 member agencies (Atherton, Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, Redwood City, San Carlos, San Mateo, West Bay Sanitation District, and unincorporated portions of San Mateo County) would collectively have lower collection and solid waste management costs. The SBWMA has delivered the lowest garbage rates in the Bay Area. A key consideration for managing costs was the construction of the transfer station in San Carlos in 1984, which is the only such facility in central San Mateo County. Browning Ferris Industries (BFI) built and operated the facility from its inception until the SBTSA purchased the transfer station and adjacent Material Recycling Facility (MRF) from BFI in 1999.”

The statement above does not accurately capture all of the history of the organization. The SBTSA (South Bayside Transfer Station Authority) was formed in 1982 by the same agencies that are a party to the South Bayside Waste Management Authority JPA. Its initial purpose was “to provide an adequate flow of solid waste to the San Carlos Transfer Station to assure the then owner/operator BFI-San Mateo that it would recover its investment in the facility. The SBTSA JPA actually expired by its own terms as a JPA in 2002. The SBWMA was formed in Dec. 9, 1999 by the former SBTSA members, “ for the joint ownership, financing, administration, review, monitoring, enforcement, and reporting of Solid Waste, Recyclable Material, and Plant Material Collection activities in the Service Area.” The SBWMA was formed concurrently with the acquisition by the SBWMA in March 2000 of the Transfer Station and Recyclery properties from BFI-San Mateo. The SBWMA JPA Agreement was amended by a First Amendment and Restatement in 2005.

As stated above, the SBWMA issued bonds and purchased the Transfer Station and the Recyclery properties from BFI-San Mateo in March 2000. At the time of sale, BFI obtained an Agreement from the SBWMA to operate the facilities without a Request for Proposals (RFP) process, dated March 1, 2000. The initial term of that agreement was to December 31, 2006, and was extended, again without an RFP process, to December 31, 2010. At the same time, effective March 2000, BFI obtained new Franchise Agreements individually with the 12 Member Agencies, without an RFP process, and those Franchise agreements were also extended by the Member Agencies, without an RFP, to December 31, 2010.

Comment #4

Page 2 – “Background” section

The Grand Jury report states:

“Since the inception of the JPA, one company, Allied, previously known as BFI, operated both the collection services and the disposal services of solid waste. The current SBWMA contract with Allied is due to expire on January 1, 2011.”

The second sentence requires clarification. First, it implies that Allied has contracts with the SBWMA for both collection services and “the disposal services of solid waste” (assuming the latter refers to the company’s contract with the SBWMA to operate the Shoreway Facility). However, the company does not and never has had a contract with the SBWMA for collection services, as each individual member agency contracts directly with the company for these services.

In addition, the current contracts are set to expire on December 31, 2010.

Comment #5

Page 2 – “*Selecting the Collection Services Contract*” section

The Grand Jury report states:

“1. The proposals for collection services were submitted to the SBWMA for review and recommendation. After the SBWMA recommendation was made, each member agency was to negotiate an individual contract with the recommended provider, depending on the agency's individual needs.”

The second sentence of this statement is incorrect. The RFP prescribed that after evaluation of the proposals and approval of a recommendation by the SBWMA Board, each Member Agency would then be provided the opportunity to consider the recommendation. The RFP specifically addresses this in section 1.2.1, Member Agency Roles and Commitment to the Process, as follows:

“The SBWMA JPA does not bind Member Agencies to follow the recommendations of the SBWMA Board regarding selection of collection contractors.”

Comment #6

Page 2 – “*Selecting the Collection Services Contract*” section

The Grand Jury report states:

“2. There would be a one-year truing up period...”

This statement is incorrect. There is no “truing up period.” The RFP and Collection Agreement prescribe a process by which contractors proposed costs are adjusted based on indices and equitable adjustments are made based on changes in customer services levels from the 2008 data included in the RFP to more current data to when the new contract will take effect.

Comment #7

Page 2 – “*Selecting the Collection Services Contract*” section

The Grand Jury report states:

“3. All proposers were required, when preparing their proposals, to use the same operational assumptions for key items such as residential cart sizes, use of new collection vehicles for core services, and use of new commercial collection containers. This requirement was for the purpose of obtaining comparable cost proposals from proposers. Member agencies retain the right to establish cart sizes for residents, use of used equipment, etc., as part of the final negotiated scope of services and costs with their selected contractor.”

The RFP did not require proposers to use the same operational assumptions. Each proposer was to apply its own operational assumptions and business practices in order to allow each company’s own unique competitive advantage to shine. The RFP required proposers to describe their own unique operational assumptions including: “routing strategy,” “productivity assumptions,” and “collection methodology” (source: Section 5.5 of the Collection Services RFP).

Specifically, the RFP did require proposers to base their costs on purchase of new collection trucks and containers, as set forth in section 5.5 of the RFP. However the number and type of both collection vehicles and carts was not prescribed in the RFP, as follows:

“Number of and description of the collection vehicles to be utilized (e.g. vehicle description, manufacturer and model number, cost, capacity, age, lease or ownership arrangements, etc.). **New vehicles are required for residential and MFD/Commercial/Member Agency collection services.** (This requirement is primarily to ensure that comparable cost proposals are submitted. Member Agencies reserve the right to allow the contractor to provide used collection vehicles.) **New or used vehicles may be used for on-call collection services, drop box service, and support vehicles.**

Manufacturer’s specifications of containers to be utilized. **New Carts shall be provided for SFD and new or used containers (i.e., carts, bins and drop boxes) may be provided for MFD/Commercial/Member Agency customers. It is anticipated that the current franchised hauler will negotiate with the selected proposer(s) to transfer ownership of all MFD commercial containers if the current hauler is not selected. However, proposers must base proposals on the assumption that new carts, bins and drop boxes will be purchased.** (This requirement is primarily to ensure that comparable cost proposals are submitted. Member Agencies reserve the right to allow the contractor to provide used MFD commercial containers/bins.)”

Comment #8

Page 2 – “*Selecting the Collection Services Contract*” section

The Grand Jury report states:

“4. The proposers will be held to their bid assumptions during the contract. For example, if a company states that the price of gas is \$ 2.50 a gallon in its bid, and the price of gas goes up, the base contractual obligation will not change. Fluctuations are limited to some CPI-type index. Presumably, the company will buy, or has bought, oil futures that secure the price.”

This statement is not accurate. Proposers needed to indicate how much money they would spend in 2011 on diesel fuel as stated in 2008 dollars. This number would be increased annually by a specific fuel index published by the federal government.

Comment #9

Page 3 – “*Selecting the Collection Services Contract*” section

The Grand Jury report states:

“6. In order to submit a proposal, the competitors had to agree not to appeal the process.”

This statement is not incorrect. The only conditions on participation by proposers in the RFP process were related to the submittal requirements specified in the RFP that included attending the pre-proposal conference, making a public presentation, facilitating site visits upon request, and submitting the required documents. In fact, the RFP was silent on the issue of an appeal process which is standard practice for procurements of this type. A survey of 44 other California jurisdictions that issued similar RFPs in recent years revealed that only two had bid protest provisions in their RFP. Again, the SBWMA RFP was silent on the issue of protesting the process. However, since no binding recommendation would arise from the RFP process, it was clear from

the beginning that any proposer choosing to protest the process would have ample opportunity when the individual member agencies considered the recommendation resulting from the RFP process.

Comment #10

Page 3 – “*Selecting the Collection Services Contract*” section
The Grand Jury report states:

“8. The new contract was designed for ease of oversight.”

This statement is incorrect. The new collection services franchise agreement(s) are written to be comprehensive with a high degree of clarity to ensure minimal opportunity for disputes. In addition, the new services are more complex than the current services, the reporting requirements are significantly expanded and improved, as are the public education and outreach requirements, liquidated damages, and the performance incentives and disincentives provisions are also new. In fact, the new franchise agreements are significantly more complex and oversight or management of these agreements will be more arduous than the current agreements which are lacking in numerous respects. In addition, the relationship of one company providing the collection services and another operating the facility where the materials are to be delivered, also increases the complexity of the agreements and management requirements.

One area of the franchise agreements that is significantly improved with regard to “oversight,” is in the area of compensation paid to the contractor. The current cost-plus form of compensation that applies to the agreements with Allied is time-consuming and costly, and the results are unpredictable with regard to the amount of compensation due to Allied annually, that in turn results in uncertainty in rates. The new compensation adjustments are highly formulaic and will be done in house by the SBWMA, thus saving approximately \$200,000 in consultant fees annually. In addition, the fixed price compensation model which the new contracts are based on will result in predictable rate increases.

Comment #11

Page 3 – “*Selecting the Collection Services Contract*” section
The Grand Jury report States:

“9. In the current SBWMA contract, Allied collects the garbage and also operates the Shoreway Facility where the garbage is sorted and processed. In the new contract, the operation of the collection and processing will be split between two separate companies.”

It should be clarified that each Member Agency has an individual franchise. Technically, garbage is not sorted, it is transferred to a landfill. Recyclable materials are sorted and processed.

Comment #12

Page 3 – “*Selecting the Collection Services Contract*” section
On page 3, the Grand Jury report states:

10. The collection company can increase its profit by lowering costs and meeting a specified diversion percentage. The facility operator can increase its profit by increasing revenues from recyclables and is dependent on the collector to bring recyclables to the facility in good condition.

The first sentence may prove to be correct; however, the two separate components of it need to be put in context. The idea that the company can “increase its profit by lowering costs” is certainly

correct. However, the franchise agreement is extremely comprehensive in scope and the penalties are severe for non-compliance in providing the required high level of services or for lapses in service.

The idea that the company can increase its profit by “meeting a specified diversion percentage” is correct; however, this statement requires clarification. The incentive payment for increasing diversion is related to an increase in overall diversion. Decreases in both commercial sector and residential sector diversion will result in disincentive payments from contractor to the agencies. Once again, the future system that will be put in place emphasizes the SBWMA and its Member Agencies commitment and the value these communities place on diversion of solid waste from landfill, reduction in greenhouse gas emissions, and the true environmental leadership that is being pursued.

Comment #13

Page 3 – “*Evaluation and Selection Committees*” section

The Grand Jury report states:

“The SBWMA divided the judging process for the Collections Services Contract into two committees: an Evaluation Committee and a Selection Committee. The Evaluation Committee analyzed and scored the proposals. The Selection Committee considered the recommendations of the Evaluation Committee and selected a Collection Services Contractor.”

The first sentence implies that the SBWMA unilaterally “divided the judging process” into two committees and the second and third sentences wholly discounted the process and actual roles and responsibilities of the Evaluation and Selection Committees. The RFP clearly prescribed how and by whom the proposals would be evaluated and the roles and responsibilities of both committees in subsections 6.1-3 of the RFP, as follows:

“6.1.1 Evaluation and Selection Process

An Evaluation Team and Selection Committee will be assembled by the SBWMA and Member Agencies. The Evaluation Team, which may include industry consultants, other industry experts, and Member Agency and SBWMA staff, will conduct a detailed evaluation of the proposals, rank proposals, and provide comparative descriptions of the proposals. The SBWMA Executive Director, with assistance from Evaluation Team as needed, will present the evaluation results to the Selection Committee.

The Selection Committee will likely include: SBWMA staff, SBWMA Board Members, and high-level Member Agency staff. The Selection Committee will review the proposals and the evaluation summary information presented by the Evaluation Team, request additional data and analysis as necessary, and develop its recommendation for consideration by the SBWMA Board for collection services for the North and South Districts.

The SBWMA Board will review the Selection Committee’s recommendation and approve that recommendation or form an alternative recommendation. The SBWMA Board recommendation and a final evaluation report will then be presented to the Member Agencies for approval. Ultimately, each Member Agency will select the collection Contractor to serve its community.

Member Agencies will have the right to act in the best interest of its’ residents and businesses, including the right to select a proposal that, in its opinion,

best meets the community's needs even if the proposal is not recommended by the Selection Committee and/or the SBWMA Board.

6.1.2 Evaluation Team

As described above, the Evaluation Team will facilitate the evaluation process by providing technical support and an evaluation of proposals to the Selection Committee. The Evaluation Team will perform the following tasks:

- Review all proposals received for compliance
- Prepare a comparative summary of proposals
- Rate proposals using a quantitative method based on the criteria presented in Section 6.2 (or other criteria as directed by the Selection Committee)
- Analyze financial capabilities of companies
- Conduct reference checks
- Evaluate reasonableness and competitiveness of cost proposals
- Request clarification information from the proposer
- Attend and participate in the proposer interviews and site visits
- Rank proposals using the established evaluation criteria
- Provide further assistance to the SBWMA Executive Director and Selection Committee as requested

6.1.3 Selection Committee

The role of the Selection Committee is anticipated to involve:

- Reviewing all proposals
- Reviewing, adjusting (if appropriate), and approving the proposal rankings presented by the Evaluation Team
- Requesting clarification information of the proposer
- Attending and participating in the proposer interviews and site visits
- Recommending award of the collection contracts for the North and South Districts
- Presenting their recommendation and evaluation report to the SBWMA Board for consideration

During the process, proposer will be required to attend interviews, allow site visits, and give presentations to the SBWMA and/or Member Agencies.”

Comment #14

Page 4 – “*How the Proposal was Scored*” section

The Grand Jury report states:

“The Evaluation Committee evaluated and numerically scored the companies' proposals. The ratings from the evaluators were compiled and discussed during several Evaluation Committee meetings to determine a preliminary ranking of the proposals based solely on the evaluation criteria.”

The first sentence is correct while the second is not. The Evaluation Team did thoroughly evaluate the proposals, conduct interviews and site visits, and numerically score the proposals based on the criteria and specific sub-criteria prescribed in section 6.2 of the RFP (below). However, the evaluators did not meet and compile and discuss the ratings. The ratings were done independently and compiled by one member of the Evaluation Team. No other members of the Evaluation Team

were privy to how the other members scored the proposals. This confidentiality in scoring proposals was maintained to ensure a fair process. While the Evaluation Team did meet to discuss the merits and shortcomings of the proposals and numerous other aspects of the evaluation (including sharing their own relevant industry related experiences with these and other companies and procurements), the individual specific scoring was not discussed.

6.2 Evaluation Criteria

Proposals will be numerically scored and ranked using the criteria and weighting described in this section. The scores assigned will reflect the extent to which criteria is fulfilled relative to other proposals. Furthermore, scores will reflect the benefits to the entire SBWMA service area or service District as a whole, rather than individual benefits to each Member Agency. The evaluation criteria and maximum score that can be achieved for each criterion is presented in Table 6-1.

**Table 6-1
Evaluation Criteria and Maximum Evaluation Score**

Criteria	Maximum Evaluation Score
Responsiveness to RFP	Pass/fail
Company qualifications and experience	150
Proposal for collection services (Includes both Core and Optional Services)	150
Cost proposal (Includes both Core and Optional Services)	200
Alternative technical proposals	<i>Score, if any, to be determined (SBWMA and Member Agencies are not obligated to evaluate alternative proposals)</i>
Other matters of concern to the SBWMA Board and Member Agencies' Council/Boards	<i>To be determined if additional criteria are added</i>
Number and Materiality of Exceptions	50
Environmental Enhancements	50
Total Maximum Score	600

Member Agencies reserve the right to act in the best interest of its' residents and businesses, including the right to reject a proposal that is given the highest quantitative scoring in the evaluation process if the proposal is not in the best interest of residents and businesses. The potential factors that may be considered by the Evaluation Team when developing the score for each criterion are presented below.

6.2.1 Responsiveness (Pass/Fail)

Proposer must be fully compliant with the RFP and procurement procedures as demonstrated by submittal of all elements required by Sections 3 and 5; full completion of all cost proposal forms required in Section 5.6; compliance with process guidelines presented in Section 4; and adherence to the code of conduct signed by the proposer.

6.2.2 Company's Qualifications and Experience (150 points)

1. Collection Experience. Demonstrated experience of company providing the requested or similar services to other jurisdictions. If the proposer is a joint venture, demonstrated experience of parties working together.
2. Service Initiation Experience. Demonstrated experience of company's ability to implement new collection services and new franchise agreements and obligations that are similar to the SBWMA's services in comparable sized communities.
3. Management and Customer Service Systems. Demonstrated capabilities of the company's existing management and customer service systems' abilities to track and monitor contract compliance, quality of collection service, and call center responsiveness and to report data required by the Collection Agreement. In the event the company proposes use of a new or modified system, the extent to which such system has the potential to meet the SBWMA and Member Agency needs and contract requirements will be evaluated.
4. Key Personnel Qualifications. Extent and relevance of the qualifications and experience of key personnel proposed for the transition team and on-going management of the SBWMA collection operations.
5. Past Performance Record. Review of company's history with litigation and regulatory action (e.g., nature of past and pending civil, legal, regulatory, and criminal actions; history and nature of payments of liquidated damages); regulatory compliance related to equipment and facilities including compliance with land use permits, storm water discharge permits, state highway requirements, etc.).
6. Financial Stability. Financial strength and ability of company to acquire equipment and provide financial assurance of performance based on review of its audited financial statements and its proposed financing plan and the relationship of the SBWMA contract to the company's total annual revenues.
7. Jurisdiction Satisfaction. Satisfaction of company's references with the services received in the past 10 years (including, but not limited to, implementation, customer service, call center, billing, payment of fees, reporting, and the handling of contractual issues).

6.2.3 Proposal for Collection Services (150 points)

1. Collection Approach – Reasonableness and reliability of the proposed collection methods (e.g., technology, equipment, and containers); reasonableness of productivity and operating assumptions (i.e., number of routes, route drivers, route hours, stops per route, and other operating statistics), if applicable; and reasonableness of assumptions.
2. Diversion Ability – The nature, reliability, and innovation of proposed diversion programs and potential of such programs to divert solid waste from landfill disposal.
3. Public Education and Promotion Program – Compatibility of the proposed education program, staffing level, and program ideas with the needs of the SBWMA and Member Agencies and the requirements of the Collection Agreement; and, the quality of public education samples relative to other proposers.
4. Customer Service – Compatibility of customer service approach, staffing levels, and training programs and capabilities of the call center and customer service software system with the needs of the SBWMA and Member Agencies and the requirements of the Collection Agreement.

5. Billing System – Compatibility of billing approach, procedures for handling customers, and coordination plans with Member Agencies who perform some or all of the billing activities.
6. Facilities for Equipment, Maintenance, and Administration. Compatibility of plan for providing the facilities needed for equipment storage and parking, maintenance, and administration. Level of assurance provided, if any, with regard to site acquisition and timely development of necessary facilities.
7. Implementation Plan - Reasonableness of implementation schedule and ability to meet deadlines (e.g., reasonableness of equipment procurement schedules, implementation staffing levels, new corporation or maintenance yard development, and contingency plans).
8. Potential Collection Impacts. Compatibility of plans for vehicle compliance with State of California Air Resources Board rules; ability to respond to issues identified during the environmental review, compliance, and permitting process associated with the development of new facilities (if any are to be developed), and hauling impacts (in terms of total annual miles traveled compared to others) related to distance between vehicle maintenance and parking facilities and Shoreway facility.
9. Additional Member Agency Services. Reasonableness and reliability of proposed collection methods, technology, equipment, and containers; reasonableness of productivity and operating assumptions (i.e., number of routes, route drivers, route hours, stops per route, and other operating statistics) for:
 - a. San Mateo County service area
 - b. Atherton
 - c. Hillsborough
 - d. Redwood City
 - e. Burlingame
 - f. Foster City
 - g. City of San Mateo
10. Other Proposed Services. Compatibility of other services proposed by company as per Section 3.15 of this RFP.

6.2.4 Cost Proposal (200 points)

1. Reasonableness of Cost Proposals. Logical relationship between proposed costs and operational assumptions for the base cost proposal and the cost proposal for additional Member Agency services.
2. Competitiveness of Cost Proposals. Cost competitiveness relative to other proposals.
3. Value to Member Agencies. The level of value provided given the relative cost for that service.

6.2.5 Alternative Technical Proposals (Maximum Score, if any, to be determined)

SBWMA and Member Agencies are not obligated to evaluate or select alternative proposals. Alternative proposals will be considered by the SBWMA and Member Agencies if the SBWMA and Member Agencies conclude, in their sole discretion, that the alternative proposals warrant evaluation and analysis. Such evaluation will consider the reasonableness and reliability of proposed collection methods, technology, equipment, and containers; and the reasonableness of productivity and operating assumptions (i.e., number of routes, route drivers, route hours, stops per route, and other operating statistics).

At the SBWMA's and/or Member Agencies' option, the reasonableness and competitiveness of one or more alternative proposal(s) may be evaluated.

6.2.6 Number and Materiality of Exceptions (50 points)

The number, nature and materiality of exceptions to the model Collection Agreement (Attachment 2) will be taken into account in evaluating proposals.

6.2.7 Environmental Enhancements (50 points)

Proposals that include Environmental Enhancements including, but not limited to those specified in Section 3.16.3 of this RFP, may be eligible to receive additional evaluation points. Proposed Environmental Enhancements that address the following will be eligible to receive points:

1. Mitigating Environmental Impacts. Reducing or minimizing the negative environmental impacts associated with providing collection services (e.g., air and water impacts, depletion of natural resources).
2. Recycled Materials. Ensuring the highest and best use of recycled materials and the highest feasible quantity of recycled content is achieved."

Comment #15

Page 4 – "How the Proposal was Scored" section

The Grand Jury report states:

"Each evaluation criterion was divided into two parts: a "competitive" part and a "reasonableness" part. In determining the "reasonableness" points of a proposer's cost proposal, equipment selection, labor, and operating assumptions were to be "considered against industry standards" and against other proposals. The point allocation process was described by Grand Jury witnesses as "highly theoretical and subjective," with a potential for a limitless amount of "theoretical points" being combined with "actual competitive points" by the individual Evaluation Committee members, up to the maximum score in each Evaluation Criteria category. Neither the individual members of the Evaluation Committee nor the Selection Committee were required to report how many overall points assigned to each criterion were based on "reasonableness" or "competitiveness.""

While the terms "reasonableness" and "competitiveness" were specifically prescribed in five (5) of the twenty-four (24) sub-criteria, it is incorrect to state that "Each evaluation criteria was divided into two parts: a "competitive" part and a "reasonableness" part."

In addition, it is incorrect to state that the scoring process was "highly theoretical" or that there was a "potential for a limitless amount of theoretical points being combined with actual competitive points..." The five primary criterions contained numerous sub-criteria and points were achieved or deducted based on the company's strengths or weaknesses for each relative to the other proposals.

Comment #16

Page 4 – "How the Proposal was Scored" section

The Grand Jury report states:

"The Grand Jury received a paper titled "Solid Waste Management-A Guide for Competitive Contracting for Collection" written by a SBWMA consultant and was told that it was the guideline for the RFP."

In 1996, JM Sloan co-authored "Solid Waste Management – A Guide for Competitive Contracting for Collection". The paper was published as a part of a policy series of the Reason Foundation – Privatization Center. While JM Sloan, of Sloan Vazquez, LLC, is a consultant to SBWMA, Mr. Sloan's consultation was specifically limited to the Facility Operations RFP, and not the Collection

Services RFP. While Mr. Sloan supports the general principles set forth in the paper, he did not submit the paper to the SBWMA, nor was he asked to provide input to the development of the Collection RFP.

To emphasize, the paper was neither offered by SBWMA consultants, nor used by the SBWMA as the guideline for the RFP.

Comment #17

Page 5 – “How the Proposal was Scored” section

The Grand Jury report states:

“On August 28, 2008, Norcal was chosen by the SBWMA to be awarded the Collection Services Contract for the ten-year period from 2011 to 2021.”

The SBWMA Board of Directors did pass a motion to approve the Selection Committee recommendation to select Norcal as the future collection services provider. The Board recommended presenting this selection to the individual governing bodies of the respective Member Agencies for consideration of awarding a contract. Only the governing bodies of the Member Agencies can award a Collection Services franchise within their jurisdiction.

Comment #18

Page 5 – “Cost Evaluation” section

The Grand Jury report states:

“The SBWMA and consultants entered the cost information provided by each of the four proposers into a Comprehensive Cost Proposal Summary. That summary was used to compare and evaluate their “competitiveness.” The final proposed costs for servicing the entire SBWMA jurisdiction are summarized in item four of Table 1.”

The first sentence is correct, while the second and third are not. The Cost Proposal Summary was used as a tool to evaluate the cost proposals with respect to all three Cost Proposal sub-criteria, including Reasonableness of Cost Proposals, Competitiveness of Cost Proposals, and Value to Member Agencies. At no point was the summary solely used, as all of the Evaluation Team members thoroughly vetted all aspects of all cost forms submitted by the proposers. The third sentence is incorrect since “Table 1” in the report reflects scores achieved and does not provide information on cost (*“the final proposed costs for servicing the entire SBWMA jurisdiction”*).

What is also important to note is that Allied was awarded the most points for competitiveness of its cost proposal since the company submitted the lowest cost proposal.

Comment #19

Page 5 – “Cost Evaluation” section

The Grand Jury report states:

“The SBWMA was informed by Allied that its costs were lower because, as a large company, it had the potential advantage of hedging fuel costs.”

At no time during the proposals evaluation process did Allied disclose any information on its local or corporate fuel purchasing practices that suggested that it had a potential advantage of hedging fuel costs.

Comment #20

Page 5 – “Cost Evaluation” section

The Grand Jury report states:

“Also, due to Allied’s size, the company that supplies new bins had agreed to roll out the bins to residents free of charge.”

This statement is incorrect. During the discovery question and answer process in evaluating proposals, Allied was asked by the SBWMA about where the cost to assemble and distribute bins was located in the cost forms submitted, and the company responded by stating that: *“The assembly and delivery cost is included in our base cost per container, located on Form #4.”* (Allied response #34, letter dated 04/15/08).

Comment #21

Page 7 - “Environmental Enhancements & Other Considerations” section

Footnote number 4 states:

“No mention was made of an opt-in proprietary program called Recyclebank, implemented successfully in Delaware and Philadelphia and awarded by the United Nations, that would supply Recyclebank’s dollars to incent household recycling: <http://www.huliq.com/1/80048?un-program-spotlights-recycle-bank>”

The information submitted by Allied pertaining to its RecycleBank program was not compliant with the RFP. Awarding or subtracting points for an alternative program that was not submitted in compliance with the RFP requirements would have compromised the fundamental due diligence of ensuring a fairly managed competitive procurement.

Comment #22

Page 7 – “SBWMA’s Due Diligence Process” section

The Grand Jury report states:

“The Grand Jury asked the SBWMA Board members who were on the Selection Committee if they were aware of Norcal’s previous, well-publicized history in the City of San Jose (San Jose) and San Bernardino County. SBWMA reported that Norcal’s problematic history was discussed. However, many of the SBWMA Board members mentioned they had no knowledge of these discussions. During a Menlo Park City Council meeting, the SBWMA consultant, who was tasked to verify the competitors’ references, publicly testified that he phoned San Jose to confirm Norcal’s recommendations, but he never followed-up. During interviews, the Grand Jury learned that the SBWMA consultant worked in a consulting firm that helped create the RFP for waste management collection services in 2000 for San Jose and their subsequent RFPs after Norcal’s problems were revealed. This consultant and his partner were on the SBWMA Evaluation Committee.”

All proposers were required to submit detailed information about contract issues and litigation in their proposals, as well as additional information requested during the evaluation process. This included contract issues and litigation related to Norcal’s contracts in San Jose and San Bernardino County. All of this information was taken into careful consideration during the evaluation and selection process.

Two members of the Evaluation Team had firsthand knowledge of Norcal’s and Green Waste Recovery’s (one of the partners in BEST) operational performance and contract compliance in the City of San Jose. This was shared and discussed, and further taken into consideration during the evaluation and selection process.

In fact, both principals of R3 consulting (Ric Hutchinson and Richard Tagore-Irwin) were key members on the primary consultant teams that worked on San Jose's last two RFPs for collection services in 2000 and 2006. The scope of their prior work for San Jose included RFP development, evaluation of proposals, facilitation of proposals scoring, and final contract negotiation and program implementation. This experience in San Jose was one of the key attributes that set the R3 consultant team apart from the others that responded to the SBWMA's competitive procurement request for qualifications for RFP consultant services.

Upon release of the recommendation to select Norcal as the next service provider, one of the proposing companies asserted that: "Over the course of the contract [between Norcal and San Jose] these problems exacerbated to a level that caused the City of San Jose to not offer an automatic extension of the contract to Norcal and put there [their – San Jose] collection and recycling services out to bid."

To which, the SBWMA responded with the following:

"This assertion is not true given the following information:

- Norcal held separate contracts with the City of San Jose for collection of recycling and garbage, and collection of yard trimmings and street sweeping.
- Norcal did in fact receive an automatic extension offer for yard trimmings/street sweeping on December 21, 2005 (refer to **Exhibit D** – letter from San Jose City Manager to Norcal).
- Norcal did not receive an automatic extension offer for recycling and garbage collection service on December 21, 2005, due to Section 2.02 of the collection agreement that conditioned an automatic extension based upon meeting certain diversion requirements (i.e., processing of collected recyclables at the materials recovery facility (MRF) (refer to **Exhibit E** – letter from San Jose City Manager).
- Lastly, a letter from San Jose staff was issued to Norcal on October 17, 2005 (refer to **Exhibit F**) which invited Norcal to make a written proposal to the City of San Jose for consideration regarding the potential extension of the agreement for recycling and garbage collection and conveying that the City's rationale for not providing an extension offer was due to issues related to not meeting diversion requirements at the processing facility (owned and operated by California Waste Solutions),..."

Comment #23

Page 7 – "SBWMA's Due Diligence Process" section

The Grand Jury report states:

"The 2004-2005 Santa Clara County Civil Grand Jury Report stated, 'That the [San Jose] Mayor's June 26, 2000 recommendation of Norcal to the Council describes Norcal's history and serious legal problems. The history also discusses San Bernardino County's lawsuit against Norcal alleging bribery, fraud, and unjust enrichment. An 18-month jail sentence for a Norcal employee, who admitted taking bribes and a \$6.5 million settlement payment by Norcal to San Bernardino County were also discussed.' The 2008-2009 San Mateo County Civil Grand Jury could not determine if the Selection Committee were aware of these issues or explored them or other issues in any depth. Further, there is no evidence that the SBWMA did a diligent search of the other proposers that might have influenced the selection."

Regarding the last sentence, the SBWMA's outside counsel performed a thorough litigation review and the results of this review and follow-up research was shared with the Selection Committee. This information was provided to the Grand Jury.

Comment #24

Page 12 – “SBWMA’s Due Diligence Process” section

The Grand Jury report states:

“The Grand Jury learned that SBR planned to run the Shoreway Facility as a ‘satellite’ operation from its headquarters in Los Angeles. At what point the SBWMA discovered this fact is not clear to the Grand Jury. SBR expects to receive additional funds annually from SBWMA because of its ‘miscalculations and omissions.’ The Grand Jury has learned, subsequent to SBR’s selection as Shoreway Operations Contractor, that it renegotiated, on May 19, 2009, to decrease its recycling revenue guarantee to \$6.75 million. However, SBWMA is still in deliberations with SBR and has not established a final amount to operate the Shoreway Facility.”

SBR proposed that the executive and financial management of Shoreway would be directed from their headquarters and that all operations management functions would be completed by local Shoreway-based managers. While the type of management structure proposed by SBR is not unusual in municipal proposals, it was deemed inappropriate for the Shoreway operation and was rejected by SBWMA. The SBWMA directed SBR to add the cost of local executive management to their cost proposal.

Comment #25

Page 12 – “SBWMA’s Due Diligence Process” section

The Grand Jury report states:

“On March 29, 2009, HBC wrote a letter to the SBWMA contesting its basis for the selection of SBR. (see Attachment 1)”

The referenced letter was written by a competitor/proposer that was not recommended to receive the contract. The letter contained no new information, and nothing that had not been made public in the Evaluation and Selection Committee reports. Each of the competitor’s points had already been fully investigated, analyzed, evaluated and were already reflected in the scoring of the proposals. The SBWMA prepared and transmitted a full response to the competitor/proposer’s letter.

Comment #26

Page 12 – “SBWMA’s Due Diligence Process” section

The Grand Jury report states:

“Additionally, the Grand Jury learned from different sources that there is concern about ongoing problems with Community Recycling, one of the two SBR partners. The Local Enforcement Agency for Los Angeles has issued forty-two outstanding Notices of Violations to Community Recycling Sun Valley Recycling and Transfer operations. Twenty-six of the violations concern permitting. Community Recycling is operating without the correct permit. The other sixteen violations are for vector, bird and animal control; training; hazardous, liquid, or special waste containment; scavenging; traffic control; cleaning; reporting; and load checking. In addition, on February 26, 2009, during a SBWMA Board meeting, a member of the Teamsters Union distributed a letter from Teamster’s Local 396 of Southern California. The letter stated the union had ‘major labor problems’ and ‘horrible working conditions’ with Community Recycling. SBR claims it has good union relationships.”

Each of the points listed in this paragraph were fully investigated, analyzed, evaluated, by the Evaluation and Selection Committees and reflected in the scoring of the proposals. All of the

findings by the Evaluation Committee related to these issues were discussed by the Selection Committee, presented to the SBWMA, and discussed in open public meetings.

The bulk of the violations were related to permit conditions surrounding of Community Recycling's facility in Sun Valley, California. This facility has been operated for over 20 years and predates many of the current regulations pertaining to solid waste facilities. These historical "permit issues" will not be a factor in a contractor's operations of the SBWMA's Shoreway facility.

Also, given that Potential Industries (the other partner in SBR) has a clean operating history, the Selection Committee was confident that the company understands and will live up to the high standards required by the SBWMA. In addition, the SBWMA agreement with SBR will include provisions to both define and enforce "good housekeeping." According to a March 18, 2009 Selection Committee report, "The Selection Committee is comfortable that SBR can and will operate the Shoreway facility at the level expected by SBWMA staff and our Member Agencies."

In addition, the SBWMA continues to monitor Community Recycling's on-going environmental records for its other facilities to ensure they are making the necessary improvements.

Comment #27

Page 12 – "SBWMA's Management Conduct" section

The Grand Jury report states:

"Allied was one of the proposers that submitted for the contract to haul garbage and run the Shoreway Facility. The decision to recommend either HBC or SBR to operate the Shoreway Facility in August 2008 meant that Allied's bid to operate the Shoreway Facility was rejected. Shortly after its bid was rejected, Allied submitted an alternative proposal to the SBWMA that addressed the ever-increasing cost proposed by the SBWMA to build the new Shoreway Facility. The request to consider this alternate proposal for building the MRF was denied by the SBWMA, due to what the SBWMA had described as 'non-compliance with the RFP requirements.' The denial prompted Allied to contact the press and city council members for a hearing."

It should be noted that Allied Waste's retrofit proposal dated August 26, 2008 was submitted outside of the RFP process, and was released to the media prior to the Board's receipt of the document.

The August, 2008 retrofit proposal was thoroughly evaluated by the SBWMA and its consultant, Sloan Vazquez, LLC. Consultants prepared analysis that demonstrated that the retrofit plan included many shortcomings including the fact that while it required lower capital cost, it would add over \$35 million in additional operating costs over the 10-year term of the contract. An analysis of Allied's pro forma costs did not include items such as profit, interest and depreciation. In addition, the plan did not address life-cycle costs and seismic concerns, costs for upgrading the existing MRF building to comply with new universal building codes and ADA requirements, among others. Lastly, the plan disregarded the product quality standard or residue standards set by the SBWMA in the RFP, resulting in a risk of lower commodity revenue.

In public meetings, the SBWMA Board concluded that Allied's retrofit plan did not merit abandonment of the RFP process, including implementation of the Shoreway Master Plan.

Comment #28

Page 13 – “SBWMA’s Management Conduct” section

The Grand Jury report states:

“With this email, the copy of a newspaper article about Allied (see Attachment 2) was also sent to the proposers. The newspaper article contained controversial information about Allied, as admitted to by staff in a SBWMA meeting on August 28, 2008. Allied’s lawyer attempted to elicit an apology from the executive at a SBWMA Board meeting, but the apology was denied on the grounds that it was not legally necessary.”

This matter has been legally settled with Allied, pursuant to a confidential written settlement that resolves use of plant material delivered to Newby Island by the SBWMA.

Comment #29

Page 14 – “SBWMA Hires External Consultant” section

The Grand Jury report states:

“The consultant’s analysis was based primarily on interviews with the committee members, not on written documents. He found that the RFP evaluators submitted combined scores, which did not distinguish the point allocation between what were “competitiveness” points and what were ‘reasonableness’ points in the RFP scoring process.”

This statement is incorrect with regards to the Collection Services RFP. The SBWMA did not hire an external consultant. The City of San Mateo retained an independent consultant to review the Collection Services RFP evaluations of the proposals to ensure they were done appropriately. The independent consultant’s findings concurred with the recommendation for the future service provider and stated that the evaluations were appropriately executed and fair. The report specifically stated the following:

- “The selection process provided multiple opportunities for each of the Proposers to provide details on their proposal.
- The Evaluation Committee members rated the proposals independently, not in a group setting.
- The Evaluation Committee did not come to agreement before the scores were tallied.
- When the scores were compared, each of the evaluators had ranked each of the Proposers in the same order.
- The Cost Proposals were fairly evaluated. The evaluation of cost not only evaluated the base fee, but also the reasonableness of the amount.
- The process for the evaluation of the proposals was fair.
- The evaluation of the proposals was fair.”

As it relates to the Facility Operations RFP, this statement is also factually incorrect. No consultant interviewed the evaluators. The scoring of the proposals did, in fact, separately account for reasonableness and competitiveness.

Superior Court of San Mateo County

Hall of Justice and Records
400 County Center
Redwood City, CA 94063-1655

John C. Fitton
Court Executive Officer
Clerk & Jury Commissioner

(650) 599-1711
FAX (650) 363-4698

July 10, 2009

Executive Director
South Bayside Waste Management Authority
610 Elm Street, #202
San Carlos, CA 94070

Re: TrashTalk: Rethinking the Waste Management RFP Process by the South Bayside Waste Management Authority Report

Dear Executive Director:

The 2008-2009 Grand Jury filed a report on July 10, 2009 which contains findings and recommendations pertaining to your agency. Your agency must submit comments, within 90 days, to the Hon. George A. Miram. Your agency's response is due no later than October 8, 2009. **Please note that the response should indicate that it was approved by your governing body at a public meeting.**

For all findings, your responding agency shall indicate one of the following:

3. The respondent agrees with the finding.
4. The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

Additionally, as to each Grand Jury recommendation, your responding agency shall report one of the following actions:

5. The recommendation has been implemented, with a summary regarding the implemented action.
6. The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
7. The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
8. The recommendation will not be implemented because it is not warranted or reasonable, with an explanation therefore.

Please submit your responses in all of the following ways:

4. Responses to be placed on file with the Clerk of the Court by the Court Executive Office.
 - Prepare original on your agency's letterhead, indicate the date of the public meeting that your governing body approved the response address and mail to Judge Miram.

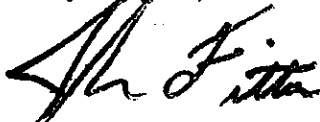
**Hon. George A. Miram
Judge of the Superior Court
Hall of Justice
400 County Center; 2nd Floor
Redwood City, CA 94063-1655.**

5. Responses to be placed at the Grand Jury website.
 - Copy response and send by e-mail to: grandjury@sanmateocourt.org. (Insert agency name if it is not indicated at the top of your response.)
6. Responses to be placed with the clerk of your agency.
 - File a copy of the response directly with the clerk of your agency. Do not send this copy to the Court.

For up to 45 days after the end of the term, the foreperson and the foreperson's designees are available to clarify the recommendations of the report. To reach the foreperson, please call the Grand Jury Clerk at (650) 599-1711.

If you have any questions regarding these procedures, please do not hesitate to contact Brenda B. Carlson, Chief Deputy County Counsel, at (650) 363-4760.

Very truly yours,



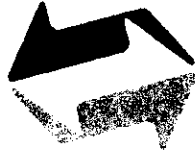
John C. Fitton
Court Executive Officer

JCF:ck
Enclosure

cc: Hon. George A. Miram
Brenda B. Carlson

Attachment C

SBWMA letter response to the Honorable Judge Miram
dated July 28, 2009



RethinkWaste

South Bayside Waste Management Authority

July 28, 2009

Honorable George A. Miram
Judge of the Superior Court
400 County Center, 2nd Floor
Redwood City, CA 94063-1655

Re: San Mateo County Civil Grand Jury Report 2009 – SBWMA RFP Process

Dear Judge Miram:

The following is the response of the Board of Directors of the South Bayside Waste Management Authority (SBWMA) to the above referenced Report by the 2008-2009 San Mateo County Civil Grand Jury. This response was approved by the Board at a public meeting held on July 23, 2009. We have responded directly to the Recommendations of the Civil Grand Jury in this letter, and address the Findings and Conclusions in the attached Addendum 1, and the facts/comments in the Background Section in Addendum 2.

I - Initial Comments

The SBWMA's goal for the RFP process was to select the best companies through a detailed and open evaluation process of the responses that could provide the desired services in the most cost-effective and environmentally superior manner. We believe that goal was accomplished. In selecting Norcal (now known as Recology) and South Bay Recycling (SBR) for consideration by the Member Agencies as the future service providers, the SBWMA did exactly as it had promised it would do through the RFP process - select the highest-rated, best firm for each service.

The SBWMA went through a very thorough and intensive process in developing, issuing and evaluating the RFPs for both the collection services and facility operations services. The RFPs clearly prescribed the proposal requirements, evaluation process and scoring system. This process took place over a four-year period to ensure that the SBWMA Member Agencies' staff and elected officials, potential proposers, other stakeholders and the public had multiple opportunities for review and input. SBWMA Board of Directors, potential proposers, consultants, legal counsel and other stakeholders helped develop and write the RFPs, selection criteria and the scoring system before the RFPs were issued. There were no objections to the RFPs received from the proposers until the recommendations for the selected companies were announced. The City of San Mateo retained an independent consultant to review the Collection Services RFP evaluations of the proposals to ensure they were done appropriately. The independent consultant's findings concurred with the recommendation for the future service provider and stated that the evaluations were appropriately executed and fair.

South Bayside Waste Management Authority
610 Elm Street, Ste 202, San Carlos California, 94070
Telephone 650/802-3500 Fax 650/802-3501

The RFP process has been vetted before all 12 SBWMA Member Agencies. Member Agencies will have additional opportunities for review as the final agreements proposed for Norcal for the Collection Franchise and SBR for the Operations Agreement come before them for approval.

II. Response to Recommendations

"The 2008-2009 San Mateo County Civil Grand Jury recommends that the South Bayside Waste Management Authority (SBWMA) and its Board and designated elected officials of the 12-member agencies [Atherton, Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, Redwood City, San Carlos, San Mateo, West Bay Sanitation District, and the San Mateo County Board of Supervisors (on behalf of the unincorporated portions of San Mateo County)]:

1. *Meet and reconsider pending contracts with Norcal and South Bay Recycling in light of the information contained in this Grand Jury report."*

Response:

Each of the two RFPs, one for collection services and another for facility operations, included key milestones to allow for Member Agency input and action. All governing boards of Member Agencies will be asked to give consideration to their individual franchise agreements for collection, and the agreement for the operation of Shoreway Environmental Center over the coming months, as prescribed in the RFP process. To date, ten of the Member Agencies, representing 85.6% of the Solid Waste tonnage in the SBWMA service area, have already considered and approved the Selection of Norcal (now known as Recology) as their future franchised hauler for solid waste, recyclables and organics. These votes of the Member Agencies have led to the preparation and negotiation of lengthy Franchise Agreements with Norcal to be considered individually by each Member Agency over the next few months, a process that began with these 10 Agencies in March 2009. The Town of Atherton also gave direction to its City Manager on July 15, 2009 to proceed with informal negotiations with Norcal. A JPA Member Agency is free to contract with any company it wants for collection. All documentation related to the RFP process, including vendor responses are available to Member Agencies for additional evaluation. The SBWMA will cooperate with any Member Agency that wishes to reevaluate responses to the RFP process.

The SBWMA Board at its July 23, 2009 Board considered approval of an Agreement with South Bay Recycling (SBR) to operate the Shoreway facility. As approved, it will be presented to the governing bodies of the Member Agencies for review and approval pursuant to Section 7.1.1 of the JPA Agreement. The SBR Operators agreement needs 2/3 of the Member Agencies to approve it.

Action:

The recommendation will effectively be implemented during finalization of the RFP process.

Honorable George A. Miram
Judge of the Superior Court
July 28, 2009
Page 3.

- "2. *In future Request For Proposal processes:*
a. *Clearly define and objectively and consistently apply the evaluation criteria,"*

Response:

The SBWMA did clearly define evaluation criteria, and to the extent practical provided objective guidelines for the application of evaluation criteria. We believe that the two concurrent RFP processes, one for collection services and another for facility operations, were both conducted professionally and thoroughly. The Evaluation and Selection Committees for each RFP meticulously followed and implemented the evaluation processes spelled out in the respective RFPs.

- "b. Provide for an appeals process before the final contracts are signed,"*

Response:

A survey of 44 other California jurisdictions that issued similar RFPs in recent years revealed that only two had bid protest provisions in their RFPs. Since these two RFPs are not Public Works "bid" type procurements, inclusion of an appeals process is not standard practice. In fact, the SBWMA RFP processes afforded stakeholders multiple opportunities to comment on the RFP documents. In addition, since the recommendations resulting from the RFP processes are made via publicly noticed SBWMA Board meetings and later considered at individual Member Agency meetings, there have been multiple opportunities for public input from companies that participated in the RFP processes and/or other interested parties. In fact, this is what has happened since September 2008 as dozens of public meetings have been held by the SBWMA Board and Member Agencies and many RFP participants voiced their opinions regarding the RFP recommendations. Lastly, the RFP process as proposed by the SBWMA was reviewed in advance by potential proposers and none commented on the lack of an appeals process or requested such a process.

In summary, every decision made regarding issuance of the RFPs, Member Agency participation in the RFP processes, recommendations resulting from the RFP processes, Member Agency consideration of the recommendations, and Member Agency approval of the recommendations via authorizing the SBWMA to prepare a contract in the case of Facility Operations or executing their own contract for Collection Services has been or will be done at publicly noticed meetings.

- "c. Assure the proposers that alternative proposals will be considered,"*

Response:

The RFPs did provide assurance that alternative proposals would be considered if submitted in compliance with the RFP. The submittal of an alternative proposal was to be treated with the same guidelines as a base proposal, which required evaluation if submitted in accordance with the RFP documents. Both RFPs addressed the submittal of alternative proposals in the same manner. During the RFP process one alternative proposal was submitted by Allied Waste and given consideration. The alternative proposal provided incomplete information, and was not responsive to the RFP. Following legal review, it was determined that the SBWMA had no legal obligation to evaluate the Allied alternative proposal as it was

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submitted because it did not comply with the RFP cost and exception requirements. Nevertheless, the SBWMA actually accorded the lone alternative more consideration than legally required.

Had the SBWMA proposal evaluation process blindly included review of alternative proposals submitted not in compliance with the RFP documents or during the proposal submission period, the fundamental premise of ensuring a fair, non-biased and transparent procurement would have been compromised.

"d. Ensure that representatives from other jurisdictions are participants on the committees, and"

Response

This recommendation is unclear as to the whether the Grand Jury is recommending representatives from SBWMA Member Agencies are participants in the committees or representatives from outside of the SBWMA are participants. The RFP process did include representatives from the Member Agencies. The Evaluation and Selection Committees for both the Collection Services and Facility Operations RFPs were comprised of different SBWMA Board members, and all of the Member Agencies were represented on the PAF and PAC committees.

If the intent of the recommendation is to include representatives from non-SBWMA jurisdictions, we cannot understand why they should have any decision-making authority in a local RFP process. We know of no other jurisdictions that follow such a process.

"e. Ensure that no one individual chair both committees."

Response:

This recommendation will be considered.

Action (Applies to Responses to Recommendation #2, including items a-e):

At such time as there is a future RFP process for either franchise agreement, the concerns of the Civil Grand Jury Report will be taken into consideration by the SBWMA. This holds true for each of the successive recommendations in this section regarding future RFP processes. A future RFP process may not occur for ten (10) years.

"3. Amend the Joint Powers Authority Agreement to include elected officials from member agencies onto the SBWMA Board of Directors."

Response:

This recommendation is one for consideration by the individual governing bodies of the JPA Member Agencies which have sole authority to amend the JPA agreement. The last restatement of the JPA agreement in 2005 confirmed Member Agencies' intent to continue to appoint staff to the SBWMA Board.

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Action:

The SBWMA Board lacks legal authority to take action on this recommendation. However, the Board will review the responses to the Report from the Member Agencies and if sufficient support (8 or more Agencies) is indicated, the Board will facilitate the preparation and circulation of an appropriate amendment to the JPA Agreement.

III. Response to Findings and Conclusions (See attached Addendum 1)

IV. Response to Background (Facts and Comments) (See attached Addendum 2)

As can be seen from our Initial Comments, the Board firmly believes the RFP process used was professionally implemented, was fully vetted to the proposers, the SBWMA Member Agencies, and the public, and resulted in recommendations of the best firms for Collection Services and for Operation of the Facilities.

Thank you for your consideration.

Very truly yours,



Martha DeBry
SBWMA Board Chair

Attachments:

- Addendum 1
- Addendum 2



The City of Burlingame

City Hall – 501 Primrose Road
Burlingame, CA 94010-3997

September 22, 2009

The Honorable George A. Miram
Judge of the Superior Court
Hall of Justice
400 County Center, 2nd Floor
Redwood City, CA 94063-1655

RE: Response to Civil Grand Jury Report *Trash-Talk: Rethinking the Waste Management RFP Process by the South Bayside Waste Management Authority*

Dear Judge Miram,

Thank you for the time and effort spent by the San Mateo County Civil Grand Jury in investigating the request for proposals process undertaken by the SBWMA. The City of Burlingame appreciates the information that has been presented to the public and is grateful for the energy devoted to the subject. Please note that the City Council of the City of Burlingame approved this response at the City Council meeting of Monday, September 21, 2009.

FINDINGS:

- 1. In the proposal process, the requirement that all proposers use the same operational assumptions to obtain comparable costs was useful to evaluators but does not apply to the actual costs and contracts that the individual member agencies can negotiate.***

Response: Partially Disagree. The request for proposals (RFP) requested specific information on operations and the costs for service. Respondents not meeting the requirements of the RFP ran the risk of having their proposals be considered “non-responsive.” The RFP requested operational information on core services and optional services. The costs proposals were based on certain 2008 operational assumptions that were in place, such as the labor agreement with the Teamsters and the tipping fees charged at the transfer station but they also included the new menu of services plus optional services identified by the JPA member agencies. Respondents were required to price all vehicles for residential, multifamily and commercial collection services as new to allow for a comparison of proposed capital costs. Respondents were also required to price all residential bins as new. Multifamily and commercial bins could be “pre-owned.” Member agencies reserved the right to allow the contractor to provide collection service using “pre-owned” vehicles. The member agencies have the final say in any and all decisions regarding the collection of solid waste and recyclable within their jurisdictions as only they can enter into franchise agreements with solid waste haulers.

2. *The process allowed for alternative proposals, yet they were not required to be considered.*

Response: Agree. Alternative proposals were allowed to give respondents an opportunity to offer new ideas for providing collection services; however they could not be inconsistent with the core services requested in the RFP. In addition, any alternative proposal(s) still required that all materials collected be delivered and processed at the Shoreway facility. The RFP did not obligate the SBWMA or its member agencies to accept any proposal.

3. *As a condition of participation, proposers had to agree to not appeal decisions.*

Response: Partially disagree. There was no formal requirement in the RFP document. But there also was no process for appealing decisions or disagreements that respondents might have with SBWMA staff or with the work of either the Evaluation or Selection Committee. In addition, the RFP respondents were required to sign Code of Conduct agreements which prevented ex-parte communications with either SBWMA Board members or the elected officials of the SBWMA agencies.

4. *In the evaluation process, the “reasonableness” points were not distinguished from the “competitiveness” points.*

Response: Agree. The evaluation committee had the duty of evaluating the “reasonableness and competitiveness of cost proposals” and assigning points based on their review. In addition the evaluation committee touted its 120 years of combined solid waste experience and expertise that would guide their work. It is the City of Burlingame’s opinion that when evaluating proposals reasonableness means that the proposal is within the bounds of common sense or based on sound judgment or thinking. Competitiveness means the ability to provide a better service at a better price given a respondent’s desire to compete and be awarded the business. Maximum evaluation scores were disclosed in the RFP, but the RFP did not include any description or explanation on what constituted “reasonableness and competitiveness of cost proposals.” In practice, the evaluation team had wide discretion to award points for either reasonableness or competitiveness; therefore there was the potential for great subjectivity in awarding points.

5. *Neither the individual members of the Evaluation Committee nor the individual members of the Selection Committee were required to report how many of the overall points assigned to each criterion were based on “reasonableness” or “competitiveness.”*

Response: Agree. The Burlingame board member served on the Selection Committee even though the SBWMA staff did not recommend his appointment to the committee. The committee was expanded to add the Burlingame board member after the staff recommendation was challenged at a board meeting. The evaluation committee reported out to the selection committee and the selection committee adopted the evaluation committee’s recommendations.

Disagreements or differences of opinion between the evaluation team and the RFP respondents were difficult to resolve once they were identified. If the evaluation committee felt that a portion of the proposal or the costs identified by one of the companies were “unreasonableness or not competitive,” then you either had to trust the evaluation team’s opinion or question their

judgment. It was extremely difficult for Selection Committee members to question the Evaluation Committee members given that two of the committee members were direct reports to the Executive Director and the two consultants were also hired by the Executive Director.

It should also be noted that the Evaluation Committee's recommendation report to the Selection Committee (dated June 25, 2008) also did not give a full explanation of how points were assigned. In fact, the report (which was marked as confidential) provides a summary of "key rationale" that was provided for "illustrative purposes and not meant to frame a comprehensive explanation of the key rationale used to develop the scoring." In reviewing the "key rationale" statements such as "the cost proposal scored highly in both competitiveness and reasonableness" and "considerable points were deducted for lack of innovation or an approach that is different from or improves upon the services that are currently provided" formed the basis for awarding points. These types of statement reflect a high degree of subjectivity.

6. *The South Bayside Waste Management Authority's (SBWMA) consultant reported that Norcal's references in San Jose were not checked.*

Response: Agree. SBWMA consultant R3 was charged with the San Jose reference checks, but they did not complete their assignment. The City of Burlingame considers R3's failure to complete its work a liability in the process given the appearance of favoritism for not following up and reporting on Norcal's legal problems in San José, CA. The City of Burlingame performed its own informal background check on all the respondents and had information pertaining to Norcal's problems in San Bernardino County, CA and San José. In addition, the Evaluation Committee noted in its report that Norcal's "reference checks returned consistently high satisfaction marks," but it did not mention that San Jose references had not been thoroughly checked and evaluated.

7. *South Bay Recycling (SBR) was the only proposer that did not provide for on-site management in its original cost proposal.*

Response: Agree. SBR proposed to manage the Shoreway Environmental Center from its headquarters in Los Angeles. That portion of the Shoreway Environmental Center operations proposal was rejected by the SBWMA and the cost of an on-site executive was added.

8. *SBR has asked the SBWMA to cover \$1.2 million for mistakes and omissions in its original proposal.*

Response: Agree. The SBWMA evaluation committee reviewing the proposals for the operation of the Shoreway Environmental Center directed that SBR to make cost changes to its proposal based on the "reasonableness" of operating expenses as determined by SBWMA; the addition of on-site executive management and changes due to errors or omissions in the SBR proposal.

9. *It appears that SBWMA did not give sufficient consideration to SBR's notices of violation in the operations of its Southern California operations.*

Response: Agree. The City of Burlingame took the 41 notices of violation issued by the City of Los Angeles seriously. The Burlingame board member called the City of Los Angeles and spoke with the employee responsible for issuing the notices of violation. The City of L.A. representative indicated that SBR should have corrected their violations by now. He also indicated that SBR was working with the City of L.A. to correct the violations. In addition, the Burlingame board member made a motion to award the operations agreement contingent on SBR correcting their violations within six months. That motion was defeated by the SBWMA Board.

10. The Grand Jury could not confirm that the proposals were adequately evaluated or reflected a thorough analysis of the proposal content and contractor background.

Response: Agree. Based on the interviews of the City of Burlingame Board member by the members of the Grand Jury, it was evident that the Grand Jury could not confirm the adequate and thorough analysis of the proposal content and contractor background. This is unfortunate given the hours invested by the Grand Jury on this matter. If ordinary citizens who are provided information by SBWMA staff directly involved in the review and evaluation can not determine if the proposals were properly vetted, then it will be difficult to explain it to our rate payers.

11. SBWMA Executive Director chaired three of the four Evaluation and Selection Committees until removed from the Shoreway Facility Contract Selection Committee by the Chairman of the SBWMA Board.

Response: Agree. The SBWMA Executive Director did chair the evaluation and selection committees for the solid waste collection contract and the evaluation committee for the Shoreway Environmental Center operations contract. The SBWMA Executive Director was removed from the evaluation committee for the latter contract after a complaint was filed by former County Supervisor Jerry Hill to the Civil Grand Jury.

12. The SBWMA Executive Director solicited emails from active proposers, asking them to attest to the integrity of the RFP process.

Response: Agree. The SBWMA Executive Director used poor judgment in soliciting letters of support from the RFP respondents. Former County Supervisor Jerry Hill filed his complaint after one of the solid waste companies complained about the SBWMA Director's actions. The Grand Jury responded to Mr. Hill's complaint and launched the investigation.

13. No elected officials are on the SBWMA's Board of Directors.

Response: Agree. There are no elected officials on the Board of Directors of the SBWMA. The policy decision to include elected officials on the Board of the SBWMA rests with the elected officials of each member agency who can request that the SBWMA JPA be amended.

RECOMMENDATIONS:

1. ***Meet and reconsider pending contracts with Norcal and South Bay Recycling in light of the information contained in this Grand Jury report.***

Response: The recommendation will not be implemented given the time, energy and expense that would be incurred to develop a new request-for-proposals (RFP), solicit respondents, review and evaluate submittals and award a contract. While the Grand Jury's findings and conclusions point out the shortcomings of the process, it is difficult to reconsider the process and start again. In the end it would be our rate payers who would incur the expense of redoing the process. Burlingame's course of action is to negotiate with Norcal to obtain the best pricing possible. In addition, the City of Burlingame will maintain its vigilant oversight over the implementation of the new franchise agreement and keep an accounting of the costs of the new agreement.

2. ***In future Request For Proposal processes:***
 - a. ***Clearly define and objectively and consistently apply the evaluation criteria;***
 - b. ***Provide for an appeals process before the final contracts are signed;***
 - c. ***Assure the proposers that alternative proposals will be considered;***
 - d. ***Ensure that representatives from other jurisdictions are participants on the committees;***
 - e. ***Ensure that no one individual chair both committees.***

Response: The recommendation has not been implemented, but will be implemented in the future when the proposed franchise agreement is close to completion in 2020.

3. ***Amend the Joint Powers Authority Agreement to include elected officials from member agencies onto the SBWMA Board of Directors.***

Response: The recommendation requires further analysis. The City of Burlingame is one of several JPA members who agree that elected officials should be included in the Board of Directors. The elected officials of the other member agencies would need to be queried to determine their support for an amendment. However, the SBWMA Joint Powers Agreement can only be amended by eight affirmative votes of all SBWMA members (eight member agencies).

The JPA language is as follows:

ARTICLE 17. AMENDMENTS

17.1 Amendment Requirements. Subject to all legal obligations of the SBWMA, this Agreement may be amended by one or more supplemental agreements executed by a vote of two thirds (2/3) of all Equity and Non-Equity Members of the SBWMA.

17.2 Signature Requirements. Signatures shall not be required on any effective amendment by those Members, if any, whose Directors did not approve the amendment; however, such Members shall nonetheless be bound by the amendment as if it were approved by all Members.

The section of the JPA that would need to be amended is the Governance section:

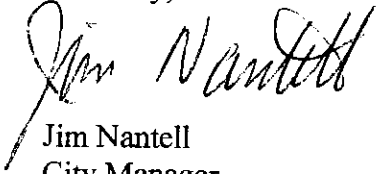
ARTICLE 8. GOVERNANCE

8.1 Board of Directors. The SBWMA shall be governed and administered by a Board of Directors composed of one Director from each Member. The Board shall exercise all powers and authority on behalf of the SBWMA. Each Member must select its Director or the Director's designee alternate from among the following positions:

- a. County, District, City, or Town Manager or the equivalent position
- b. County, District, City, or Town Assistant Manager or the equivalent position
- c. Finance Director or Assistant Finance Director or the equivalent position
- d. Public Works Director or Assistant Public Works Director or Environmental Programs Manager or the equivalent position.

If you have any questions regarding these report, please do not hesitate to contact Jesús Nava, Finance Director/Treasurer, at 650-558-7222.

Sincerely,



Jim Nantell
City Manager

cc: Mary Ellen Kearney, Burlingame City Clerk
SBWMA Board of Directors

RESOLUTION NO. 88-2009

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BURLINGAME APPROVING AND AUTHORIZING THE CITY MANAGER TO SUBMIT TO THE SAN MATEO GRAND JURY THE CITY OF BURLINGAME'S RESPONSE TO THE REPORT ENTITLED "TRASH-TALK: RETHINKING THE WASTE MANAGEMENT RFP PROCESS BY THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY"

WHEREAS, the South Bayside Waste Management Authority (SBWMA) is a joint powers agency comprised of numerous municipalities in San Mateo County, including the City of Burlingame, formed for the purpose of processing solid waste and recyclable materials; and

WHEREAS, SBWMA has developed plans for a new solid waste and recyclables processing center in San Carlos and has issued bonds for the construction of said new facility; and,

WHEREAS, SBWMA has, over the past two years, engaged in an RFP process to select a private company to perform collection and management services for its new facility; and

WHEREAS, the process employed by the SBWMA has been criticized by the San Mateo Grand Jury report entitled "Trash-Talk: Rethinking the Waste Management RFP Process by the South Bayside Waste Management Authority"; and

WHEREAS, the San Mateo Grand Jury has requested that the City of Burlingame respond; to the findings of fact and recommendations included in the Grand Jury's report;


NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Burlingame, as follows:

1. The City Council has reviewed the Grand Jury's Report entitled "Trash-Talk: Rethinking the Waste Management RFP Process by the South Bayside Waste Management Authority" and has reviewed the City's proposed response in the form of the draft letter attached hereto and incorporated herein.
2. The City Council approves the attached proposed response and authorizes the City Manager to sign the response on behalf of the City of Burlingame and to submit it to the San Mateo Grand Jury in accordance with Penal Code section 933.


Ann Keighran, Mayor

I, Mary Ellen Kearney, City Clerk of the City of Burlingame, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the Burlingame City Council held on the **21st** day of **Sept.** 2009, by the following vote to wit:

AYES: Councilmembers **BAYLOCK, DEAL, KEIGHRAN, O'MAHONY**
NOES: Councilmembers:
ABSENT: Councilmembers: **NAGEL**


Mary Ellen Kearney, City Clerk

**AGENDA ITEM
REGULAR JOINT CITY COUNCIL/RDA MEETING**

Tuesday, January 5, 2010

ITEM: No. 11.C

ITEM: No. 11.C

**GRAND JURY REPORT RESPONSE: RE-THINKING THE WASTE
MANAGEMENT RFP PROCESS BY THE SOUTH BAYSIDE
WASTE MANAGEMENT AUTHORITY**



City of East Palo Alto
Office of the City Manager
2415 University Avenue • East Palo Alto, CA 94303

TO: Honorable Mayor and Council Members

FROM: Alvin James, City Manager

SUBJECT: Grand Jury Report Response: Re-thinking the Waste Management RFP Process by the South Bayside Waste Management Authority

DATE: January 5, 2010

RECOMMENDATIONS:

It is recommended that the City Council:

1. Indicate that it cannot agree or disagree with any of the first twelve findings made by the Grand Jury because the City's representative to the SBWMA did not take part in the RFP process or any of the actions that are the subject of the Grand Jury's report. Relative to the thirteenth and final finding, which makes the observation that "No elected officials are on the SBWMA's Board of Directors, indicate that the Council agrees with the finding.
2. Indicate that the Grand Jury's recommendation that the City Council meet and reconsider pending contracts with Norcal and South Bay Recycling in light of the information contained in the Grand Jury report will not be implemented. As indicated, the City has no way to confirm the occurrence of the activities described in the Grand Jury report. The SBWMA has provided a response to the Grand Jury report, and the Council has no way to confirm it's point of view either. The Council, via previous resolutions, among other things, committed to the method of conducting the contractor selection process, including the method, schedule and evaluation criteria. It also authorized the competitive proposal guidelines, and scope of contract terms. It authorized the selection of Norcal Systems (now Recology) in November, 2008 and authorized staff to negotiate a franchise agreement for solid waste collection services. It received periodic presentations from staff, including SBWMA staff representatives. The Council directed its Board representative to vote for Hudson Baylor, which took place, but that firm was not ultimately selected. On October 6, 2009, the City Council in separate actions, authorized the City Manager to execute both the franchise agreement with Recology (formerly Norcal) and, the operations agreement with South Bay Recycling.
3. Consider directing staff to prepare and transmit a letter to the SBWMA Board indicating that at such time as any new RFP processes might be initiated in the future, the Board should review and incorporate as appropriate, the Grand Jury's recommendation 2 (a thru e). If such a letter is to be prepared, advise the Grand Jury of such pending action.
4. Consider advising the Grand Jury that its recommendation regarding amending the Joint Powers Authority Agreement to include elected officials from member agencies onto the SBWMA

Board of Directors requires further analysis and that Council will, within six months, schedule for discussion whether to recommend via letter to other member agencies, consideration of such an amendment.

5. Approve this report as the city's response to the Grand Jury and authorize the City Manager to submit it as may be revised following City Council discussion to the appropriate receiving entity on behalf of the Grand Jury.

Background

The City of East Palo Alto is one of 12 member agencies in the South Bayside Waste Management Authority (SBWMA). In addition to Belmont, the other member agencies are the cities of Atherton, Burlingame, Belmont, Foster City, Hillsborough, Menlo Park, Redwood City, San Carlos and San Mateo along with the County of San Mateo and the West Bay Sanitary District. These agencies initially formed a Joint Powers Authority (JPA) in June 1982 pursuant to Section 6500 et seq. of the California Government Code.

The new agency was known as the South Bayside Transfer Station Authority (SBTSA) and was responsible for negotiating and managing the garbage collection and recycling services franchise agreements, including the contract with San Mateo County Scavenger Company (which became Browning Ferris Industries (BFI)). Initially, there was no transfer station. BFI built, owned and operated the transfer station. The agreement provided for the agencies to have Solid Waste collected by the provider (San Mateo Scavenger/BFI) and then processed through a Transfer Station located on Shoreway Road in San Carlos.

In 1999 with passage of the recycling law AB 939, the SBTSA exercised an option to acquire the Transfer Station and related buildings and property including the Recyclery located on Shoreway Road in San Carlos. The SBWMA was then formed to continue the functions of the SBTSA as well as to issue revenue bonds in early 2000 to acquire these facilities. The life of the SBWMA extends to the year 2019 to match the term of these revenue bonds. Pursuant to the Bond Indenture Agreement, the members covenanted to deliver waste, plant material and recyclable material collected through their respective franchisees to the System so long as the 2000 Bonds remain outstanding. Withdrawal by a Member from the Authority requires that such Member reimburse its proportionate share of any Bond obligations and other liabilities of the authority. On November 18, 2008, the City Council, as a member agency, authorized the SBWMA to issue revenue bonds in an amount not to exceed \$65,455,000 for the purpose of financing proposed improvements for the Shoreway Transfer Facility and, redeeming outstanding debt associated with the 2000 bonds.

The primary purpose of the original JPA was to provide an adequate flow of municipal solid waste to the San Carlos transfer station and to assure BFI-San Mateo that it would recover its investment in the facility. Creation of SBWMA in 1999 allowed the members to finance and own the facilities. A secondary purpose of forming the JPA was to have strength in numbers in negotiating customer rates with the provider (San Mateo County Scavenger Company/BFI, which became Allied Waste and now Republic) and to have cost efficiencies in doing the rate review (auditing their books and recommending rates). Prior to the formation of the JPA, each agency had its own franchise and had to go through a separate rate setting process. In the early years after formation of the JPA, one uniform rate increase would be negotiated for all agencies and then applied to each member agencies rates. With the passage of AB 939, recycling requirements became mandatory by state law. The MRF (materials recycling facility), a competitive RFP process for selecting the waste/recycling hauler and transfer station/MRF operator, etc have all greatly expanded the

scope/responsibilities of what started as a purely technical entity.

The SBWMA now owns the transfer station and recycling center facilities. It operates the Transfer Station and Recycling through an Operating Agreement with Allied Waste Systems (formerly known as BFI). An annual franchise fee is paid to the City of San Carlos. The operating agreement with Allied expires on December 31, 2010. The new operator, South Bay Recycling, was recently selected by the SBWMA Board and will begin as the facility operator January 1, 2011. A facility master plan has been approved for the Shoreway facility which serves as the basis for the renovation which is currently underway and is anticipated to be completed sometime during the winter of 2010-11.

The Board of Directors of the SBTSA was originally comprised of senior staff members from the member entities of the JPA membership. As is the case today, each City entered into a separate franchise agreement with the provider. Customer rates were negotiated by a rate committee composed of staff from the member agencies, primarily Redwood City, San Carlos and San Mateo. The group was led by the Redwood City Director of Finance. Today Redwood City is the Fiscal Agent for the JPA. Because these activities were technical in nature, the Board was comprised of non-elected officials. In lieu of staff at that time, the JPA hired consultants HF&H, Mr. Bob Hilton to perform rate analysis for the Board and member entities.¹

The JPA was revised in 1999 when the name was changed from South Bayside Transfer Station Authority (SBTSA) to South Bayside Waste Management Authority (SBWMA) and again in 2005 when the decision was made to: have a full-time executive director, redefine who on staff could represent each agency and, limit the Board's authority to independently make decisions by requiring that certain actions be taken back to the respective elected officials of each agency for approval (requiring a 2/3 approval threshold of all agencies).

The 2008 – 2009 San Mateo County Civil Grand Jury Report

The 2008-2009 Grand Jury filed a report on June 4, 2009 which contains findings and recommendations pertaining to the SBWMA's Waste Management Request for Proposal process for the Collection Services Contractor and Facility Operations Contractor. The SBWMA Board filed a response to the Grand Jury's findings and recommendations in late July, 2009. However, each member agency is also required to submit a reply individually as well. Specifically, responding agencies are asked to indicate agreement or disagreement (wholly or partially) with the Grand Jury's findings. This report serves as the proposed response on behalf of the City of East Palo Alto. If authorized by the City Council, it will be submitted to the Grand Jury.

The Grand Jury identified thirteen specific findings as part of its report. Twelve of the findings pertained to perceived inadequacies with the process undertaken by SBWMA participants in arriving at recommendations regarding a Collection Services Contractor and Facility Operations Contractor. East Palo Alto staff did not take part in either contractor interviews or either selection process. Accordingly, staff recommends that the city indicate that it cannot agree or disagree with any of the first twelve findings made by the Grand Jury. Relative to the thirteenth finding, which makes the observation that "No elected officials are on the SBWMA's Board of Directors, it is recommended that the city indicate that it agrees with the finding.

In addition to findings, the city is required to respond to the Grand Jury's recommendations. The Grand Jury submitted three recommendations for member agency consideration:

1. Meet and reconsider pending contracts with Norcal and South Bay Recycling in light of the information contained in the Grand Jury report.
2. In future Request For Proposal processes:
 - a. Clearly define and objectively and consistently apply the evaluation criteria,
 - b. Provide for an appeals process before the final contracts are signed,
 - c. Assure the proposers that alternative proposals will be considered,
 - d. Ensure that representatives from other jurisdictions are participants on the committees, and
 - e. Ensure that no one individual chair both committees.
3. Amend the Joint Powers Authority Agreement to include elected officials from member agencies onto the SBWMA Board of Directors.

With respect to the first Grand Jury recommendation, on March 17, 2009, the City Council conducted an open discussion around the RFP/selection process and activity regarding the SBWMA Board's pending vote related to selection of the new service provider for the transfer station. The Council received comments from the two finalist proposers, Hudson Baylor and SouthBay Recycling as well as SBWMA staff, who were all present to provide information for the Council. The Council directed that the matter be brought back at its next regularly scheduled meeting for further consideration and discussion. It should be noted that the SBWMA Board had scheduled the matter for consideration at its March 26, 2009 but postponed the item to a future meeting in order to allow member agencies to complete their respective consideration of the matter. On April 7, 2009, staff sought City Council direction regarding how it should proceed, in its capacity as SBWMA Board representative, in voting related to a new service provider for the operation of the transfer collection station located in the City of San Carlos. The City Council discussed the matter and, subsequently, directed staff to cast the city's vote in favor of Hudson Baylor. At the SBWMA meeting on April 23, 2009, in which a new service provider was being considered, staff cast the vote per City Council direction. South Bay Recycling was selected as the new service provider for the facility.

On November 18, 2008, the City Council approved the SBWMA's recommendation to select Norcal Waste Systems of San Mateo County (now Recology), and directed staff to commence negotiations with that entity for a new franchise agreement, in consultation with SBWMA staff and return with a final franchise agreement for execution. On October 6, 2009, the City Council in separate actions, authorized the City Manager to execute both the franchise agreement with Recology (formerly Norcal) and, the operations agreement with South Bay Recycling.

In reference to the Grand Jury's second recommendation, unless a majority of member agencies, vote to reconsider pending contracts with Norcal and South Bay Recycling, it is not likely that another RFP process will occur in the foreseeable future. Staff has not been able to identify any actions by member agencies to initiate a new RFP process for either collection services or transfer facility operation. The Council may wish to direct staff to prepare and transmit a letter to the SBWMA Board indicating that at such time as any new RFP processes might be initiated in the future, the Board should review and incorporate as appropriate, the Grand Jury's recommendation 2 (a thru e).

The Grand Jury's third recommendation relates to member agencies amending the JPA Agreement to include elected officials on the SBWMA Board of Directors. The Board of Directors of the SBWMA JPA is currently comprised of senior staff members from member agencies: e.g. City managers, Finance Directors, Public Works Directors, and Assistant City Managers, in contrast to its predecessor agency, the SBTSA, which also allowed for Mid-Management representatives. In 2005, the SBWMA Board of Directors proposed amending the organization's JPA Agreement. Key changes made at that time

included:

- Provisions for a new Executive Director that would be responsible for the day to day operations of the SBWMA
- Eliminating the executive duties of the Chairman of the SBWMA Board who up to this point in time had been the San Carlos City Manager...even when it was the SBTSA.
- Changing the JPA to allow any member agency board member to serve as the SBWMA Board Chair (previously the City Manager or Assistant City Manager of San Carlos served as Board Chair in light of the presence of the Transfer Station and Recyclery on Shoreway Road in San Carlos)
- Changing the SBWMA Board Membership to require that Board Representatives be at the level of City Manager, Assistant City Manager, Finance Director, Public Works Director and Environmental Programs Manager rather than the prior practice of City Management and Mid-Management level personnel serving as Board Representatives in some agencies.

In addition to these changes, the SBWMA Board proposed transferring several of their key responsibilities from the SBWMA Board to the member agency City Councils and Governing Boards. The Board felt that these changes would leave the most important decisions with the greatest structural and/or financial impacts to each agency's Governing Body. The following areas were transferred:

- Acquisition of Real Property
- Disposal of Real Property
- Entering into or amending franchise agreements for operation of the Facilities
- Issuance or refinancing of bonds

The SBWMA JPA Agreement requires a 2/3 vote — or a vote of 8 or more of the 12 agencies to affect an amendment to the JPA Agreement. The 2005 amendments received a 2/3 vote from all of the twelve member entities of the JPA and were adopted. During the discussion of the 2005 proposed amendments, the then Mayor of Belmont sent a letter to each of the Mayors and Board Chairs of each of the member agencies. The letter indicated that the Belmont City Council believed that the SBWMA JPA Agreement should be further amended to change the Board of Director membership to City Council Member and Board Member representatives rather than the past practice of staff representatives. Reportedly, the letter was discussed by several cities. The concept of a board made up of elected officials or a mixed board made up of elected and appointed officials was not supported by a majority of the member agencies.

In March of 2007 a similar letter was sent to the Mayor of each of the SBWMA member agencies from the then Belmont Vice Mayor Bill Dickenson. In light of the foregoing discussion, it is recommended that the Council provide a response that the recommendation requires further analysis and that Council will schedule for discussion at a future meeting the question of whether to recommend via letter to other member agencies, consideration of amending the JPA agreement to include elected officials from member agencies onto the SBWMA Board of Directors.

ⁱ Historical background in this report was extracted from information previous provided by Martha Debry (Hillsborough), Rahn Becker (Retired), Bob Lanzone (San Carlos), Jim Hardy (Foster City), Brian Moura (San Carlos) and Kevin McCarthy (SBWMA).



TRASHTALK:

Rethinking the Waste Management RFP Process by the South Bayside Waste Management Authority

Issue

Did the South Bayside Waste Management Authority follow its stated goal to “conduct the RFP process with integrity and transparency” for the Collection Services Contractor and the Facility Operations Contractor?

Background

South Bayside Waste Management Authority’s Request For Proposal Goals

In July 2005, five years before the contract with Allied Waste (Allied) was due to expire, the South Bayside Waste Management Authority (SBWMA) initiated two Requests For Proposals (RFP). The RFP process involved a four-year period for planning, soliciting and evaluating proposals, and selecting and negotiating with the selected contractors, and a one and one half year implementation period leading to commencement of services on or before January 1, 2011.

The stated goals of the SBWMA during the RFP process were:

“Integrity, Competition in Selection Process, and Industry-Standard Contract Terms

- Conduct the RFP process with integrity and transparency
- Maintain the association of Member Agencies
- Select contractors that meet Member Agency and SBWMA needs
- Enter into contracts with fair terms and conditions
- Set high performance standards and use incentives/disincentives to achieve standards related to:
 - Collection quality
 - Customer service
 - Diversion from landfill disposal
 - Deliver high quality cost-effective services to customers
- Stimulate competition among proposing companies”

The South Bayside Waste Management Authority

The SBWMA was first formed in 1982 as the South Bayside Transfer Station (SBTSA) Joint Powers Authority (JPA). Its purpose was to consolidate local collection services and address the need for coordinated municipal efforts to manage solid waste disposal, ensuring that its 12 member agencies (Atherton, Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, Redwood City, San Carlos, San Mateo, West Bay Sanitation District, and unincorporated portions of San Mateo County) would collectively have lower collection and solid waste management costs. The SBWMA has delivered the lowest garbage rates in the Bay

Area. A key consideration for managing costs was the construction of the transfer station in San Carlos in 1984, which is the only such facility in central San Mateo County. Browning Ferris Industries (BFI) built and operated the facility from its inception until the SBTSA purchased the transfer station and adjacent Material Recycling Facility (MRF) from BFI in 1999.

Since the inception of the JPA, one company, Allied, previously known as BFI, operated both the collection services and the disposal services of solid waste. The current SBWMA contract with Allied is due to expire on January 1, 2011. In anticipation of the contract's expiration, the SBWMA decided to initiate an RFP process for collections services and facility operations for the next ten years to:

1. Introduce a single-stream recycling system to increase the use of recyclables and divert garbage from the landfills and
2. Execute the new Shoreway Master Plan Facility (Shoreway Facility), which includes a transfer station, MRF, and Environmental Educational Center; and

The SBWMA has stated that the Collection Services Contract will be one of the largest in the United States.

Selecting the Collection Services Contractor

1. The proposals for collection services were submitted to the SBWMA for review and recommendation. After the SBWMA recommendation was made, each member agency was to negotiate an individual contract with the recommended provider, depending on the agency's individual needs.
2. There would be a one-year truing up period, after which "the adjustment to costs is objectively based on CPI-type indices. The only other adjustment, besides the annual index based adjustments, to a proposer's cost is related to service level changes for the Collection Agreement. Since the RFP stated that certain assumptions must be used by all proposers, there are two cost adjustments, one for 2011 and another in 2013, for changes in service levels from the RFP data to actual data [e.g., the number of single family accounts, commercial bin lifts and drop box pulls, requiring the driver to get out of the truck]. The process to adjust for service level changes is also objectively prescribed in the Agreement. No adjustments to costs to reflect changes in service levels shall be made after the change made in 2013, when setting compensation for 2013 and beyond."
3. All proposers were required, when preparing their proposals, to use the same operational assumptions for key items such as residential cart sizes, use of new collection vehicles for core services, and use of new commercial collection containers. This requirement was for the purpose of obtaining comparable cost proposals from proposers. Member agencies retain the right to establish cart sizes for residents, use of used equipment, etc., as part of the final negotiated scope of services and costs with their selected contractor.
4. The proposers will be held to their bid assumptions during the contract. For example, if a company states that the price of gas is \$ 2.50 a gallon in its bid, and the price of gas goes

up, the base contractual obligation will not change. Fluctuations are limited to some CPI-type index. Presumably, the company will buy, or has bought, oil futures that secure the price.

5. For collective bargaining agreement (CBA) employees, labor and benefit costs would be adjusted to reflect the CBA pay and benefit rates for the Rate Year during the term of the CBA contracts in effect at the start of the Agreement. Both a worker-retention and prevailing-wage clause would be in the contract, but no labor-peace clause was included.
6. In order to submit a proposal, the competitors had to agree not to appeal the process.
7. Alternate proposals were allowed, but the SBWMA was not required to consider them.
8. The new contract was designed for ease of oversight.
9. In the current SBWMA contract, Allied collects the garbage and also operates the Shoreway Facility where the garbage is sorted and processed. In the new contract, the operation of the collection and processing will be split between two separate companies.
10. The collection company can increase its profit by lowering cost and meeting a specified diversion percentage. The facility operator can increase its profit by increasing revenues from recyclables and is dependent on the collector to bring recyclables to the facility in good condition.

The Evaluation Process For Selecting A Collection Services Contractor

On November 1, 2007, the SBWMA released the Collection Services Contract RFP to select the contractor to serve the SBWMA service area. By the March 11, 2008 deadline for submission of proposals, the SBWMA received four proposals from companies qualified to provide the collection services described in the RFP.

The four competitors for the Collection Services Contract were:

1. Allied Waste Services of San Mateo County (Allied)
2. Bayside Environmental Services & Transfer (BEST), a joint venture of Peninsula Sanitary Group, South San Francisco Scavenger Company, Green Waste Recovery and Zanker Road Resource Management
3. Norcal Waste Systems of San Mateo County (Norcal), an Employee Stock Ownership Plan (ESOP)
4. Republic Services of California, Inc. (Republic)

Evaluation and Selection Committees

The SBWMA divided the judging process for the Collections Services Contract into two committees: an Evaluation Committee and a Selection Committee. The Evaluation Committee analyzed and scored the proposals. The Selection Committee considered the recommendations of the Evaluation Committee and selected a Collection Services Contractor.

The Evaluation Committee was chaired by the SBWMA Executive Director and also included the SBWMA Recycling Programs Manager, the SBWMA Finance Manager, a representative from a nearby regional waste management district, and two consultants, who were partners in the same consulting firm.

The Selection Committee consisted of six SBWMA Board member representatives and included the SBWMA Board Chairman, who chaired the Selection Committee.

How the Proposal was Scored

The Evaluation Committee evaluated and numerically scored the companies' proposals. The ratings from the evaluators were compiled and discussed during several Evaluation Committee meetings to determine a preliminary ranking of the proposals based solely on the evaluation criteria.

Each evaluation criterion was divided into two parts: a "competitive" part and a "reasonableness" part. In determining the "reasonableness" points of a proposer's cost proposal, equipment selection, labor, and operating assumptions were to be "considered against industry standards" and against other proposals. The point allocation process was described by Grand Jury witnesses as "highly theoretical and subjective," with a potential for a limitless amount of "theoretical points" being combined with "actual competitiveness points" by the individual Evaluation Committee members, up to the maximum score in each Evaluation Criteria category. Neither the individual members of the Evaluation Committee nor the Selection Committee were required to report how many overall points assigned to each criterion were based on "reasonableness" or "competitiveness."

The Grand Jury received a paper titled "Solid Waste Management—A Guide for Competitive Contracting for Collection" written by a SBWMA consultant and was told that it was the guideline for the RFP.¹ Addressing "reasonableness," the paper states, "The municipality may choose to give each of the selection criteria equal consideration or to weight the factors in accordance with specific interests of the community. If the selection criteria are to be weighted, the municipality should precisely state the 'weighting formula.'" The criteria for judging contractors qualifications included:

- "Experience providing like services – The municipality may not wish to risk contracting with an inexperienced company. Most municipalities prefer to have contractors that have experience providing similar services and a good track record with favorable references.
- Legal encumbrances – Cities need to know with whom they are doing business. Are there financial or character issues regarding the company that has been determined in a court of law?
- Labor issues –This includes union and non-union lawsuits, for example. Does the company have a good relationship with its employees?"

¹ "Solid-Waste Management" – A Guide for Competitive Contracting for Collections –August 1996, p.7; Scarlett, Lynn; Sloan, J.M.

Members of the Evaluation Committee independently analyzed and scored the proposals. The results were jointly discussed at four separate meetings with the Selection Committee. The Selection Committee unanimously approved the Evaluation Committee's recommendation to select Norcal. On August 28, 2008, Norcal was chosen by the SBWMA to be awarded the Collection Services Contract for the ten-year period from 2011 to 2021.

Each Evaluation Committee member individually reviewed and scored each evaluation criterion based on a maximum allowed score for each category. The total maximum score was 3,000 points. Table 1 shows the Evaluation Criteria, the maximum allowed scores for each criterion and the actual scores as totaled from individual evaluations.

Cost Evaluation

Cost for services was worth 33% of the total evaluation, more than any other criterion. The SBWMA and consultants entered the cost information provided by each of the four proposers into a Comprehensive Cost Proposal Summary. That summary was used to compare and evaluate their "competitiveness." The final proposed costs for servicing the entire SBWMA jurisdiction are summarized in item four of Table 1.

Table 1: Proposer Evaluation Score² for Collections Services Contract

	EVALUATION CRITERIA	MAX EVALUATION	SCORE				
				ALLIED	BEST	NORCAL	REPUBLIC
1	RESPONSIVENESS TO RFP	PASS/FAIL	N/A	P	P	P	P
2	COMPANY'S QUALIFICATIONS AND EXPERIENCE	750	25%	551	665	647	661
3	PROPOSAL FOR COLLECTION SERVICES INCLUDES CORE AND OPTIONAL SERVICES	750	25%	453	638	653	51
4	COST PROPOSAL	1,000	33.30%	802	719	884	649
5	ENVIRONMENTAL ENHANCEMENTS AND OTHER CONSIDERATIONS	250	8.30%	40	190	225	40
6	NUMBER AND MATERIALTY OF EXCEPTIONS	250	8.30%	250	215	250	20
	TOTAL POINTS	3000	100%	2096	2427	2659	1421
	PERCENT OF TOTAL AWARDED			69.70%	80.90%	88.60%	62.60%
	RANKING			3	2	1	4

In Table 2, the following cost summaries were used to compare the four proposers' costs to evaluate their "competitiveness." SBWMA gave Allied fewer points based on the Evaluation Committee's subjective "reasonableness" determination. The SBWMA was informed by Allied that its costs were lower because, as a large company, it had the potential advantage of hedging fuel costs. Also, due to Allied's size, the company that supplies new bins had agreed to roll out

² All the tables are from the SBWMA selection committee reports, although the tables are arranged differently in this report.

the bins to residents free of charge. Additionally, personnel and equipment were already in place because they were the present operators.

Table 2: Cost Summaries

ACTUAL COSTS	<u>Allied</u>	<u>BEST</u>	<u>Norcal</u>	<u>Republic</u>
TOTAL ANNUAL COST	\$44,949,227	\$52,165,632	\$46,239,552	\$63,811,856
TOTAL OPERATING COST	\$43,502,035	\$49,717,944	\$44,470,447	\$61,433,400
TOTAL CAPITAL AND STARTUP	\$53,052,230	\$78,910,864	\$58,518,543	\$63,782,666

Cost Proposal Appraisal by the SBWMA

On August 28, 2008, when Norcal was selected to be the Collection Services Contractor, the following explanation was presented:

“Norcal: Awarded the most points for its cost proposal due to the strength of its cost proposal in both competitiveness and reasonableness.

Allied: Awarded the second most points for its cost proposal primarily due to submitting the lowest cost proposal; however, the company lost considerable points based on reasonableness. The company’s proposal based many costs on its ability to get a rolling start as the incumbent service provider; thus, according to the SBWMA report, various costs were omitted from its proposal.

BEST: Awarded the third most points for its cost proposal, primarily due to the high overall cost proposed. BEST’s capital and start-up costs (i.e. \$78.9 million) were significantly higher than the other proposers: 49% above Allied, 35% above Norcal, and 24% above Republic.

Republic: Awarded the fewest points for its cost proposal because it had the highest overall annual cost, and many costs, according to the Evaluators, ‘simply weren’t competitive.’”³

Environmental Enhancements & Other Considerations

Table 1 above shows that the Environmental Enhancements accounted for 8.3% of the total score.

SBWMA concluded the following about each company in that category:

³ SBWMA Collection Services RFP, Selection Committee Report: Evaluation and Scoring of Proposals, August 21, 2008

“Norcal: [awarded 225 points]

The proposal included Environmental Enhancements such as: use of B40 fuel (i.e., 40% biodiesel), regular carbon footprint monitoring and reporting, use of hybrid trucks for route supervisors, and incorporating green building design practices and standards at its facilities.

BEST: [awarded 190 points]

The company is committed to using the highest percentage of biodiesel fuel available. The company will use hybrid vehicles for its route supervisors.

Allied: [awarded 40 points]

The Environmental Enhancements proposed include continuing the current practice of using B20 fuel (i.e., 20% biodiesel) in its collection fleet. In addition, the company provided an Alternative Proposal to operate CNG [Compressed Natural Gas] collection trucks for its collection fleet at an additional capital cost of approximately \$6 million.⁴

Republic: [awarded 40 points]

None specifically noted or called out in the proposal.”⁵

SBMWA's Due Diligence Process

The Grand Jury asked the SBWMA Board members who were on the Selection Committee if they were aware of Norcal's previous, well-publicized history in the City of San Jose (San Jose) and San Bernardino County. SBMWA reported that Norcal's problematic history was discussed. However, many of the SBWMA Board members mentioned they had no knowledge of these discussions. During a Menlo Park City Council meeting, the SBWMA consultant, who was tasked to verify the competitors' references, publicly testified that he phoned San Jose to confirm Norcal's recommendations, but he never followed-up. During interviews, the Grand Jury learned that the SBWMA consultant worked in a consulting firm that helped create the RFP for waste management collection services in 2000 for San Jose and their subsequent RFPs after Norcal's problems were revealed. This consultant and his partner were on the SBWMA Evaluation Committee.

The 2004-2005 Santa Clara County Civil Grand Jury Report stated, “That the [San Jose] Mayor's June 26, 2000 recommendation of Norcal to the Council describes Norcal's history and serious legal problems. The history also discusses San Bernardino County's lawsuit against Norcal alleging bribery, fraud, and unjust enrichment. An 18-month jail sentence for a Norcal employee, who admitted taking bribes and a \$6.5 million settlement payment by Norcal to San Bernardino County were also discussed.” The 2008-2009 San Mateo County Civil Grand Jury could not determine if the Selection Committee were aware of these issues or explored them or other issues in any depth. Further, there is no evidence that the SBWMA did a diligent search of the other proposers that might have influenced the selection.

⁴ No mention was made of an opt-in proprietary program called Recyclebank, implemented successfully in Delaware and Philadelphia and awarded by the United Nations, that would supply Recyclebank's dollars to incent household recycling; <http://www.huliq.com/1/80048?un-program-spotlights-recycle-bank>

⁵ SBWMA Collection Services RFP, Selection Committee Report: Evaluation and Scoring of Proposals, August 21, 2008

Selecting the Shoreway Facility Operations Contractor

On November 1, 2007, SBWMA released an RFP for operation of the Shoreway Facility. By the March 4, 2008 deadline, SBWMA received seven proposals.

The seven competitors for the Shoreway Facility Operations contractor were:

1. Allied Waste Systems of San Mateo County (Allied)
2. Bayside Environmental Services & Transfer (BEST), a joint venture of Peninsula Sanitary Group, South San Francisco Scavenger Company, Green Waste Recovery and Zanker Road Resource Management
3. Greenstar, LLC (Greenstar)
4. Hudson Baylor Corp (HBC) with Waste Solutions Group (WSG)
5. Norcal Waste Systems of San Mateo County (Norcal)
6. Republic Services, Inc. (Republic)
7. South Bay Recycling, LLC (SBR), a joint venture of Community Recycling & Resource Recovery and Potential Industries

The Evaluation Process for Selecting the Shoreway Facilities Operations Contractor

The SBWMA divided the judging process for the Shoreway Facility Operations Contract into two committees: an Evaluation Committee and a Selection Committee. The Evaluation Committee analyzed and scored the proposals. The Selection Committee considered the recommendations of the Evaluation Committee and selected a Shoreway Facility Operations Contractor.

On April 23, 2009, SBWMA selected SBR as the Shoreway Facilities operator.

Evaluation Committee and Selection Committee

The SBWMA divided the judging process for the Shoreway Facility Operations Contract into two committees: an Evaluation Committee and a Selection Committee. The Evaluation Committee analyzed and scored the proposals. The Selection Committee considered the recommendations of the Evaluation Committee and selected a Shoreway Facility Operations Contractor.

Members of the Evaluation Committee independently analyzed and scored the proposals. The results were jointly discussed at three separate meetings with the Selection Committee. The Selection Committee unanimously approved the Evaluation Committee's recommendation to short list SBR and HBC/WSG.

On April 23, 2009, SBWMA selected SBR as the Shoreway Facility operator.

How the Proposal was Scored

The Evaluation Committee members numerically scored proposing companies using the evaluation criteria and the weighting described in the RFP. The Evaluation Committee

envisioned a short-list being developed prior to technical interviews. All seven proposers participated in the technical interview and presentation process.

Each Evaluation Committee member individually reviewed and scored each evaluation criterion based on a maximum allowed score for each category. The total maximum score was 500 points. Table 3 shows the Evaluation Criteria, the maximum allowed scores for each criterion, and the actual scores as totaled from individual evaluations. The Table also illustrates the SBWMA's point evaluation score of each firm's qualifications, technical proposal, cost proposal, and other considerations.

The results were jointly discussed at three separate meetings with the Selection Committee. At the last meeting on June 25, 2008, the Selection Committee unanimously approved the Evaluation Committee's recommendation to short list SBR and HBC/WSG.

Table 3: Proposer Evaluation Score for the Facility Operations Contract

	CRITERIA	MAX SCORE	Allied	BEST	Greenstar	HBC	Norcal	Republic	SBR
1	Responsiveness to RFP	Pass/Fail	P	P	P	P	P	P	P
2	Company's Qualifications & Experience	100	81.5	88	73.5	85.8	84.5	74.5	84
3	Cost Proposal	100	81.8	70.4	64.9	79.1	72	62	86
4	SRDC Operations Proposal MRF Design, & Installation	100	67.8	80	64.5	87.3	75.5	63.8	86
5	Start-up Proposal	75	58.5	65.3	63	68.6	61.9	65.3	59.6
6	Materials Marketing Plan	75	62.5	60.8	42.8	66	60.8	55.9	74.3
7	Environ. Enhancements	25	15	15	15	10	22.5	10	18.8
8	Number & Materiality of Exceptions	25	25	25	0	25	25	0	22.5
	TOTAL SCORE	500	392	405	324	422	402	332	431
	<u>RANKING</u>		<u>5</u>	<u>3</u>	<u>7</u>	<u>2</u>	<u>4</u>	<u>6</u>	<u>1</u>

The scores assigned to each of the proposal's criteria reflect the extent to which the proposer fulfills the requirements of the evaluation criteria and meets the needs of the SBWMA relative to the other competitors. Each evaluator reviewed each of the proposals and cost information using a set of established criteria.

SBWMA's Recommendation for Shoreway Facility Operator

Based on a review of the seven proposals submitted, technical interviews, site visits, follow-up questions and answers, and reference checks and litigation review, the Selection Committee, which was chaired by the SBWMA's Executive Director, initially recommended that SBR and HBC be short listed for negotiations to determine the selected facility operations contractor.

The Selection Committee announced that SBR, a joint venture of Community Recycling & Resource Recovery and Potential Industries and HBC (with Waste Solutions Group) stood clearly apart from the other five proposers for the following reasons (as quoted from the SBWMA Selection Committee report of July 17, 2008):

- “The entirety of their responses (original proposals, written answer to technical questions, and technical interview performance) was the most thorough and complete.
- These companies offer a combination of experience, technical capability, and pricing that set them apart from the rest of the field. These two firms had the two lowest overall cost proposals.
- These two firms are the two most qualified single stream MRF operators and offer the best commodity marketing capabilities. This is critical given the growing importance of commodity revenues to fund SBWMA operations.
- Each of the two firms stand out financially with HBC offering the highest commodity revenue guarantee at \$10.1 million and SBR offering the lowest overall cost proposal.
- Each firm has a strong plan for increasing diversion at the transfer station and unique attributes to their proposed transfer station operations. HBC put together the most innovative base proposal for transfer station diversion, while SBR offers the highest payloads and lowest cost transfer operation.”

Operating Costs

The scores for the operating cost proposals were considered 20% of the total possible points. SBR’s original operating cost proposal was \$4.2 million less per year than the next lowest proposal.

Table 4: Annual Operating Costs Including Interest (as of July 24, 2008)

	Proposed Annual Cost to SBWMA
Allied	\$15,870,629
BEST	\$17,703,982
Greenstar	\$16,599,003
HBC	\$15,216,385
Norcal	\$17,549,549
Republic	\$19,775,788
SBR	\$11,648,528

Cost Evaluation Explanations

SBWMA stated:

- “1. South Bay was ranked highest by virtue of the lowest overall cost proposal at \$11.6 million. South Bay’s scoring was reduced somewhat on ‘reasonableness’ due to the Evaluation Committee’s concerns regarding their extremely low transportation costs and management/administration staffing levels.
2. Allied was ranked second due to its low overall cost, third lowest overall at \$ 15.9 million, and lowest total capital cost for the MRF equipment and installation at \$15.2 million.
3. Hudson Baylor was ranked third due to its low overall cost, second lowest overall at \$15.2 million, and the highest commodity revenue guarantee at \$10.1 million. Their scoring was reduced somewhat on “reasonableness” due to proposing the highest capital cost for MRF equipment and installation at \$19.8 million.
4. & 5. Norcal and BEST were ranked fourth and fifth, respectively, due to their high overall costs. Both had the highest costs for the transfer station operations, and Norcal had the second highest MRF costs. These firms’ overall costs are \$6 million and \$6.1 million, respectively, higher than SBR.
6. Greenstar had the fourth lowest overall cost at \$16.6 million but was scored even lower due to the ‘reasonableness’ evaluation of their transfer station and transport costs.
7. Republic was ranked lowest on cost because, by far, they had the highest overall cost at \$19.8 million. Their proposed costs simply weren’t competitive, and in several cases, for MRF costs and transport costs, their costs were considered unreasonable.”⁶

Table 5: Recycling Revenue Guarantee

	COMMODITIES GUARANTEE	REVENUE SHARE
Allied	\$6,750,000	80/20
BEST	\$8,500,000	75/25
Greenstar	\$6,750,000	75/25
HBC	\$10,100,000	75/25
Norcal	\$8,000,000	75/25
Republic	\$6,750,000	75/25
SBR	\$7,250,000	75/25

⁶ SBWMA Facility Operations RFP, Selection Committee Report: Evaluation and Scoring of Proposals, July 17, 2008

Commodities Guarantee

Commodity sales, along with tipping fees, are SBWMA's main sources of revenue. Tipping fees are the charges levied upon a ton of waste, which is delivered to various landfills, depending on the waste category. The guarantees, offered by proposers that they will deliver a set commodity amount, is as crucial as operating costs to the SBWMA. Commodities are recyclables. They consist of aluminum cans that can be turned into the state for CRV funds, glass sold to bottlers, paper and cardboard sold to overseas mills. Commodity prices have been historically high in the last few years, but market prices fell dramatically in October 2008, making commodity guarantees questionable.

SBWMA's Due Diligence Process

The Grand Jury learned that SBR planned to run the Shoreway Facility as a "satellite" operation from its headquarters in Los Angeles. At what point the SBWMA discovered this fact is not clear to the Grand Jury. SBR expects to receive additional funds annually from SBWMA because of its "miscalculations and omissions." The Grand Jury has learned, subsequent to SBR's selection as Shoreway Operations Contractor, that it renegotiated, on May 19, 2009, to decrease its recycling revenue guarantee to \$6.75 million. However, SBWMA is still in deliberations with SBR and has not established a final amount to operate the Shoreway Facility.

On March 29, 2009, HBC wrote a letter to the SBWMA contesting its basis for the selection of SBR. (see Attachment 1)

Additionally, the Grand Jury learned from different sources that there is concern about ongoing problems with Community Recycling, one of the two SBR partners. The Local Enforcement Agency for Los Angeles has issued forty-two outstanding Notices of Violations to Community Recycling Sun Valley Recycling and Transfer operations. Twenty-six of the violations concern permitting. Community Recycling is operating without the correct permit. The other sixteen violations are for vector, bird and animal control; training; hazardous, liquid, or special waste containment; scavenging; traffic control; cleaning; reporting; and load checking. In addition, on February 26, 2009, during a SBWMA Board meeting, a member of the Teamsters Union distributed a letter from Teamster's Local 396 of Southern California. The letter stated the union had "major labor problems" and "horrible working conditions" with Community Recycling. SBR claims it has good union relationships.

SBWMA's Management Conduct

Allied was one of the proposers that submitted for the contract to haul garbage and run the Shoreway Facility. The decision to recommend either HBC or SBR to operate the Shoreway Facility in August 2008 meant that Allied's bid to operate the Shoreway Facility was rejected. Shortly after its bid was rejected, Allied submitted an alternative proposal to the SBWMA that addressed the ever-increasing cost proposed by the SBWMA to build the new Shoreway Facility. The request to consider this alternate proposal for building the MRF was denied by the SBWMA, due to what the SBWMA had described as "non-compliance with the RFP requirements." The denial prompted Allied to contact the press and city council members for a hearing.

In response to letters and articles questioning the RFP process, the SBWMA Executive Director solicited letters attesting to the transparency and integrity of the RFP process from proposers actively competing for an SBWMA contract. The email request, dated August 23, 2008, is quote below:

“Subject: Special request

Hello. Im sure you all saw the articles friday in three different papers re: Allied’s desperate plea for consideration of their alternative proposal. Allied’s intentions are quite clear: they want the results of both procurements thrown out and for cities to negotiate a package deal to keep them as the hauler and shoreway opearator.

Given the above, i have a special and awkward request to make: can....write a letter stating that, while you are certainly disappointed wth the results and you not being selected, you feel the rfp processes were conducted professionally, thoroughly, and with the highest level of transparency and integrity. Can you write this letter? If so, can you email a signed copy to me by monday morning? My intent would be to attach this to my response. Im making a similar request of [other proposers].

If one of you can call me on my cell this weekend to confirm if you can meet this special request. My cell no is..... Thanks for the consideration.”

With this email, the copy of a newspaper article about Allied (see Attachment 2) was also sent to the proposers. The newspaper article contained controversial information about Allied, as admitted to by staff in a SBWMA meeting on August 28, 2008. Allied’s lawyer attempted to elicit an apology from the executive at a SBWMA Board meeting, but the apology was denied on the grounds that it was not legally necessary. (see Attachment 3)

One proposer refused to comply with the Executive Director’s request to validate the fairness of the RFP process. Instead, he sent a copy of the Executive Director’s email to a member of the San Mateo County Board of Supervisors, who in turn publicized it to the press and to the elected officials of the member agencies. The Executive Director learned of this, and on August 28, in the San Mateo Library, during a SBWMA Board meeting break, confronted said proposer with vulgar language.

As a result of the events, the following actions were taken by the SBWMA Board of Directors to curtail the Executive Director’s power as quoted in a letter from the Chairman of the SBWMA Board to a San Mateo County Supervisor dated September 4, 2008. An excerpt of the letter follows:

1. “The Executive Director will no longer participate as a member of the Facility Operations Contractor Selection Committee;
2. The Executive Committee (Chair or Vice Chair of SBWMA Board) will review and approve direct correspondence with proposers or the member agencies regarding the selection process;

3. The Executive Committee's role in contract negotiations with the shortlisted Facility Operations firms will be increased to provide direct oversight of the process;"

SBWMA Hires External Consultant

The consultant's analysis was based primarily on interviews with the committee members, not on written documents. He found that the RFP evaluators submitted combined scores, which did not distinguish the point allocation between what were "competitiveness" points and what were "reasonableness" points in the RFP scoring process.

Governance Structure of the SBWMA

The Joint Powers Agreement (JPA) for the SBWMA defines the governance structure of the organization. Section 8.1 of the current SBWMA JPA states:

"The SBWMA shall be governed and administered by a Board of Directors composed of one Director from each Member. The Board shall exercise all powers and authority on behalf of the SBWMA. Each member must select its Director or the Director's designee alternate from among the following positions:

- a. County, District, City or Town Manager or the equivalent position.
- b. County, District, City or Town Assistant Manager or the equivalent position.
- c. Finance Director or Assistant Finance Director or the equivalent position.
- d. Public Works Director or Assistant Public Works Director or Environmental Programs Manager or equivalent position."

Since its inception, the SBWMA Governing Board has been comprised of "agency staff members." The original and subsequent versions of the JPA provided that each member shall designate one Director from among the positions or their designate: City/County Manager, City/County Assistant Manager, Finance Director, Director of Public Works. There is no provision in the current JPA that authorizes an elected official to serve as a member of the SBWMA Governing Board.

When a restated JPA was presented to the Board of Supervisors in late 2005, it deferred approval of the new JPA until it could learn the answers to questions that had been raised by other members. One concern was the City Council of Belmont's suggestion that the membership of the SBWMA Governing Board should permit elected officials to serve on the Governing Board. SBWMA responded that the JPA governance benefited from the technical expertise of staff and that although the SBWMA Board had considered the possibility of adding elected members to its Governing Board, it had decided to "leave the SBWMA board membership the way it has been since the organization's inception."

Section 17.1 of the restated JPA provides that "subject to all legal obligations of the SBWMA, this Agreement may be amended by one or more supplemental agreements executed by a vote of two thirds (2/3) of all Equity and Non-Equity members of the SBWMA." Such an amendment would be required to allow elected officials to serve on the SBWMA Board.

When the Grand Jury questioned board members as to why elected officials were excluded from the SBWMA Board, the Grand Jury learned that board members had asked some council members about serving and the council members showed no interest. A SBWMA Board member mentioned that (s)he acts as a buffer between the council members and the public. However, city council members from different member agencies within the SBWMA jurisdiction contacted the Grand Jury during the course of this investigation and informed the Grand Jury that it was their goal to get elected officials onto the SBWMA Board. These council members testified that they would be actively pursuing such a goal and have wanted to be on the SBWMA Board for a number of years. When a member agency's staff attends a SBWMA Board meeting, there is a cost and a loss of work hours incurred by member cities.

Investigation

The 2008-2009 San Mateo County Civil Grand Jury interviewed South Bayside Waste Management Authority (SBWMA) Board members, staff members, Requests For Proposal competitors, city council members, consultants, and attorneys. The Grand Jurors read numerous SBWMA reports, SBWMA meeting minutes, newspaper articles, in addition to visiting websites. Jurors attended SBWMA meetings, member agency meetings and watched tapes of SBWMA and city council meetings.

Findings

The 2008-2009 San Mateo County Civil Grand Jury found that:

1. In the proposal process, the requirement that all proposers use the same operational assumptions to obtain comparable costs was useful to evaluators but does not apply to the actual costs and contracts that the individual member agencies can negotiate.
2. The process allowed for alternative proposals, yet they were not required to be considered.
3. As a condition of participation, proposers had to agree not to appeal decisions.
4. In the evaluation process, the "reasonableness" points were not distinguished from the "competitiveness" points.
5. Neither the individual members of the Evaluation Committee nor the individual members of the Selection Committee were required to report how many of the overall points assigned to each criterion were based on "reasonableness" or "competitiveness."
6. The South Bayside Waste Management Authority's (SBWMA) consultant reported that Norcal's references in San Jose were not checked.
7. South Bay Recycling (SBR) was the only proposer that did not provide for on-site management in its original cost proposal.

8. SBR has asked the SBWMA to cover \$1.2 million for mistakes and omissions in its original proposal.
8. It appears that SBWMA did not give sufficient consideration to SBR's notices of violation in the operation of its Southern California operations.
10. The Grand Jury could not confirm that the proposals were adequately evaluated or reflected a thorough analysis of the proposal content and contractor background.
11. SBWMA Executive Director chaired three of the four Evaluation and Selection Committees until removed from the Shoreway Facility Contract Selection Committee by the Chairman of the SBWMA Board.
12. The SBWMA Executive Director solicited emails from active proposers, asking them to attest to the integrity of the RFP process.
13. No elected officials are on SBWMA's Board of Directors.

Conclusions

The 2008-2009 San Mateo County Civil Grand Jury concludes that the SBWMA did not follow its stated goal to "conduct the RFP process with integrity and transparency." The Grand Jury has no opinion on which contractors should have been selected. However, the Grand Jury has no confidence in the RFP processes by which the Collections Services Contractor and the Shoreway Master Plan Facility Contractor were selected.

The Grand Jury further concludes that:

1. The structure of the Evaluation and Selection Committees lent itself to the appearance of undue influence.
2. Whether or not elected officials from the member agencies are on the SBWMA Board of Directors, these elected officials are ultimately responsible for all actions taken by the SBWMA.
3. After four years of preparation, staff time, and consultant fees, the RFP process was poorly executed.

Recommendations

The 2008-2009 San Mateo County Civil Grand Jury recommends that the South Bayside Waste Management Authority (SBWMA) and its Board and designated elected officials of the 12-member agencies [Atherton, Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, Redwood City, San Carlos, San Mateo, West Bay Sanitation District, and the San Mateo County Board of Supervisors (on behalf of the unincorporated portions of San Mateo County)]:

1. Meet and reconsider pending contracts with Norcal and South Bay Recycling in light of the information contained in this Grand Jury report.
2. In future Request For Proposal processes:
 - a. Clearly define and objectively and consistently apply the evaluation criteria,
 - b. Provide for an appeals process before the final contracts are signed,
 - c. Assure the proposers that alternative proposals will be considered,
 - d. Ensure that representatives from other jurisdictions are participants on the committees, and
 - e. Ensure that no one individual chair both committees.
3. Amend the Joint Powers Authority Agreement to include elected officials from member agencies onto the SBWMA Board of Directors.

Attachment 1

March 23, 2009

Hilary Gans
South Bayside Waste Management Authority
610 Elm St. Suite 202
San Carlos, CA 94070

RE: Evaluation and Selection Committee Reports

Dear Hilary:

Hudson Baylor strongly disagrees with the Staff recommendation in the recently issued Evaluation and Selection Committee reports, and with the basis for the recommendation. We believe that the facts, as laid out in your report, and as further elaborated below, should lead to your choice of Hudson Baylor to operate the Shoreway Environmental Center. As stated in your report, the decision is based solely on your calculation of the cost differences between our proposal and SBR's. We want to provide you and the local elected officials with a more accurate and factual analysis with updated information.

To summarize, we are confident that our commodity sales structure will generate a minimum of **\$700,000 in incremental revenue** to the Authority; that our transfer station diversion plan will generate at least **\$200,000 in cost avoidance**, and that a fair presentation of our labor position results in at least **\$800,000 of cost equalization**. In total, the swing in benefits to the SBWMA and its member cities is **at least \$1.7 million in HBC's favor**.

Commodity sales can be a complicated issue, but the numbers under this contract are straightforward. SBR clearly provided a formula to you within the last several weeks, tying their prices to OBM LA Export prices (an indicator that has only included ONP Export since January 2009). We provided a comparable formula tied to OBM SF High prices in our original bid. Our formula is OBM SF High +\$10. Analyzing the worksheet titled "Exhibit B" in the report package results in SBR's formula being approximately OBM LA Export Average -\$18.50 (its formula appears to have several moving components, but the example shown calculates to \$18.50 below).

The table shown in *Exhibit 1* in the appendix to this letter outlines the result of the two formulas applied to the February 7 OBM data used in SBR's example (leaving aside any floor price issues for the moment). HBC's formula actually results in *higher* revenue for the same tons. Applying this formula to the first quarter of 2009 (the only time that it is possible to apply SBR's formula) results in HBC generating an incremental \$57,000 in sales revenue in the quarter, or approximately \$225,000 annualized. Assuming that we are over the revenue guarantee, this would generate an incremental \$170,000 to SBWMA.

Moreover, we learned that SBR now has a floor pricing arrangement to cover half the fiber volume at the MRF. HBC, as you know, has an agreement with ACN that provides floor pricing for *all* fiber tons (as well as for plastics). Up to this point, we and ACN have not divulged the prices for proprietary and competitive reasons. However, with the recommendation report out, ACN has now agreed to let us disclose that our floor prices for fiber (ONP and OCC) are 00per ton. We are providing these floor prices at this time so we can further explain our position to

SBWMA decision makers with regard to material sales revenue. We do request that these floor prices are kept confidential.

As our floor prices are currently higher than the formula or market, we would be selling at our floor price today when markets are down. The table in *Exhibit 2* of the appendix to this letter shows our floor price revenue, compared with SBR's floor price revenue (same tons as in prior table). We note that for SBR, we used their floor prices for half the volume (since that is their guarantee), and their formula for the remainder of the volume. This results in \$78,442 higher revenues per month with the HBC floors, which annualizes to \$941,302 in higher sales. Assuming that we are over any guarantee levels, this would result in approximately **\$706,000 in incremental revenue to SBWMA.**

We have consistently explained to you that we felt that the Authority's analysis was lacking in understanding our ability to market material, and these figures demonstrate that either using our floor prices, or using our representative formulas, **HBC will generate higher revenues for SBWMA.**

Finally, we appreciate the kind words in the Staff report with regard to the "well thought out and innovative approach" to HBC and WSG's transfer station diversion program. The original evaluation report said that WSG offered an "excellent transfer station operation plan to maximize diversion and improve operational efficiencies". We believe that this transfer station incentive program will conservatively return **up to \$200,000 or more** in incremental revenue to the Authority. An example of this calculation is included in *Exhibit 3* in the appendix to this letter.

Adding these up, it appears that there is in fact a cost advantage for HBC over SBR. We find it unfortunate that the reports issued by the Authority reflect the opposite conclusion.

We trust that the SBWMA and its member cities will accept the above facts in the constructive spirit in which they are being offered. We want to make sure that elected and appointed representatives of the SBWMA member cities and County ultimately make a fair and informed decision for their ratepayers. We continue to look forward to work with you for the very best operation of the Shoreway facility.

Sincerely,

Scott Tenney
President
Hudson Baylor Corporation

Attachment 2

Yard waste wasted

Comments

Aug 4, 2008 6:00 AM (327 days ago) by Mike Rosenberg, The Examiner

SEE HOW THIS STORY DEVELOPED

EMAIL STORY

PRINT STORY

» 327 days ago: Yard waste wasted «

Related Topics: San Mateo County



(Juan Carlos Pometa Betancourt/Special to The Examiner)

Down in the dumps: The South Bayside Waste Management Authority is asking Allied Waste to pay back residents for composting services it allegedly did not provide.

San Mateo County (Map, News) -

The money and work of environmentally minded Peninsula residents have been partially wasted after Allied Waste garbage trucks were found to have dumped tons of recyclable material into a landfill, authorities said recently.

Allied Waste, which provides garbage services from Burlingame to the southern San Mateo County border, has dumped up to 64,722 tons of plant materials into the Ox Mountain landfill near Half Moon Bay during the last four years, according to the South Bayside Waste Management Authority.

Allied is contractually obligated to send the yard trimmings to its Newby Island compost site in Milpitas so the material can be recycled and used in local gardens and agriculture.

Now the South Bayside Waste Management Authority, which oversees Allied in San Mateo County, has demanded the garbage company pay back its residents between \$560,000 and \$1.8 million for the composting services. Allied Waste charges residents a fee for composting plants from yard trimmings. The exact fine would depend on the precise number of tons Allied did not divert to composting.

SBWMA board member Diane Dryer said neglecting to compost yard trimmings increases local greenhouse gas emissions.

"It would probably be a good idea to think about banning plant materials altogether from landfills due to the global warming problems," Dryer said.

If Allied refuses to pay, the SBWMA said it would seek legal action based on the contract violation.

"This material was set out for recycling and it was put in a landfill. It's a breach of public trust," said Hillary Gans, SBWMA's facility operations contract manager.

To conduct the investigation, the SBWMA in April hired Walnut Creek-based consulting agency HF&H, which presented a nine-page report on the accusations to the group's board of directors recently.

Evan Boyd, Allied Waste's general manager for the county, admitted some of the plant material did end up in the landfill but argued the SBWMA's numbers may be inflated a little bit.

Boyd acknowledged his company dumped 14,159 tons of plants into a landfill in 2005 and 2006. He said his company faced an unusual situation those years, due to the relocation and shrinking of their compost pad. Allied contacted the SBWMA board about the infractions but the two could not reach a solution, he said.

"We've got to sit down and figure out if there's going to be a compromise made," Boyd said.

Despite the controversy, Boyd said the two groups still have a decent working relationship. The dispute between Allied and SBWMA comes as the two prepare to part ways on the local recycling center, a \$15 million contract.

Allied, which has operated the county's Shoreway Recycling and Disposal Center in San Carlos, will be let go by the SBWMA when its contract expires at the end of 2010.

mrosenberg@sfoxaminer.com

Uncovering the compost

The South Bayside Waste Management Authority has demanded that Allied Waste pay back residents for composting service payments after Allied was found to have dumped recyclable material into landfills.

64,722 Plant tons dumped into landfill that should have been composted

14,159 Plant tons Allied admitted it dumped into landfill

4 Years Allied dumped plants into landfill

2 Years Allied admitted it dumped plants into landfill

\$560,000 to \$1.8 million Fine levied on Allied Waste

12 County cities or agencies that supplied the plant material

Source: South Bayside Waste Management Authority, Allied Waste

Attachment 3

ROBERT J. LANZONE
JEAN E. SAVARBE
MARG L. ZAFFERANO
GREGORY J. RUBENS
LINDA J. NOEBBE*
*Certified Specialist, Family Law
The State Bar of California
Board of Legal Specialization

KATHLEEN A. KANE
KATE D. KOSTRZEWA

ROBERT J. LANZONE, Ext. 204
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MICHAEL AARONSON
(1916-1998)
KENNETH M. DICKERSON
(1926-2008)
MELVIN S. COHN
(Superior Court Judge/Retired)
OF COUNSEL

September 2, 2008.

Jeff Andrews
c/o Allied Waste
6800 Koll Center Parkway, Suite 320
Pleasanton, CA 94566

Re: HFH Consultants Composting Compliance Review

Dear Mr. Andrews:

We represent the South Bayside Waste Management Authority (SBWMA) and have been asked to respond to your letter of August 27, 2008 to Kevin McCarthy the Executive Director of SBWMA.

Your letter addresses a staff report and information presented to the Board of Directors of the SBWMA at a public meeting on July 24, 2008. As your attorneys will confirm, statements made by public officials and their representatives at a public meeting are excepted from the rules with respect to so called defamatory statements or communications made "in any other official proceeding authorized by law". California Civil Code Section 47 (b). It is well established in California law that statements made in the course of local government proceedings are privileged. Therefore, the statements made in the SBWMA staff report of July 24, 2008, and made at the public meeting of July 24, 2008 are privileged communications and not subject to the rules of defamation. The fact that a newspaper may have published articles about statements or reports made at the meeting is not relevant here.

Further, the comments made with respect to the City of Milpitas and use of its plant materials as ADC, were corrected, at the meeting of July 24, 2008, on the record, by the representative from HFH Consultants. With respect to comments made as to Allied's contract compliance with the City of Fremont and use of its plant material as ADC, we understand that the issue is still pending.

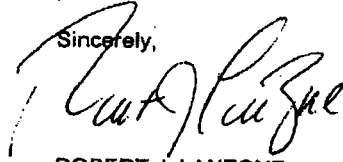
At this point in time, while we will look into the matter further, we will not be

Jeff Andrews
c/o Allied Waste
September 4, 2008
Page 2

complying with your request for "an immediate and final retraction" of statements and reports made at the July 24, 2008 meeting.

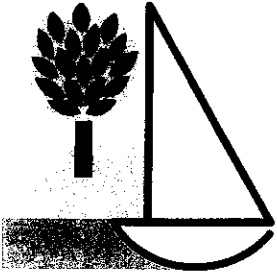
If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert J. Lanzone". The signature is written in a cursive style with a large initial "R".

ROBERT J. LANZONE

RJL:jm
cc: Kevin McCarthy, Executive Director, SBWMA



City of Foster City

ESTERO MUNICIPAL IMPROVEMENT DISTRICT

610 FOSTER CITY BOULEVARD
FOSTER CITY, CA 94404-2222
(650) 286-3200
FAX (650) 574-3483

September 21, 2009

Honorable George A. Miriam
Judge of the Superior Court
Hall of Justice
400 County Center, 2nd Floor
Redwood City, CA 94063-1655

Subject: Grand Jury Report: TrashTalk: Rethinking the Waste Management RFP Process by the South Bayside Waste Management Authority

Dear Judge Miriam:

Thank you for the opportunity to review the 2008-2009 San Mateo County Civil Grand Jury's report titled: "TrashTalk: Rethinking the Waste Management RFP Process by the South Bayside Waste Management Authority", dated July 10, 2009.

The City has reviewed the Grand Jury report and the attached response dated July 28, 2009 prepared by the SBWMA. Foster City has adequate representation and is an active participant on the SBWMA Board and concurs with the SBWMA's responses to the Findings and Recommendations.

The attached Table 1 identifies the dates over the past approximately four years wherein our City Council and members of the public had opportunities to hear and consider the subject of the Contractor Selection Process for Facility Operations and Collection Services. Based on the numerous presentations, discussions, and meetings that were conducted over the approximately four-year period, our City Council is satisfied that the SBWMA followed the stated goal to "conduct the RFP process with integrity and transparency".

The City Council has every confidence in the RFP process by which the Collection Services Contractor and the Shoreway Master Plan Facility Contractor were selected. Given the number of Agencies, the number of proposers, and the magnitude of the scope of services to be provided, Foster City finds that the RFP process was handled fairly, professionally, and without bias.

With respect to Recommendation Number three (3)—“Amend the Joint Powers Authority Agreement to include elected officials from member agencies onto the SBWMA Board of Directors”, Foster City would like to add the following to the SBWMA’s response:

Response: The City Council of the City of Foster City considered the subject of the Board composition of the SBWMA Board of Directors on November 21, 2005.

At the November 21, 2005 meeting, after consideration of the Board composition being elected officials versus member agency staff, the City Council voted to support our staff’s recommendation to continue with a Board composed of non-elected staff personnel from the Member Agencies. However, to maintain a certain level of oversight at the Board level, the Council approved an amendment to the JPA which included revisions to Article 8 - Governance that changed the JPA language to clarify from which staff positions a Member Agency may select its Board Representative. The change limits the Board Representatives to be selected from upper management positions within each agency (e.g. City Manager, Assistant City Manager, Public Works Director, Finance Director, or equivalent positions).

When the issue of the Board composition was raised again on October 21, 2008, our City Council reaffirmed its prior decision, by directing its Board Representative to vote “no” to the formation of an elected official oversight committee of the SBWMA Board (Per Minute Order 1114).

At the September 21, 2009 meeting, the City Council had an opportunity to reconsider the inclusion of elected officials on the SBWMA Board. The Council does not concur with the Grand Jury recommendation, and would continue to support a staff appointed Board from designated upper management positions per the current JPA Agreement.

Please feel free to contact me if you need any additional information or have any questions regarding this response to the Grand Jury’s report.

Sincerely,



John Kiramis
Mayor

Attachment: Exhibit A: Response letter dated July 28, 2009 prepared by the SBWMA

cc: Members of the City Council
James C. Hardy, City Manager
Jean B. Savaree, City Attorney
Doris L. Palmer, City Clerk
Subject, Chron



RethinkWaste

South Bayside Waste Management Authority

July 28, 2009

Honorable George A. Miram
Judge of the Superior Court
400 County Center, 2nd Floor
Redwood City, CA 94063-1655

Re: San Mateo County Civil Grand Jury Report 2009 – SBWMA RFP Process

Dear Judge Miram:

The following is the response of the Board of Directors of the South Bayside Waste Management Authority (SBWMA) to the above referenced Report by the 2008-2009 San Mateo County Civil Grand Jury. This response was approved by the Board at a public meeting held on July 23, 2009. We have responded directly to the Recommendations of the Civil Grand Jury in this letter, and address the Findings and Conclusions in the attached Addendum 1, and the facts/comments in the Background Section in Addendum 2.

I - Initial Comments

The SBWMA's goal for the RFP process was to select the best companies through a detailed and open evaluation process of the responses that could provide the desired services in the most cost-effective and environmentally superior manner. We believe that goal was accomplished. In selecting Norcal (now known as Recology) and South Bay Recycling (SBR) for consideration by the Member Agencies as the future service providers, the SBWMA did exactly as it had promised it would do through the RFP process - select the highest-rated, best firm for each service.

The SBWMA went through a very thorough and intensive process in developing, issuing and evaluating the RFPs for both the collection services and facility operations services. The RFPs clearly prescribed the proposal requirements, evaluation process and scoring system. This process took place over a four-year period to ensure that the SBWMA Member Agencies' staff and elected officials, potential proposers, other stakeholders and the public had multiple opportunities for review and input. SBWMA Board of Directors, potential proposers, consultants, legal counsel and other stakeholders helped develop and write the RFPs, selection criteria and the scoring system before the RFPs were issued. There were no objections to the RFPs received from the proposers until the recommendations for the selected companies were announced. The City of San Mateo retained an independent consultant to review the Collection Services RFP evaluations of the proposals to ensure they were done appropriately. The independent consultant's findings concurred with the recommendation for the future service provider and stated that the evaluations were appropriately executed and fair.

Honorable George A. Miram
Judge of the Superior Court
July 28, 2009
Page 2.

The RFP process has been vetted before all 12 SBWMA Member Agencies. Member Agencies will have additional opportunities for review as the final agreements proposed for Norcal for the Collection Franchise and SBR for the Operations Agreement come before them for approval.

II. Response to Recommendations

"The 2008-2009 San Mateo County Civil Grand Jury recommends that the South Bayside Waste Management Authority (SBWMA) and its Board and designated elected officials of the 12-member agencies [Atherton, Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, Redwood City, San Carlos, San Mateo, West Bay Sanitation District, and the San Mateo County Board of Supervisors (on behalf of the unincorporated portions of San Mateo County)]:

1. *Meet and reconsider pending contracts with Norcal and South Bay Recycling in light of the information contained in this Grand Jury report."*

Response:

Each of the two RFPs, one for collection services and another for facility operations, included key milestones to allow for Member Agency input and action. All governing boards of Member Agencies will be asked to give consideration to their individual franchise agreements for collection, and the agreement for the operation of Shoreway Environmental Center over the coming months, as prescribed in the RFP process. To date, ten of the Member Agencies, representing 85.6% of the Solid Waste tonnage in the SBWMA service area, have already considered and approved the Selection of Norcal (now known as Recology) as their future franchised hauler for solid waste, recyclables and organics. These votes of the Member Agencies have led to the preparation and negotiation of lengthy Franchise Agreements with Norcal to be considered individually by each Member Agency over the next few months, a process that began with these 10 Agencies in March 2009. The Town of Atherton also gave direction to its City Manager on July 15, 2009 to proceed with informal negotiations with Norcal. A JPA Member Agency is free to contract with any company it wants for collection. All documentation related to the RFP process, including vendor responses are available to Member Agencies for additional evaluation. The SBWMA will cooperate with any Member Agency that wishes to reevaluate responses to the RFP process.

The SBWMA Board at its July 23, 2009 Board considered approval of an Agreement with South Bay Recycling (SBR) to operate the Shoreway facility. As approved, it will be presented to the governing bodies of the Member Agencies for review and approval pursuant to Section 7.1.1 of the JPA Agreement. The SBR Operators agreement needs 2/3 of the Member Agencies to approve it.

Action:

The recommendation will effectively be implemented during finalization of the RFP process.

- "2. *In future Request For Proposal processes:*
a. *Clearly define and objectively and consistently apply the evaluation criteria,"*

Response:

The SBWMA did clearly define evaluation criteria, and to the extent practical provided objective guidelines for the application of evaluation criteria. We believe that the two concurrent RFP processes, one for collection services and another for facility operations, were both conducted professionally and thoroughly. The Evaluation and Selection Committees for each RFP meticulously followed and implemented the evaluation processes spelled out in the respective RFPs.

- "b. Provide for an appeals process before the final contracts are signed,"*

Response:

A survey of 44 other California jurisdictions that issued similar RFPs in recent years revealed that only two had bid protest provisions in their RFPs. Since these two RFPs are not Public Works "bid" type procurements, inclusion of an appeals process is not standard practice. In fact, the SBWMA RFP processes afforded stakeholders multiple opportunities to comment on the RFP documents. In addition, since the recommendations resulting from the RFP processes are made via publicly noticed SBWMA Board meetings and later considered at individual Member Agency meetings, there have been multiple opportunities for public input from companies that participated in the RFP processes and/or other interested parties. In fact, this is what has happened since September 2008 as dozens of public meetings have been held by the SBWMA Board and Member Agencies and many RFP participants voiced their opinions regarding the RFP recommendations. Lastly, the RFP process as proposed by the SBWMA was reviewed in advance by potential proposers and none commented on the lack of an appeals process or requested such a process.

In summary, every decision made regarding issuance of the RFPs, Member Agency participation in the RFP processes, recommendations resulting from the RFP processes, Member Agency consideration of the recommendations, and Member Agency approval of the recommendations via authorizing the SBWMA to prepare a contract in the case of Facility Operations or executing their own contract for Collection Services has been or will be done at publicly noticed meetings.

- "c. Assure the proposers that alternative proposals will be considered,"*

Response:

The RFPs did provide assurance that alternative proposals would be considered if submitted in compliance with the RFP. The submittal of an alternative proposal was to be treated with the same guidelines as a base proposal, which required evaluation if submitted in accordance with the RFP documents. Both RFPs addressed the submittal of alternative proposals in the same manner. During the RFP process one alternative proposal was submitted by Allied Waste and given consideration. The alternative proposal provided incomplete information, and was not responsive to the RFP. Following legal review, it was determined that the SBWMA had no legal obligation to evaluate the Allied alternative proposal as it was

Honorable George A. Miram
Judge of the Superior Court
July 28, 2009
Page 4.

submitted because it did not comply with the RFP cost and exception requirements. Nevertheless, the SBWMA actually accorded the lone alternative more consideration than legally required.

Had the SBWMA proposal evaluation process blindly included review of alternative proposals submitted not in compliance with the RFP documents or during the proposal submission period, the fundamental premise of ensuring a fair, non-biased and transparent procurement would have been compromised.

"d. Ensure that representatives from other jurisdictions are participants on the committees, and"

Response

This recommendation is unclear as to whether the Grand Jury is recommending representatives from SBWMA Member Agencies are participants in the committees or representatives from outside of the SBWMA are participants. The RFP process did include representatives from the Member Agencies. The Evaluation and Selection Committees for both the Collection Services and Facility Operations RFPs were comprised of different SBWMA Board members, and all of the Member Agencies were represented on the PAF and PAC committees.

If the intent of the recommendation is to include representatives from non-SBWMA jurisdictions, we cannot understand why they should have any decision-making authority in a local RFP process. We know of no other jurisdictions that follow such a process.

"e. Ensure that no one individual chair both committees."

Response:

This recommendation will be considered.

Action (Applies to Responses to Recommendation #2, including items a-e):

At such time as there is a future RFP process for either franchise agreement, the concerns of the Civil Grand Jury Report will be taken into consideration by the SBWMA. This holds true for each of the successive recommendations in this section regarding future RFP processes. A future RFP process may not occur for ten (10) years.

"3. Amend the Joint Powers Authority Agreement to include elected officials from member agencies onto the SBWMA Board of Directors."

Response:

This recommendation is one for consideration by the individual governing bodies of the JPA Member Agencies which have sole authority to amend the JPA agreement. The last restatement of the JPA agreement in 2005 confirmed Member Agencies' intent to continue to appoint staff to the SBWMA Board.

Honorable George A. Miram
Judge of the Superior Court
July 28, 2009
Page 5.

Action:

The SBWMA Board lacks legal authority to take action on this recommendation. However, the Board will review the responses to the Report from the Member Agencies and if sufficient support (8 or more Agencies) is indicated, the Board will facilitate the preparation and circulation of an appropriate amendment to the JPA Agreement.


III. Response to Findings and Conclusions (See attached Addendum 1)

IV. Response to Background (Facts and Comments) (See attached Addendum 2)

As can be seen from our Initial Comments, the Board firmly believes the RFP process used was professionally implemented, was fully vetted to the proposers, the SBWMA Member Agencies, and the public, and resulted in recommendations of the best firms for Collection Services and for Operation of the Facilities.

Thank you for your consideration.

Very truly yours,



Martha DeBry
SBWMA Board Chair

Attachments:

Addendum 1
Addendum 2

MINUTE ORDER

No. 1167

OFFICE OF THE CITY CLERK/
DISTRICT SECRETARY
FOSTER CITY, CALIFORNIA

Date: September 28, 2009

Attention: City Council/EMID Board
James C. Hardy, City Manager
Honorable George A. Miriam, Judge of the Superior Court

City Council/EMID Board Meeting Date: September 21, 2009

Subject: Response to 2008-2009 Grand Jury Report – Trashtalk: Rethinking the Waste Management RFP Process by the South Bayside Waste Management Authority

Motion by Councilmember Koelling, seconded by Councilmember Kiesel, and carried unanimously, 5-0-0, IT WAS ORDERED approving response letter Option #1 not to concur with the Grand Jury recommendation, and continue to support a staff appointed Board from designated upper management positions per the current JPA agreement.



CITY CLERK/DISTRICT SECRETARY

HEYWARD ROBINSON
MAYOR

RICHARD CLINE
VICE MAYOR

JOHN BOYLE
COUNCIL MEMBER

ANDREW COHEN
COUNCIL MEMBER

KELLY FERGUSSON
COUNCIL MEMBER



701 LAUREL STREET, MENLO PARK, CA 94025-3483
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September 28, 2009

Honorable George A. Miram
Judge of the Superior Court
400 County Center, 2nd Floor
Redwood City, California 94063-1655

Dear Judge Miram:

Subject: Response to Civil Grand Jury Report "TRASHTALK – Rethinking the Waste Management RFP Process by the South Bayside Waste Management Authority"

In response to the above referenced Grand Jury report, the City of Menlo Park respectfully submits responses to the findings and recommendations contained in the report. This letter was approved by the City Council at its regular meeting held on September 1, 2009.

Grand Jury Findings

The City of Menlo Park concurs with the responses to the Grand Jury's findings submitted by the South Bayside Waste Management Authority (SBWMA). The SBWMA response document is incorporated herein in its entirety by reference.

Grand Jury Recommendations

"The 2008-2009 San Mateo County Civil Grand Jury recommends that the South Bayside Waste Management Authority (SBWMA) and its Board and designated elected officials of the 12 member agencies [Atherton, Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, Redwood City, San Carlos, San Mateo, West Bay Sanitary District, and the San Mateo County Board of Supervisors (on behalf of the unincorporated portions of San Mateo County)]."

Recommendation 1:

"Meet and reconsider pending contracts with Norcal and South Bay Recycling in light of the information contained in this Grand Jury report."

Building

TEL 650.330.6704
FAX 650.327.5403

City Clerk

TEL 650.330.6620
FAX 650.328.7935

City Council

TEL 650.330.6630
FAX 650.328.7935

City Manager's Office

TEL 650.330.6610
FAX 650.328.7935

Community Services

TEL 650.330.2200
FAX 650.324.1721

Engineering

TEL 650.330.6740
FAX 650.327.5497

Environmental

TEL 650.330.6763
FAX 650.327.5497

Finance

TEL 650.330.6640
FAX 650.327.5391

Housing & Redevelopment

TEL 650.330.6706
FAX 650.327.1759

Library

TEL 650.330.2500
FAX 650.327.7030

Maintenance

TEL 650.330.6780
FAX 650.327.1953

Personnel

TEL 650.330.6670
FAX 650.327.5382

Planning

TEL 650.330.6702
FAX 650.327.1653

Police

TEL 650.330.6300
FAX 650.327.4314

Transportation

TEL 650.330.6770
FAX 650.327.5497

Response:

The contractor selection process was carefully reviewed by the Menlo Park City Council and staff over a 2-year process commencing in 2007. The process included key milestones for City Council input and approval, with discussion and deliberation occurring during several public meetings. The City Council's actions included:

- City Council approval of the City's participation in the collection services franchise agreement process on January 23, 2007
- City Council approval of the services and contract terms for the RFP processes on September 11, 2007
- City Council approval of the selection of Norcal (Recology San Mateo County) as the City's future collection services contractor on October 7, 2008
- City Council approval of the issuance of debt for the Shoreway Environmental Center on February 24, 2009
- City Council direction to staff regarding services to be negotiated with Norcal on May 5, 2009
- City Council approval of the plan of finance for the bond financing for the Shoreway Environmental Center on July 14, 2009

In addition, City staff participated in the Selection Committee which reviewed and evaluated responses to the collection services RFP.

The City of Menlo Park has undertaken an extensive vetting and consultation process between its City Council, staff and the public to ensure that ratepayers receive the best service and value available from both the collections and operations contractors.

Action:

The recommendation has been effectively implemented by the City of Menlo Park.

Recommendation 2:

"In future Request for Proposal Processes:

- a. Clearly define and consistently apply the evaluation criteria,
- b. Provide for an appeals process before the final contracts are signed,
- c. Assure the proposers that alternative proposals will be considered,
- d. Ensure that representatives from other jurisdictions are participants on the committees, and
- e. Ensure that no one individual chair both committees."

Response:

The City of Menlo Park believes that the RFP processes reviewed by the Grand Jury accomplished parts a, b, c and d of the Recommendation. The City supports part e of the recommendation which will be considered for future RFP processes.

Action:

Future RFP processes undertaken by the SBWMA are expected to follow a similar process as the current collection services and facility operations contracts. That will ensure that the City Council will have, at a minimum, the same direct involvement in and close oversight of all steps of the decision-making processes undertaken by the SBWMA as occurred with the subject contracts. Input from ratepayers and other interested members of the public will continue to be considered by the City Council in future procurement processes.

Recommendation 3:

“Amend the Joint Powers Authority Agreement to include elected officials from member agencies onto the SBWMA Board of Directors.”

Response:

The role of the City of Menlo Park’s SBWMA Board member and alternate falls within those employees’ scopes of authority and their duty to seek advice or counsel as needed and to ensure that the full City Council renders decisions and gives direction on matters affecting City policy, finances, resources and ratepayers. The SBWMA Board member is delegated authority to vote on the City’s behalf on matters related to routine SBWMA business, such as approving of items to be sent to member agencies’ governing bodies for decision, approving meeting minutes, receiving reports, and approving of SBWMA budgets and expenses that do not impact City resources. The Board member and alternate are required to observe City policy and direction given by the Council, and are accountable for their actions to both the City Manager and the City Council.

The SBWMA Joint Powers Agreement was amended in November 2005 to clarify certain provisions, add the position of Executive Director and to clarify from which positions a member agency may select its Board member. The amendment removed the Board of Director’s powers to do certain things without a two-thirds vote of approval by the member agencies’ governing bodies (i.e. City Council). Those actions included:

- (a) Acquisition of real property;
- (b) Disposal of real property;
- (c) Entering into or amending franchise agreements for operation of facilities;
- (d) Issuance or refinancing of bonds.

The amendment also listed the positions from among which the member agencies must choose their SBWMA representative. The relevant positions for the City of Menlo Park

are the City Manager and Assistant City Manager; Director and Assistant Director of Public Works (or equivalent); Finance Director and Environmental Programs Coordinator.

The amendments left decisions with the greatest structural and/or financial implications to the elected officials who govern each of the member agencies. Other decisions are made by the SBWMA Board, continuing to allow the Board to operate SBWMA facilities and perform technical functions of the JPA. The amendment was unanimously approved by the City Council.

The City of Menlo Park is aware that elected officials from some SBWMA member agencies have expressed a desire to serve on the SBWMA Board. It is unclear whether that desire results from a lack of confidence in their SBWMA Board member, lack of communication between the Board member and elected officials, or from external or political pressures. The City of Menlo Park has long maintained active engagement between its SBWMA Board member and the City Council, and therefore believes that the City's high standards for transparency and accountability are currently well served by delegation of the SBWMA Board membership to high level City staff.

The City also believes that elected official representation on the SBWMA Board would need to involve representatives from all 12 member agencies in order to make decisions efficiently, and that such involvement would be redundant to the decision making processes currently in place. Further, a SBWMA Board comprising only elected officials would require that an additional board or committee involving all member agencies be formed to advise the Board of Directors and SBWMA staff on technical matters related to the operation of recycling and solid waste facilities. Such a structure would increase the City's costs and commitment of staff resources, resulting in higher fees for rate payers.

Action:

The Recommendation as stated will not be supported by the City of Menlo Park for the reasons indicated above. However, the City encourages the SBWMA to explore the possibility of forming a policy advisory committee comprising elected officials in addition to the current form of governance.

Thank you for this opportunity to respond. Please contact me at (650) 330-6600 should you have any questions regarding the City's response to the report or its participation in the SBWMA.

Sincerely,

A handwritten signature in blue ink, appearing to read "Glen Rojas".

Glen Rojas, City Manager

Cc: Mayor and City Council Members

Mayor Rosanne S. Foust
Vice Mayor Diane Howard

Council Members
Alicia C. Aguirre
Ian Bain
Jim Hartnett
Jeff Ira
Barbara Pierce



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September 2, 2009

Honorable George A. Miram
Judge of the Superior Court
400 County Center, 2nd Floor
Redwood City, CA 94063-1655

RE: San Mateo County Civil Grand Jury Report 2009 – SBWMA RFP Processes

Dear Judge Miram:

On behalf of the City of Redwood City Council I am responding to the above referenced Report. The City Council authorized me to provide this response at their August 24, 2009 Council meeting.

Having followed this process very closely since its inception in 2005 through its recent conclusion most of us are disappointed with the tenor and tone of the Report. As Council Members we were kept well advised of these request for proposal (RFP) processes which were the object of this report and had sufficient opportunities to monitor them and provide meaningful input into their development. It is very important to recognize that there were no criticisms of these RFP processes until after the recommendations for the selected companies were announced. This speaks volumes to us about the motivation of the criticisms that have been made about the RFP processes.

With respect to the Recommendations contained with the Report we offer the following responses:

1. **“Meet and reconsider the pending contracts with Norcal and South Bay in light of the information contained in this Grand Jury Report.”**

Response: The Grand Jury Report did not provide any new information to the Redwood City Council. The Council and the Council Solid Waste Committee received substantial information about the proposed RFP process before it was enacted and approved the process before it was adopted by the Board. The Council received substantial written reports and held three public meetings (one for the consideration of selecting the collection contractor and two to provide the City’s SBWMA Board representative with direction on how to vote regarding the selection of the SRDC operator at the April 23, 2009 SBWMA Board meeting) at which it received extensive information and provided ample opportunities for competing proposers to raise questions and levy their criticisms of the process and results. Redwood City’s finance director, who has almost 25 years of experience with the solid waste contracts and operations, directly monitored the entire process at the direction of the Council and spent a substantial amount of time in doing so. There was no information contained in the Grand Jury Report that causes the Council to see a need to reconsider the decisions made at these meetings.

2. In future Request for Proposal processes:

a) "Clearly define and objectively and consistently apply the evaluation criteria,"

Response: The Council believes that the SBWMA did clearly define the evaluation criteria and applied it consistently.

b) "Provide for an appeals process before the final contracts are signed,"

Response: The process used to select the two contractors was an RFP process which normally does not include an appeals process, but the proposers who were not selected had a fair opportunity to object both at the Board level as well as at the Council level. All proposers were provided sufficient opportunities at public meetings held by the SBWMA Board and by member agencies (including Redwood City) to ask questions and voice criticisms of the process and results, and to de facto appeal the Board decisions and recommendations. The process was designed (as approved by the Council) to be transparent, professional and non-political. The Council believes that, despite certain proposers' attempts to politicize the process, the process accomplished the objectives.

c) "Assure the proposers that alternative proposals will be considered,"

Response: The process did provide assurance that alternative proposals would be considered if submitted in compliance with the RFP.

d) "Ensure that representatives from other jurisdictions are participants on the committees, and"

Response: The RFP process did include representatives from member agencies and industry individuals from outside the service area.

e) "Ensure that no one individual chair both committees."

Response: This recommendation will be considered in future contractor selection processes.

3. "Amend the Joint Powers Authority Agreement to include elected officials from member agencies onto the SBWMA Board of Directors."

Response: This suggestion was discussed by the Council in 2005 when the JPA agreement was most recently amended. At that time the Council felt that the arrangement of having senior staff members from each agency sit on the SBWMA Board of Directors well served the public and member agencies interests. The Council believes that this arrangement continues to be appropriate as major policy decisions such as contractor selection and debt issuance must be brought back to the member agency governing bodies for approval. The City's SBWMA Board representative will monitor discussions and activity concerning this recommendation and will keep the Council apprised of any pertinent developments. The Council may elect to revisit this matter in the future should circumstances indicate that reconsideration of the Board structure is warranted. However, the Council is very cautious about the potential politicalization of the Board.

With regard to the Findings and Conclusions contained with the Report we concur with the responses submitted to your office by the SBWMA on pages 1 - 9 of Addendum 1 (Findings and Conclusions).

Given our respect for the Civil Grand Jury process we were deeply disturbed that the Report was leaked prior to its formal distribution and have sent the attached letter to Steve Wagstaffe of the District Attorney's Office requesting that his office vigorously investigate the source of this leak and that the perpetrator thereof be held accountable.

Sincerely,

A handwritten signature in cursive script that reads "Rosanne Foust".

Rosanne Foust
Mayor

Attachments

Cc: City of Redwood City Council Members
Peter Ingram, City Manager
Stan Yamamoto, City Attorney
Kevin McCarthy, Executive Director, SBWMA

Mayor Rosanne S. Foust
Vice Mayor Diane Howard

Council Members
Alicia C. Aguirre
Ian Bain
Jim Hartnett
Jeff Ira
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September 2, 2009

Mr. Steve Wagstaffe
District Attorney's Office
County of San Mateo
400 County Center, 3rd Floor
Redwood City, CA 94063

RE: San Mateo County Civil Grand Jury Report 2009 – SBWMA RFP Processes

Dear Mr. Wagstaffe:

On July 10, 2009 the San Mateo County Civil Grand Jury released a report titled "TRASH TALK: Rethinking Waste the Waste Management RFP Process by the South Bayside Waste Management Authority." The members of the Redwood City Council and I are deeply disturbed that this report, or portions thereof, were apparently leaked prior to the formal release date in what could be interpreted as a deliberate attempt to use the contents of this report to influence policy decisions yet to be made by some governing bodies. We find this very troubling as leaking this report did not provide the South Bayside Management Authority (SBWMA) or any of its member agencies the opportunity to respond to any of the findings and recommendations contained therein. We also see this as perhaps a blatant attempt to politicize the two procurement processes (one for the selection of a solid waste collection company and one to select a firm to operate the Shoreway Recycling and Disposal Center) that were being undertaken by the SBWMA.

On behalf of my colleagues on the Redwood City Council I formally request that your office vigorously investigate this report being leaked with the goal of identifying those responsible so that they can be held accountable for this deplorable behavior.

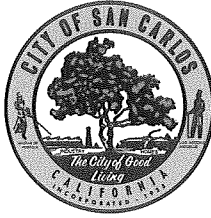
Sincerely,

A handwritten signature in black ink, appearing to read "Rosanne Foust".

Rosanne Foust
Mayor

CC: City of Redwood City Council Members
Peter Ingram, City Manager
Stan Yamamoto, City Attorney
Silvia Vonderlinden, City Clerk
Kevin McCarthy, Executive Director SBWMA

CITY OF SAN CARLOS



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CITY COUNCIL

ROBERT GRASSILLI, MAYOR
RANDY ROYCE, VICE MAYOR
MATTHEW B. GROCOTT
OMAR AHMAD
BRADFORD LEWIS

October 6, 2009

Honorable George A. Miram
Judge of the Superior Court
Hall of Justice
400 County Center; 2nd floor
Redwood City, CA 94063-1655

Re: **Civil Grand Jury Report – SBWMA RFP Process**

Dear Judge Miram:

I am writing to you on behalf of the San Carlos City Council. This will serve as the City of San Carlos' formal response to the July 10, 2009 letter from the Superior Court communicating comments made by the Civil Grand Jury about the SBWMA RFP Process. The City Council has reviewed this letter and has authorized that it be sent at their meeting on September 28, 2009.

The San Carlos City Council and its members have followed the SBWMA RFP Process very closely since its inception in 2005. This includes multiple briefings and reports by the City Staff and members of the SBWMA Staff as well as opportunities to comment on and change the content of these documents before they were issued. I personally attended all 11 of the vendor presentations in response to the SBWMA RFP in Foster City during May 2008.

It is very important to recognize that there were no criticisms of these RFP processes until after the recommendations for the selected companies were announced. This speaks volumes to us about the motivation of the criticisms that have been made about the RFP processes.

With respect to the Recommendations contained with the Report, the San Carlos City Council offers the following responses:

1. **"Meet and reconsider the pending contracts with Norcal and South Bay in light of the information contained in this Grand Jury Report."**

San Carlos Response: The Civil Grand Jury Report does not provide any new information to the City Council. The Council received substantial information about the proposed RFP process before it

started and approved the process before it was adopted by the SBWMA Board of Directors. During the process, the City Council received a number of written reports and held several public City Council meetings on these decisions. This includes:

- A meeting in October 2008 where several hours were spent reviewing both the selection of Norcal – now Recology – as the Solid Waste Collection firm and authorizing the issuance of the Shoreway Facility Bonds after an extensive series of Staff and Expert Reports and Presentations;
- Two Council Meetings on the selection of the Shoreway Operator;
- Two more Council Meetings on the deal points in the Recology Solid Waste Collection Service Agreement and Franchise for San Carlos).

At these meetings the City Council and the public received extensive information about these matters. The meetings also provided ample opportunities for competing proposers to raise questions and levy their criticisms of the process and results. San Carlos's Assistant City Manager, who has over 20 years of experience with solid waste contracts and operations, directly monitored the entire process as a representative of the City and spent a substantial amount of time in doing so. In addition, the City Manager served on the selection committee for the Shoreway Operations Contract. A copy of his 2 page letter on the SBWMA RFP Process is attached for your information. In summary, there is no information contained in the Grand Jury Report that causes the Council to see a need to reconsider the decisions made at these meetings.

2. In future Request for Proposal processes:

a) "Clearly define and objectively and consistently apply the evaluation criteria"

San Carlos Response: The City Council believes that the SBWMA did clearly define the evaluation criteria and applied it consistently.

b) "Provide for an appeals process before the final contracts are signed"

San Carlos Response: The process used to select the two contractors was an RFP process which normally does not include an appeals process, but the proposers who were not selected had a fair opportunity to object both at the SBWMA Board level as well as at the City Council level. All proposers were provided sufficient opportunities at public meetings held by the SBWMA Board and by member agencies (including San Carlos) to ask questions and voice criticisms of the process and results, and to de facto appeal the Board decisions and recommendations. The process was designed (as approved by the City Council) to be transparent, professional and non-political. The City Council believes that, despite certain proposers' attempts to politicize the process, the process accomplished these objectives.

c) "Assure the proposers that alternative proposals will be considered"

San Carlos Response: The process did provide assurance that alternative proposals would be considered if submitted in compliance with the SBWMA RFP process. It's also worth noting here that several alternatives submitted by vendors not recommended by the selection subcommittees were evaluated by the SBWMA Board at the expense of several thousand dollars even though the SBWMA Board was not required to do so.

d) "Ensure that representatives from other jurisdictions are participants on the committees, and"

San Carlos Response: The SBWMA RFP process did include representatives from member agencies as well as industry and agency individuals from outside the SBWMA service area.

e) "Ensure that no one individual chair both committees"

San Carlos Response: This recommendation will be considered in future contractor selection processes by the SBWMA.

3. "Amend the Joint Powers Authority Agreement to include elected officials from member agencies onto the SBWMA Board of Directors."

San Carlos Response: This suggestion has been discussed over the years by the San Carlos City Council on several occasions. In each instance, the Council has reaffirmed its support of the current system of using experienced City Staff Members on this Board. The Council believes that this arrangement continues to be appropriate as major policy decisions such as contractor selection and debt issuance must be brought back to the member agency governing bodies for approval. While the City Council can always bring this topic back for another review, in light of the events surrounding this RFP process, the Council is very cautious about the potential politicalization of the SBWMA Board.

With regard to the Findings and Conclusions contained with the Report we are attaching a series of detailed responses to those items as Addendum 1 of this letter. In addition there are a series of Corrections and Comments to the Report which are shown as Addendum 2 of this letter.

Sincerely,



Bob Grassilli
Mayor

cc: City Council
City Manager
Assistant City Manager
Executive Director, SBWMA

Attachments

- Letter from City Manager Mark Weiss – Civil Grand Jury Report on SBWMA RFP Process
- City of San Carlos Comments – Addendum 1 – Findings and Conclusions – Civil Grand Jury Report on SBWMA RFP Process
- City of San Carlos Comments – Addendum 2 – Corrections and Comments to the Report – Civil Grand Jury Report on SBWMA RFP Process



DATE: Honorable Mayor and Members of the City Council
TO: Mark Weiss, City Manager
FROM: September 28, 2009
SUBJECT: Response to 2008-2009 Civil Grand Jury Report on the South Bayside Waste Management RFP Process

The 2008-2009 Grand Jury issued a report on July 10, 2009 containing “findings and recommendations” regarding the South Bayside Waste Management Authority’s (SBWMA) request for proposal (RFP) process. The SBWMA utilized the referenced process in soliciting and recommending firms for solid waste collection and recycling services. As San Carlos City Manager, I monitored the RFP process, and participated directly in one component of that process as a member of the Shoreway Operations Selection Committee.

As acknowledged within the Grand Jury’s Report, the SBWMA conducted a quantitative and qualitative evaluative process in reviewing qualified candidates for collection and operations services. This was the most open and exhaustive franchising process utilized in the SBWMA’s history and represents a quantum leap forward in the application of good government process. The success of this endeavor is all the more impressive given the industry within which the process was applied. The refuse industry has historically been fraught with allegations of impropriety in the conduct of public affairs.

The SBWMA and draft City of San Carlos responses to the Grand Jury Report are thorough, accurate and appropriate. Following are some additional observations:

- The SBWMA effort is an example of successful regional and multi-city collaboration in the provision of municipal service in a regionally responsible manner;
- SBWMA Board Members approved and signed a Code of Conduct in an effort to ensure organizational and individual objectivity and integrity throughout the RFP process (see attached). Such conduct and standards should be acknowledged and encouraged irrespective of whether elected or appointed officials supervise such endeavors;
- The RFP process was acclaimed as being thorough and objective until such time as specific firms were recommended. Then, and only then, a couple of the firms not selected and proponents for those firms, became critical of the process; and

- The RFP process was conducted by experienced professional staff skilled in the management of such processes in the public domain. That staff included City Managers, Public Works Directors/City Engineers, Finance Directors and professional consultants representing the SBWMA and the 12 participating Agencies. These participants share decades of experience in municipal contracting and implementation and arguably represent the “best and brightest” of such municipal talent on the Peninsula.

This is the fourth refuse franchise selection/renewal process in which I have been personally involved during my career. It has been, by far, the most thorough, inclusive and open process specific to the refuse industry in which I have participated. In my estimation, the SBWMA, its Member Agencies and the participating professional staff members should be commended for their courage, professionalism, dedication and conduct in furthering the concepts of good governance as represented by this effort.

Given the above, it is surprising that the Grand Jury could conclude simply that it had “. . . no confidence in the RFP processes by which the Collections Services Contractor and Shoreway Master Plan Facility Contractor were selected.” While constructive criticism and suggestions are welcome, the Jury’s dismissive conclusion without any acknowledgment of the advances made by the SBWMA begs question as to the review’s objectivity.

The SBWMA has furthered the cause of open, objective and transparent governance with its RFP selection process. Such advances should be recognized, appreciated, refined and encouraged.

Attachment 4
SBWMA Board's Code of Conduct

**SBWMA BOARD CODE OF CONDUCT
FOR THE SBWMA CONTRACTOR SELECTION PROCESS
FOR COLLECTION AND OPERATING SERVICES**

The South Bayside Waste Management Authority ("SBWMA") is a joint powers authority among the cities of Belmont, Burlingame, East Palo Alto, Foster City, Menlo Park, Redwood City, San Carlos, and San Mateo; towns of Atherton and Hillsborough; the West Bay Sanitary Service District; and the County of San Mateo ("Member Agencies"). The SBWMA is planning to request and receive proposals for the collection, processing, of solid waste, recyclable materials, and organic materials within the jurisdiction of the SBWMA and for the operation of the SBWMA's transfer station and recyclerly located in San Carlos, California ("Contractor Selection Process").

The Board Members of the SBWMA are obligated to comply with the Political Reform Act of 1974 ("PRA") and the Brown Act (Government Code §56950 et seq.).

**SBWMA BOARD MEMBER CODE OF CONDUCT
APPLICABLE TO THE CONTRACTOR SELECTION PROCESS**

1. Ex Parte Contacts:

- These are written/verbal contacts outside SBWMA meetings with participants.
- The contacts are with participants in the RFP process for selecting one or more contractors for the Transfer Station and for Collection. It includes their employees and agents. It excludes contacts with them that are arranged by staff.
- The start date is April 1, 2006 when the RFP process is most likely to get started.
- There is no penalty stated, but the ex parte contact is to be disclosed by the Board member at the very next Board meeting.

2. Gifts/Compensation:

- Participants are defined as above.
- Gifts and compensation are given their common meaning.
- Acceptance of such can lead to a censure proceeding brought by the Board.
- The start date is also April 1, 2007.
-

The goal for this policy is to keep the RFP participants at arms length from Board members during the RFP process and avoid anything by way of contacts or gifts that would taint the process. The policy as stated should accomplish this result for the Board.

1. Ex Parte Contacts Prohibited

From April 1, 2007, and prior to the SBWMA Board and Member Agencies selection of contractors or June 30, 2009 whichever comes later, SBWMA Board Members (the Board Members) are prohibited from having any verbal or written communications (ex parte contacts) with any Proposer (defined as any entity or individual involved in making a submittal to the SBWMA in response to the RFP process to select a contractor or contractors for the collection, processing, and transfer of solid waste, recyclable materials and/or organic materials) concerning any matter related to the RFP process or Contractor Selection process, except in the course of a legally noticed meeting of the SBWMA Board, or any subcommittee of the Board, or in conjunction with an ex parte contact arranged by and involving SBWMA staff and/or consultants.

If any such unauthorized ex parte contact occurs, the Board member shall disclose its occurrence at the next meeting of the SBWMA Board that next follows the said ex parte contact.

2. Gift and Compensation Prohibited (Also applicable to SBWMA staff and consultants)

From April 1, 2007, to prior to SBWMA Board and Member Agencies selection of contractors or June 30, 2009 whichever comes later, SBWMA Board Members, are prohibited from accepting any gift of any monetary value, or compensation of any kind (as defined under the California Political Reform Act) from a Proposer (defined above). This prohibition shall also apply to SBWMA staff members and consultants.

Any Board Member who accepts such a gift or compensation may be subject to censure by the SBWMA Board. Any SBWMA staff member who violates this policy may be subject to discipline including termination of services, and any consultant who violates this policy may be subject to termination of services.

C. It is understood that this Code of Conduct is in addition to any other applicable state or local regulations that apply to the conduct of the SBWMA Board.

SAN CARLOS REPOSE - ADDENDUM 1 FINDINGS & CONCLUSIONS

FINDINGS

The 2008-2009 San Mateo County Civil Grand Jury found that:

1. *In the proposal process, the requirement that all proposers use the same operational assumptions to obtain comparable costs was useful to evaluators but does not apply to the actual costs and contracts that the individual member agencies can negotiate.*

Response: (Respondent disagrees with this finding.)

Proposers were not required to use the same operational assumptions. To ensure a comparable analysis of cost proposals and ensure a fair cost evaluation process, proposers were required to base their cost proposals on purchasing new collection trucks and containers. Since the \$50+ million in capital equipment would primarily consist of trucks and containers, allowing proposers to include a myriad of different scenarios for the key capital purchases would certainly have resulted in apples-to-oranges cost proposals that could not be fairly compared against one another. The policy decision to require that cost proposals to include all new vehicles and containers was made in 2006 by the Process and Contracts Committee consisting of several member agencies. The RFP required that the Contractor is held to all operational assumptions and costs included in its proposal. If an agency chooses to deploy used vehicles or equipment, then this would be negotiated by that specific agency. Specifically, Section 5.5 of the RFP, in relevant part:

“New vehicles are required for residential and MFD/Commercial/Member Agency collection services. (This requirement is primarily to ensure that comparable cost proposals are submitted. Member Agencies reserve the right to allow the contractor to provide used collection vehicles.) New or used vehicles may be used for on-call collection services, drop box service, and support vehicles.”

Lastly, it is important to note that drafts of the RFP and contract documents were submitted to the proposers for their review and comment several months prior to the official release of the RFP and none objected to these cost provisions.

2. *The process allowed for alternative proposals, yet they were not required to be considered.*

Response: (Respondent agrees partially with this finding)

The statement is correct but requires that it be framed in the proper context. Section 6.2.5 of the RFP, in part, states: “SBWMA and Member Agencies are not obligated to evaluate or select alternative proposals. Alternative proposals will be considered by the SBWMA and Member Agencies if the SBWMA and Member Agencies conclude, in their sole discretion, that the alternative proposals warrant evaluation and analysis.”

In addition, the RFP explicitly required proposers to state exceptions to the collection agreement attached to the RFP that support any alternative proposal, as follows:

“Each exception or alternative must be presented separately by stating the specific exception or alternative, the suggested changes, if any, to the program or services related to the exception or

alternative, and the reason for the proposed exception or alternative. Proposers may submit suggested changes in the Collection Agreement language related to the exception or alternative, and the specific dollar change in each of the affected cost items, as proposed by the Proposer in response to this RFP, that would take place if the exception or alternative was accepted by the Member Agency. Proposers should note that if exceptions are taken, all required information as set forth above must be submitted. Exceptions taken or alternatives provided, without providing the required information will not be considered.”

Despite a follow-up request from the collection services RFP Evaluation Committee, Allied Waste Services of San Mateo County failed to provide the information required to have its alternative proposal comply with the RFP submittal requirements.

The SBWMA Board determined that Allied’s alternative proposal contemplated a complete abandonment of the competitive RFP process for both the collection contracts and the Shoreway facility operations. Lastly, in light of the fundamental incompatibility between the alternative proposal and the contract process envisioned in the two RFPs, and the lack of any detailed explanation of how the compensation arrangements in the collection contracts would actually operate (despite providing Allied ample opportunity and encouragement to provide this information), the Evaluation Committee could have omitted any reference to the Allied alternative proposal in its report to the Selection Committee. However, the Evaluation Committee did address the alternative proposal, noting that:

- Allied did not provide a cost estimate for the Recycle Bank program.
- Allied had not provided any detail about how the key compensation provisions in the collection contracts would have to be rewritten to accommodate the plan suggested in the alternative proposal.

Following legal review, it was determined that neither the SBWMA nor the Member Agencies had a legal obligation to evaluate the Allied alternative proposal and that the SBWMA Board actually accorded it more consideration than legally required.

3. *As a condition of participation, proposers had to agree not to appeal decisions.*

Response: (Respondent disagrees with this Finding.)

This statement is incorrect. The only conditions on participation by proposers in the RFP process were related to the submittal requirements specified in the RFP that included attending the pre-proposal conference, making a public presentation, facilitating site visits upon request and submitting the required documents. In fact, the RFPs were silent on the issue of an appeal process which is not standard practice for procurements of this type. A survey of 42 other California jurisdictions that issued similar RFPs in recent years revealed that only two had bid protest provisions in their RFP. Again, the RFP was silent on the issue of protesting the process. However, since no binding recommendation would arise from the RFP process, it was clear from the beginning that any proposer choosing to protest the process would have ample opportunity when the SBWMA Board and individual Member Agencies considered the recommendation resulting from the RFP process.

4. *In the evaluation process, the “reasonableness” points were not distinguished from the “competitiveness” points.*

Response: (Respondent disagrees with this Finding.)

This statement is incorrect. The Collection Services RFP specified five criteria that contained 24 distinct and specific sub-criteria, as follows:

- Qualifications and Experience – 7
- Proposal for Collection Services – 10
- Cost Proposal – 3
- Alternative Technical Proposals – none, since no points were specified
- Exceptions – 2 (specific to the number and materiality of exceptions)
- Environmental Enhancements – 2

The Cost Proposal criterion was the only one where the “reasonableness” and “competitiveness” sub-criteria were used. In fact, the cost proposal criterion specified three sub-criteria, as follows: “reasonableness of cost proposals,” “competitiveness of cost proposals,” and “value to member agencies.”

The achievable evaluation points for cost proposals were split equally between reasonableness and competitiveness/value by each Evaluation Committee member.

As it relates to the Facility Operations RFP, this statement is also factually incorrect. The scoring of the cost proposals did, in fact, separately account for reasonableness and competitiveness.

5. *Neither the individual members of the Evaluation Committee nor the individual members of the Selection Committee were required to report how many of the overall points assigned to each criterion were based on “reasonableness” or “competitiveness.”*

Response: (Respondent agrees partially with this Finding.)

This statement is primarily incorrect. As stated above, the Cost Proposal criterion was the only one where the specific “reasonableness” and “competitiveness” sub-criteria were used in the Collection Services RFP. Roughly 90% of the evaluation points were reported by the Committees.

The Evaluation Committee provided the Selection Committee, the SBWMA Board and Member Agencies with information on exactly how many of the overall points were assigned to each criterion, by each evaluator. This information was provided to the San Mateo County Civil Grand Jury.

The following additional information was also provided to the Grand Jury: “...Allied submitted the lowest cost proposal and was awarded the maximum point from each evaluator for [cost proposal] sub-criterion #2 ‘Competitiveness of Cost Proposals,’ however, the proposal lost points based on the ‘Reasonableness’ and ‘Value’ sub-criteria as compared to the other proposers and was ranked second overall in the Cost Proposal criteria behind Norcal.”

As it relates to the Facility Operations RFP, this statement is factually incorrect. The scoring of the proposals did, in fact, separately account for reasonableness and competitiveness.

6. *The South Bayside Waste Management Authority's (SBWMA) consultant reported that Norcal's references in San Jose were not checked.*

Response: (Respondent agrees partially with this Finding.)

This statement is partially correct. R3 Consulting was charged with making the reference checks and despite attempting to contact San Jose representatives in accordance with the reference checks protocol used, they were unable to do so in order to include a reference from San Jose in the analysis. This does not mean that Norcal's experience in San Jose was not discussed and included in the evaluation of proposals. In fact, one of the primary attributes in selecting R3 Consulting to assist the SBWMA and Member Agencies with the RFP review process was the firm's direct experience with two recent RFP processes and contract negotiations in San Jose. This information was also provided to the Civil Grand Jury. In fact, letters from San Jose staff were also shared with the Grand Jury that documented the City's appreciation for all Norcal had done for the community.

The implication that Norcal's experience in San Jose was overlooked is without merit. The five members of the Evaluation Committee have a combined 120 years of recent experience in this industry in the Bay Area and large roll-outs of service are highly publicized, especially as noted, those that have problems. In addition, the knowledge and experience of this group, specific to the situation with Norcal in San Jose, was shared with the Evaluation Committee.

7. *South Bay Recycling (SBR) was the only proposer that did not provide for on-site management in its original cost proposal.*

Response: (Respondent disagrees with this Finding.)

This statement is incorrect. SBR proposed that the executive and financial management of the Shoreway facility would be directed from their headquarters and that all operations management functions would be completed by local Shoreway-based managers. While the type of management structure proposed by SBR is not unusual in municipal proposals, it was deemed inappropriate for the Shoreway operation and was rejected by SBWMA and the Evaluation Subcommittee. The SBWMA and the Evaluation Subcommittee directed SBR to add the cost of local executive management to their cost proposal.

8. *SBR has asked the SBWMA to cover \$1.2 million for mistakes and omissions in its original proposal.*

Response: (Respondent disagrees with this Finding.)

This statement is incorrect. While SBR did submit a revised cost proposal in late 2008 following requests from the Evaluation Committee for additional information, some of the cost changes were SBWMA directed. The Evaluation Committee was concerned by the increases and the limited explanation and justification offered by the company for some of the revised cost proposal items. After several rounds of questions between the SBWMA Staff and SBR, the SBWMA Staff received sufficient detail from the company to understand the reasons for company's proposed increase in costs. The cost changes fell into three categories: A.) operating costs changes that were directed by the SBWMA, B.) cost changes that were the results of proposer error or oversight, and C.) cost changes that were not discussed or approved by the SBWMA. The cost changes that were "directed by the SBWMA" are changes that the SBWMA Staff and the Evaluation Committee felt are essential to providing the proper level of service and management required for this service area.

The March 18, 2009 Evaluation Committee report further stated that, "If SBR is selected as the facility operator, the final decision for SBR to operate the Shoreway facility should be predicated upon successful negotiation of a MRF sorting system equal to or less than the cost proposed by the company." The SBWMA Staff conducted negotiations with SBR for a final agreement that was recommended by the SBWMA Board to the Member Agencies for approval.

9. *(Listed as a second #8 in the Report) It appears that the SBWMA did not give sufficient consideration to SBR's notices of violation in the operation of its Southern California operations.*

Response: (Respondent disagrees with this Finding.)

The notices were investigated, analyzed, evaluated, and the company's initial and final scoring were downgraded due to these notices. Further, SBWMA staff continues to monitor monthly inspection activities at the Community Recycling facility per the direction of the SBWMA Board.

10. *The Grand Jury could not confirm that the proposals were adequately evaluated or reflected a thorough analysis of the proposal content and contractor background.*

Response: (Respondent disagrees with this Finding.)

The SBWMA and Member Agencies went to great lengths to ensure that open, transparent, competitive and effective procurement processes were pursued.

SBWMA Staff shared with the Grand Jury that during the proposal evaluation process, all of the proposers were interviewed, numerous site visits conducted by the respective RFPs Evaluation Committee members; a thorough litigation history review and analysis was conducted by outside counsel; and, each proposer provided public presentations in support of its proposal, which were also made available to all interested parties on the SBWMA website. After an exhaustive proposals review and evaluation process by both the Evaluation and Selection Committees, recommendations were presented to the SBWMA Board as to the selection of the future collection services and facility operations providers, and the recommendations to select Norcal and SBR were then presented to the Member Agencies for consideration.

11. *SBWMA Executive Director chaired three of the four Evaluation and Selection Committees until removed from the Shoreway Facility Contract Selection Committee by the Chairman of the SBWMA Board.*

Response: (Respondent agrees partially with this Finding.)

While this statement is accurate, it is misleading in that the Grand Jury report does not disclose what the role of the Executive Director was as chairman. As chairman, the Executive Director's role was primarily an administrative one that consisted of setting committee meetings, setting agenda, etc. All evaluations of the proposals were done independently by the individual committee members separate from the committee meetings. The evaluations and scoring were done blindly by each committee member without any influence by the Chairman. The SBWMA has no reason to believe the Executive Director exerted undue influence on the process, and the Grand Jury Report did not identify any specific instances of concern in this regard.

12. *The SBWMA Executive Director solicited emails from active proposers, asking them to attest to the integrity of the RFP process.*

Response: (Respondent agrees with this Finding.)

This statement is correct.

13. *No elected officials are on SBWMA's Board of Directors.*

Response: (Respondent agrees partially with this Finding.)

This statement is correct and reflects the desire of a 2/3 majority of the SBWMA's Member Agencies. Any decision to amend the JPA regarding the constitution of Board members is not a decision for the Board, but for the elected officials of the Member Agencies pursuant to Sec. 17.1 of the JPA agreement. There has never been a positive response from the Member Agencies to change the Board composition. In 2005, several of the powers of the Board were moved to the Member Agencies (such as approving any Franchise agreement for Operation of the Transfer Station, or for SBWMA bonding and financing decisions).

The JPA was also amended in 2005 to provide for specific City Manager or other entity staff members to be designated for the Board to both provide for specific qualified staff members and also to have a consistent group of staff members attending as Board members. The Member Agencies had to vote on the Amended JPA Agreement, and did so in 2005, approving it by a 2/3 vote. In doing so, the Member Agency governing bodies (e.g., city councils) rejected the notion of elected officials being on the Board as a minority of the JPA Members had requested.

Subsequently the issue has been raised by the Board of Supervisors to the Member Agencies and by one of the other JPA Members, and received no support. From the standpoint of the SBWMA Board, it is not its decision but one for the governing bodies of the Members of the JPA and it will of necessity go along with what those bodies decide under the terms of the JPA to do.

CONCLUSIONS

The 2008-2009 San Mateo County Civil Grand Jury concludes that the SBWMA did not follow its stated goal to “conduct the RFP process with integrity and transparency.” The Grand Jury has no opinion on which contractors should have been selected. However, the Grand Jury has no confidence in the RFP processes by which the Collections Services Contractor and the Shoreway Master Plan Facility Contractor were selected.

The Grand Jury further concludes that:

- 1. The structure of the Evaluation and Selection Committees lent itself to the appearance of undue influence.*
- 2. Whether or not elected officials from the member agencies are on the SBWMA Board of Directors, these elected officials are ultimately responsible for all actions taken by the SBWMA.*
- 3. After four years of preparation, staff time, and consultant fees, the RFP process was poorly executed.*

Response – Conclusions #1 & #3:

Conclusions 1 and 3 are unfounded, and the City joins the SBWMA Board in strongly disagreeing with the statements. The SBWMA and Member Agencies went to great lengths to ensure that an open, transparent, competitive and effective procurement processes were pursued.

The SBWMA Board and its Member Agencies initiated the Collection Services and Facility Operations Services request for proposals (RFP) process in July 2005 to plan future programs and services, and select future contractors. The decision to proceed with the RFP process was made in concurrence by all 12 Member Agencies of the SBWMA. One of the primary reasons was the fact that none of the existing contracts for Collection Services and Facility Operations Services had ever been subject to a competitive procurement/review process. Another reason was the declining performance of the incumbent collection/operator contractor.

It should be noted that the contract with the SBWMA to operate the Shoreway facility and the twelve individual contracts with the Member Agencies to provide Solid Waste Collection Services represent perhaps the largest contracts of their nature in the country. As such, this process has been closely monitored and highly anticipated by many in the Solid Waste industry.

Feedback received from many Member Agencies and other jurisdictions praised the SBWMA RFP process as being one of the most thorough they had ever seen. A separate letter to that point from City Manager Mark Weiss is attached to this response.

Most importantly, the RFP process was lauded by the proposers and other stakeholders. It was only after the release of the selection results that a few of the companies who were not selected began questioning the process and the results. This is an unfortunate outcome of many public solid waste procurement processes – and one that is not unique to the SBWMA RFP process. It is perhaps not totally unexpected in light of the significance of some of these contracts and the efforts and costs expended by the proposing companies.

The SBWMA’S RFP process entailed a four-year period for planning, soliciting, evaluating and selecting the future contractors to ensure that the Member Agencies’ staff and elected officials, potential proposers, other stakeholders and the public had multiple opportunities for review and input.

The goal of the SBWMA Board and Member Agencies was to select the best companies through a detailed and open evaluation process of the responses that could provide the desired services in the most cost-effective and environmentally superior manner. The City strongly believes that this goal was achieved with the two companies selected.

To ensure that the RFP process for both services was conducted with integrity and transparency, input was solicited from elected officials, potential proposers, consultants and other stakeholders on draft copies of the RFP documents. The final RFPs issued incorporated this valuable input, and each was a comprehensive document that clearly and concisely detailed the rights reserved by the SBWMA Board and Member Agencies, and the future companies, how the evaluations would proceed, the make-up of the evaluation teams, the specific evaluation criteria and distribution of evaluation points, and specifically how items such as exceptions or alternative proposals were to be submitted and the implications for not complying with these requirements.

The RFPs were issued in November 2007 after a thorough review and approval process that included a Governing Body resolution from each SBWMA Member Agency. A pre-proposal meeting was attended by all proposers. Several necessary addenda were subsequently issued providing clarifications and improvements to the processes. Four responses to the Collection Services RFP and seven to the Facility Operations RFP were received in March 2008. During the proposal evaluation process, all of the proposers were interviewed, numerous site visits conducted by the respective RFPs Evaluation Committee members. A thorough litigation history review and analysis was conducted by outside counsel. Each proposer provided public presentations in support of their proposals.

The RFPs prescribed that an Evaluation Committee and Selection Committee for the Collection Services procurement, and a separate Evaluation Committee and Selection Committee for the Facility Operations Services would be created to review and evaluate the proposals. The SBWMA Board purposefully created two separate committees for each RFP comprised of different individuals to ensure a checks-and-balance approach to selecting the next service providers. Once again, it is important to note that these documents were vetted over several months and were ultimately approved via resolution by each Governing Body of the SBWMA Member Agencies.

The Evaluation Committees' role was to conduct a detailed evaluation of the proposals, rank proposals, and provide comparative descriptions of the proposals. The Selection Committees were tasked with reviewing the proposals and the evaluation summary information presented by their respective Evaluation Committee, requesting additional data and analysis as necessary, and developing their recommendations for consideration by the SBWMA Board. All four committees were provided with clear guidelines on how to proceed with the evaluations and scoring. These guidelines were based on the detailed criteria and maximum scoring that was prescribed in the RFP documents for the proposers to ensure that the evaluations were independent, thorough and fair.

The SBWMA Board was tasked with reviewing the Selection Committees' separate recommendations for Collection Services and Facility Operations Services and either approving the recommended companies or proceeding with different options. Once approved by the SBWMA Board, there was a final opportunity to review the RFP process and the SBWMA Board's recommendations when they were presented to each Member Agencies' governing body for consideration.

In addition, the City of San Mateo retained an independent consultant to review the Collection Services RFP evaluations of two proposals to ensure they were done appropriately. The independent consultant's findings concurred with the recommendation for the future service provider and stated that the evaluations were appropriately executed and fair. The report specifically stated the following:

- "The selection process provided multiple opportunities for each of the Proposers to provide details on their proposal.
- The Evaluation Committee members rated the proposals independently, not in a group setting.
- The Evaluation Committee did not come to agreement before the scores were tallied.
- When the scores were compared, each of the evaluators had ranked each of the Proposers in the same order.
- The Cost Proposals were fairly evaluated. The evaluation of cost not only evaluated the base fee, but also the reasonableness of the amount.
- The process for the evaluation of the proposals was fair.
- The evaluation of the proposals was fair."

In conclusion, this exhaustive four-year process yielded two top-rated companies that met the goals and objectives of the RFP process as established by the SBWMA Board and its Member Agencies in a manner that was fair and with no undue influence.

Response – Conclusion #2:

The City joins the SBWMA Board in strongly concurring with this conclusion. The SBWMA JPA agreement defers all significant decisions affecting ratepayers to the governing bodies of the Member Agencies, e.g. setting collection rates, authorizing franchises and approving the Shoreway operation.

SAN CARLOS RESPONSE - ADDENDUM 2

CORRECTIONS AND COMMENTS TO THE REPORT

The following are corrections and comments regarding factual matters and comments in the Grand Jury Report contained in the "Background" section.

Comment #1

Page 1 – “Background” section

The quoted text from the Collection Services RFP after the statement “*The stated goals of the SBWMA during the RFP process were*” is incorrect. The bolded and underlined phrase below is not included in the RFP.

"Integrity, Competition in Selection Process, and Industry-Standard Contract Terms

- *Conduct the RFP process with integrity and transparency*
- *Maintain the association of Member Agencies*
- *Select contractors that meet Member Agency and SBWMA needs*
- *Enter into contracts with fair terms and conditions*
- *Set high performance standards and use incentives/ disincentives to achieve standards related to:*
 - *Collection quality*
 - *Customer service*
 - *Diversion from landfill disposal*
 - ***Deliver high quality cost-effective services to customers***
- *Stimulate competition among proposing companies"*

Comment #2

In addition, this quote reflects section 1.3.1 in its entirety which is found in section 1.3 “SBWMA Goals and Objectives.” However, this is not all of the goals and objectives listed in the RFP as the Grand Jury report states. The Grand Jury report omits subsection 1.3.2, as follows:

1.3.2 Cost-Effective Programs

- Cost
 - Provide cost-effective operations
 - Minimize fiscal impact on ratepayers
- Service
 - Emphasize innovative, responsive management
 - Ensure consistent, reliable and high quality service
- Conserve and protect resources/assets
 - Minimize impacts on air, water, and natural resources
 - Encourage highest and best use of recycled materials
 - Handle as much material locally as possible
 - Meet or exceed AB 939’s 50% diversion mandate
 - Protect the SBWMA’s investment in the Shoreway facility
- Community benefits
 - Continue programs and services that work well
 - Demonstrate proactive waste reduction/recycling philosophy
 - Include involvement of local recyclers/reuse
 - Support local market development where possible

- Educate the public
- Educate and involve the community
- Integrate collection services with SBWMA facilities
- Flexibility of collection methods

Comment #3

Page 2 – “Background” section

The Grand Jury report states:

“The SBWMA was first formed in 1982 as the South Bayside Transfer Station (SBTSA) Joint Powers Authority (JPA). Its purpose was to consolidate local collection services and address the need for coordinated municipal efforts to manage solid waste disposal, ensuring that its 12 member agencies (Atherton, Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, Redwood City, San Carlos, San Mateo, West Bay Sanitation District, and unincorporated portions of San Mateo County) would collectively have lower collection and solid waste management costs. The SBWMA has delivered the lowest garbage rates in the Bay Area. A key consideration for managing costs was the construction of the transfer station in San Carlos in 1984, which is the only such facility in central San Mateo County. Browning Ferris Industries (BFI) built and operated the facility from its inception until the SBTSA purchased the transfer station and adjacent Material Recycling Facility (MRF) from BFI in 1999.”

The statement above does not accurately capture all of the history of the organization. The SBTSA (South Bayside Transfer Station Authority) was formed in 1982 by the same agencies that are a party to the South Bayside Waste Management Authority JPA. Its initial purpose was “to provide an adequate flow of solid waste to the San Carlos Transfer Station to assure the then owner/operator BFI-San Mateo that it would recover its investment in the facility. The SBTSA JPA actually expired by its own terms as a JPA in 2002. The SBWMA was formed in Dec. 9, 1999 by the former SBTSA member agencies, “ for the joint ownership, financing, administration, review, monitoring, enforcement, and reporting of Solid Waste, Recyclable Material, and Plant Material Collection activities in the Service Area.” The SBWMA was formed concurrently with the acquisition by the SBWMA in March 2000 of the Transfer Station and Recyclery properties from BFI-San Mateo. The SBWMA JPA Agreement was amended by a First Amendment and Restatement in 2005.

As stated above, the SBWMA issued bonds and purchased the Transfer Station and the Recyclery properties from BFI-San Mateo in March 2000. At the time of sale, BFI obtained an Agreement from the SBWMA to operate the facilities without a Request for Proposals (RFP) process, dated March 1, 2000. The initial term of that agreement was to December. 31, 2006, and was extended, again without an RFP process, to December 31, 2010. At the same time, effective March 2000, BFI obtained new Franchise Agreements individually with the 12 Member Agencies, without an RFP process, and those Franchise agreements were also extended by the Member Agencies, without an RFP, to December 31, 2010.

Comment #4

Page 2 – “Background” section

The Grand Jury report states:

“Since the inception of the JPA, one company, Allied, previously known as BFI, operated both the collection services and the disposal services of solid waste. The current SBWMA contract with Allied is due to expire on January 1, 2011.”

The second sentence is incorrect in two ways. First, it implies that Allied has contracts with the SBWMA for both collection services and “the disposal services of solid waste” (assuming the latter refers to the company’s contract with the SBWMA to operate the Shoreway Facility). However, the company does not and never has had a contract with the SBWMA for collection services. San Carlos and each individual Member Agency contracts directly with Allied for these services.

In addition, the current contracts are set to expire on December 31, 2010.

Comment #5

Page 2 – “*Selecting the Collection Services Contract*” section

The Grand Jury report states:

“1. The proposals for collection services were submitted to the SBWMA for review and recommendation. After the SBWMA recommendation was made, each member agency was to negotiate an individual contract with the recommended provider, depending on the agency’s individual needs.”

The second sentence of this statement is incorrect. The RFP prescribed that after evaluation of the proposals and approval of a recommendation by the SBWMA Board, each Member Agency would then be provided the opportunity to consider the recommendation. The RFP specifically addresses this in section 1.2.1, Member Agency Roles and Commitment to the Process, as follows:

“The SBWMA JPA does not bind Member Agencies to follow the recommendations of the SBWMA Board regarding selection of collection contractors.”

Comment #6

Page 2 – “*Selecting the Collection Services Contract*” section

The Grand Jury report states:

“2. There would be a one-year truing up period...”

This statement is incorrect. There is no “truing up period.” The RFP and Collection Agreement prescribe a process by which contractors proposed costs are adjusted based on indices and equitable adjustments are made based on changes in customer services levels from the 2008 data included in the RFP to more current data to when the new contract will take effect.

Comment #7

Page 2 – “*Selecting the Collection Services Contract*” section

The Grand Jury report states:

“3. All proposers were required, when preparing their proposals, to use the same operational assumptions for key items such as residential cart sizes, use of new collection vehicles for core services, and use of new commercial collection containers. This requirement was for the purpose of obtaining comparable cost proposals from proposers. Member agencies retain the right to establish cart sizes for residents, use of used equipment, etc., as part of the final negotiated scope of services and costs with their selected contractor.”

While this statement is generally correct, it is misleading. The RFP did not require proposers to use the same operational assumptions. Each proposer was to apply its own operational assumptions and business practices in order to allow each company’s own unique competitive advantage to shine.

The RFP required proposers to describe their own unique operational assumptions including: “routing strategy,” “productivity assumptions,” and “collection methodology” (source: Section 5.5 of the Collection Services RFP).

Specifically, the RFP did require proposers to base their costs on purchase of new collection trucks and containers, as set forth in section 5.5 of the RFP. However the number and type of both collection vehicles and carts was not prescribed in the RFP, as follows:

“Number of and description of the collection vehicles to be utilized (e.g. vehicle description, manufacturer and model number, cost, capacity, age, lease or ownership arrangements, etc.). **New vehicles are required for residential and MFD/Commercial/Member Agency collection services.** (This requirement is primarily to ensure that comparable cost proposals are submitted. Member Agencies reserve the right to allow the contractor to provide used collection vehicles.) **New or used vehicles may be used for on-call collection services, drop box service, and support vehicles.**

Manufacturer’s specifications of containers to be utilized. **New Carts shall be provided for SFD and new or used containers (i.e., carts, bins and drop boxes) may be provided for MFD/Commercial/Member Agency customers.** It is anticipated that the current franchised hauler will negotiate with the selected proposer(s) to transfer ownership of all MFD commercial containers if the current hauler is not selected. However, proposers must base proposals on the assumption that new carts, bins and drop boxes will be purchased. (This requirement is primarily to ensure that comparable cost proposals are submitted. Member Agencies reserve the right to allow the contractor to provide used MFD commercial containers/bins.)”

Comment #8

Page 2 – “*Selecting the Collection Services Contract*” section

The Grand Jury report states:

“4. The proposers will be held to their bid assumptions during the contract. For example, if a company states that the price of gas is \$ 2.50 a gallon in its bid, and the price of gas goes up, the base contractual obligation will not change. Fluctuations are limited to some CPI-type index. Presumably, the company will buy, or has bought, oil futures that secure the price.”

The first sentence is partially correct. This procurement was not a “bid” but a competitive procurement for technical services, which is very different from a standard Public Works “bid” procurement. While proposers will be held to the costs submitted with the proposal to provide the services required, the assumptions that they used in many cases are irrelevant. For example, whether a company assumed diesel would be \$3.00 a gallon in 2011 or \$10.00 a gallon, is irrelevant. What is relevant is how much money they would spend in 2011 on diesel fuel and this number was what the company would have to live with. And, this is the number that would be increased annually by a specific fuel index published by the federal government (not “some CPI-type index” as the Grand Jury report states).

Comment #9

Page 3 – “*Selecting the Collection Services Contract*” section

The Grand Jury report states:

“5. For collective bargaining agreement (CBA) employees, labor and benefit costs would be adjusted to reflect the CBA pay and benefit rates for the Rate Year during the term of the CBA contracts in effect at the start of the Agreement. Both a worker-retention and prevailing-wage clause would be in the contract, but no labor-peace clause was included.”

The “contract” or franchise agreement for collection services that will be executed between agencies and the contractor has no bearing on labor peace. The agreement with labor is between the company and the union, not the agency.

Comment #10

Page 3 – “*Selecting the Collection Services Contract*” section

The Grand Jury report states:

“6. In order to submit a proposal, the competitors had to agree not to appeal the process.”

This statement is not incorrect. The only conditions on participation by proposers in the RFP process were related to the submittal requirements specified in the RFP that included attending the pre-proposal conference, making a public presentation, facilitating site visits upon request, and submitting the required documents. In fact, the RFP was silent on the issue of an appeal process which is standard practice for procurements of this type. A survey of 44 other California jurisdictions that issued similar RFPs in recent years revealed that only two had bid protest provisions in their RFP. Again, the SBWMA RFP was silent on the issue of protesting the process. However, since no binding recommendation would arise from the RFP process, it was clear from the beginning that any proposer choosing to protest the process would have ample opportunity when the individual member agencies considered the recommendation resulting from the RFP process.

Comment #11

Page 3 – “*Selecting the Collection Services Contract*” section

The Grand Jury report states:

“7. Alternate proposals were allowed, but the SBWMA was not required to consider them.”

The statement is correct but requires that it be framed in the proper context. Section 6.2.5 of the RFP, in part, states: “SBWMA and Member Agencies are not obligated to evaluate or select alternative proposals. Alternative proposals will be considered by the SBWMA and Member Agencies if the SBWMA and Member Agencies conclude, in their sole discretion, that the alternative proposals warrant evaluation and analysis.”

In addition, the RFP explicitly required proposers to state exceptions to the collection agreement attached to the RFP that support any alternative proposal, as follows:

“Each exception or alternative must be presented separately by stating the specific exception or alternative, the suggested changes, if any, to the program or services related to the exception or alternative, and the reason for the proposed exception or alternative. Proposers may submit suggested changes in the Collection Agreement language related to the exception or alternative, and the specific dollar change in each of the affected cost items, as proposed by the Proposer in response to this RFP, that would take place if the exception or alternative was accepted by the Member Agency. Proposers should note that if exceptions are taken, all required information as set forth above must be submitted. Exceptions taken or alternatives provided, without providing the required information will not be considered.”

Despite a follow-up request from the collection services RFP Evaluation Committee, Allied Waste Services of San Mateo County failed to provide the information required to have its alternative proposal comply with the RFP submittal requirements.

The Evaluation Committee determined that Allied’s alternative proposal contemplated a complete abandonment of the competitive procurement process initiated by the SBWMA for both the collection contracts and the Shoreway facility operations. Lastly, in light of the fundamental incompatibility between the alternative proposal and the contract process envisioned in the two RFPs, and the lack of any detailed explanation of how the compensation arrangements in the collection contracts would actually operate (despite providing Allied ample opportunity and encouragement to provide this information), the Evaluation Committee could have omitted any reference to the Allied alternative proposal in its report to the Selection Committee. However, the Evaluation Committee did address the alternative proposal, noting that:

- Allied did not provide a cost estimate for the Recycle Bank program.
- Allied had not provided any detail about how the key compensation provisions in the collection contracts would have to be rewritten to accommodate the plan suggested in the alternative proposal.

Following legal review, it was determined that the SBWMA Board and its Member Agencies had no legal obligation to evaluate the Allied alternative proposal and that the SBWMA Board and its Member Agencies actually accorded it more consideration than legally required.

Comment #12

Page 3 – “*Selecting the Collection Services Contract*” section

The Grand Jury report states:

“8. The new contract was designed for ease of oversight.”

This statement is incorrect. The new collection services franchise agreement(s) are written to be comprehensive with a high degree of clarity to ensure minimal opportunity for disputes. In addition, the new services are more complex than the current services, the reporting requirements are significantly expanded and improved, as are the public education and outreach requirements, liquidated damages, and the performance incentives and disincentives provisions are also new. In fact, the new franchise agreements are significantly more complex and oversight or management of these agreements will be more arduous than the current agreements which are lacking in numerous respects.

In addition, the relationship of one company providing the collection services and another operating the facility where the materials are to be delivered, also increases the complexity of the agreements and management requirements.

One area of the franchise agreements that is significantly improved with regard to “oversight,” is in the area of compensation paid to the contractor. The current cost-plus form of compensation that applies to the agreements with Allied is time-consuming and costly, and the results are unpredictable with regard to the amount of compensation due to Allied annually, that in turn results in uncertainty in rates. The new compensation adjustments are highly formulaic and will be done in house by the SBWMA Staff, thus saving approximately \$200,000 in consultant fees annually. In addition, the fixed price compensation model which the new contracts are based on will result in predictable rate increases from year to year.

Comment #13

Page 3 – “*Selecting the Collection Services Contract*” section

The Grand Jury report States:

“9. In the current SBWMA contract, Allied collects the garbage and also operates the Shoreway Facility where the garbage is sorted and processed. In the new contract, the operation of the collection and processing will be split between two separate companies.”

The first sentence is incorrect in several ways. First, the SBWMA does not have a contract with Allied to collect garbage or any other material. The City of San Carlos and the SBWMA Member Agencies each have individual contracts with Allied to provide collection services of solid waste, recyclable materials and plant materials. Second, while Allied does have a contract with the SBWMA to operate the Shoreway facility, the garbage delivered to this facility is not “sorted and processed.” The source separated recyclable materials delivered to Shoreway are sorted into the constituent commodities and processed for sale in the marketplace. Third, the City of San Carlos, the SBWMA Board and the SBWMA Member Agencies all place a high value on diversion from landfill and consistent emphasis is placed on waste reduction and recycling and educating the public on the importance of these issues. The SBWMA Board and its Member Agencies are committed to meeting and exceeding the State mandated solid waste diversion goals prescribed in the California Integrated Waste Management Act of 1989 (AB 939) and the RFP processes while addressing the need for “garbage” collection, were clearly not constrained to this limited, yet necessary, service.

Comment #14

Page 3 – “*Selecting the Collection Services Contract*” section

On page 3, the Grand Jury report states:

10. The collection company can increase its profit by lowering costs and meeting a specified diversion percentage. The facility operator can increase its profit by increasing revenues from recyclables and is dependent on the collector to bring recyclables to the facility in good condition.

The first sentence may prove to be correct; however, the two separate components of it need to be put in context. The idea that the company can “increase its profit by lowering costs” is certainly correct. However, the franchise agreement is extremely comprehensive in scope and the penalties are severe for non-compliance in providing the required high level of services or for lapses in service.

The idea that the company can increase its profit by “meeting a specified diversion percentage” is correct; however, this statement requires clarification. The incentive payment for increasing diversion is related to an increase in overall diversion. Decreases in both commercial sector and residential sector diversion will result in disincentive payments from contractor to the agencies. Once again, the future system that will be put in place emphasizes the commitment from the City of San Carlos, the SBWMA Board and its Member Agencies and the value these communities place on diversion of solid waste from landfill, reduction in greenhouse gas emissions, and the true environmental leadership that is being pursued.

Comment #15

Page 3 – “*Evaluation and Selection Committees*” section

The Grand Jury report states:

“The SBWMA divided the judging process for the Collections Services Contract into two committees: an Evaluation Committee and a Selection Committee. The Evaluation Committee analyzed and scored the proposals. The Selection Committee considered the recommendations of the Evaluation Committee and selected a Collection Services Contractor.”

The first sentence implies that the SBWMA Board unilaterally “divided the judging process” into two committees and the second and third sentences wholly discounted the process and actual roles and responsibilities of the Evaluation and Selection Committees. The RFP clearly prescribed how and by whom the proposals would be evaluated and the roles and responsibilities of both committees in subsections 6.1-3 of the RFP, as follows:

“6.1.1 Evaluation and Selection Process

An Evaluation Team and Selection Committee will be assembled by the SBWMA and Member Agencies. The Evaluation Team, which may include industry consultants, other industry experts, and Member Agency and SBWMA staff, will conduct a detailed evaluation of the proposals, rank proposals, and provide comparative descriptions of the proposals. The SBWMA Executive Director, with assistance from Evaluation Team as needed, will present the evaluation results to the Selection Committee.

The Selection Committee will likely include: SBWMA staff, SBWMA Board Members, and high-level Member Agency staff. The Selection Committee will review the proposals and the evaluation summary information presented by the Evaluation Team, request additional data and analysis as necessary, and develop its recommendation for consideration by the SBWMA Board for collection services for the North and South Districts.

The SBWMA Board will review the Selection Committee’s recommendation and approve that recommendation or form an alternative recommendation. The SBWMA Board recommendation and a final evaluation report will then be presented to the Member Agencies for approval. Ultimately, each Member Agency will select the collection Contractor to serve its community.

Member Agencies will have the right to act in the best interest of its' residents and businesses, including the right to select a proposal that, in its opinion, best meets the community's needs even if the proposal is not recommended by the Selection Committee and/or the SBWMA Board.

6.1.2 Evaluation Team

As described above, the Evaluation Team will facilitate the evaluation process by providing technical support and an evaluation of proposals to the Selection Committee. The Evaluation Team will perform the following tasks:

- Review all proposals received for compliance
- Prepare a comparative summary of proposals
- Rate proposals using a quantitative method based on the criteria presented in Section 6.2 (or other criteria as directed by the Selection Committee)
- Analyze financial capabilities of companies
- Conduct reference checks
- Evaluate reasonableness and competitiveness of cost proposals
- Request clarification information from the proposer
- Attend and participate in the proposer interviews and site visits
- Rank proposals using the established evaluation criteria
- Provide further assistance to the SBWMA Executive Director and Selection Committee as requested

6.1.3 Selection Committee

The role of the Selection Committee is anticipated to involve:

- Reviewing all proposals
- Reviewing, adjusting (if appropriate), and approving the proposal rankings presented by the Evaluation Team
- Requesting clarification information of the proposer
- Attending and participating in the proposer interviews and site visits
- Recommending award of the collection contracts for the North and South Districts
- Presenting their recommendation and evaluation report to the SBWMA Board for consideration

During the process, proposer will be required to attend interviews, allow site visits, and give presentations to the SBWMA and/or Member Agencies.”

Comment #16

Page 4 – “*Evaluation and Selection Committees*” section

The Grand Jury report states:

“The Evaluation Committee was chaired by the SBWMA Executive Director and also included the SBWMA Recycling Programs Manager, the SBWMA Finance Manager, a representative from a nearby regional waste management district, and two consultants, who were partners in the same consulting firm.”

This statement is correct. However, it is important to note that the SBWMA Finance Manager's participation in Evaluation Team activities was primarily limited to review and analysis of the cost proposals. In addition, the five primary members of the Evaluation Team have a combined 120 years of recent Bay Area experience in this industry. Lastly, the make-up of both the Evaluation Team and Selection Committee was unanimously approved by the SBWMA Board.

Comment #17

Page 4 – “How the Proposal was Scored” section

The Grand Jury report states:

“The Evaluation Committee evaluated and numerically scored the companies' proposals. The ratings from the evaluators were compiled and discussed during several Evaluation Committee meetings to determine a preliminary ranking of the proposals based solely on the evaluation criteria.”

The first sentence is correct while the second is not. The Evaluation Team did thoroughly evaluate the proposals, conduct interviews and site visits, and numerically scored the proposals based on the criteria and specific sub-criteria prescribed in section 6.2 of the RFP (below). However, the evaluators did not meet and compile and discuss the ratings. The ratings were done independently and compiled by one member of the Evaluation Team. No other members of the Evaluation Team were privy to how the other members scored the proposals. This confidentiality in scoring proposals was maintained to ensure a fair process. While the Evaluation Team did meet to discuss the merits and shortcomings of the proposals and numerous other aspects of the evaluation (including sharing their own relevant industry related experiences with these and other companies and procurements), the individual specific scoring was not discussed.

6.2 Evaluation Criteria

Proposals will be numerically scored and ranked using the criteria and weighting described in this section. The scores assigned will reflect the extent to which criteria is fulfilled relative to other proposals. Furthermore, scores will reflect the benefits to the entire SBWMA service area or service District as a whole, rather than individual benefits to each Member Agency. The evaluation criteria and maximum score that can be achieved for each criterion is presented in Table 6-1.

**Table 6-1
Evaluation Criteria and Maximum Evaluation Score**

Criteria	Maximum Evaluation Score
Responsiveness to RFP	Pass/fail
Company qualifications and experience	150
Proposal for collection services (Includes both Core and Optional Services)	150
Cost proposal (Includes both Core and Optional Services)	200
Alternative technical proposals	<i>Score, if any, to be determined (SBWMA and Member Agencies are not obligated to evaluate alternative proposals)</i>
Other matters of concern to the SBWMA Board and Member Agencies' Council/Boards	<i>To be determined if additional criteria are added</i>
Number and Materiality of Exceptions	50
Environmental Enhancements	50
Total Maximum Score	600

Member Agencies reserve the right to act in the best interest of its' residents and businesses, including the right to reject a proposal that is given the highest quantitative scoring in the evaluation process if the proposal is not in the best interest of residents and businesses.

The potential factors that may be considered by the Evaluation Team when developing the score for each criterion are presented below.

6.2.1 Responsiveness (Pass/Fail)

Proposer must be fully compliant with the RFP and procurement procedures as demonstrated by submittal of all elements required by Sections 3 and 5; full completion of all cost proposal forms required in Section 5.6; compliance with process guidelines presented in Section 4; and adherence to the code of conduct signed by the proposer.

6.2.2 Company's Qualifications and Experience (150 points)

1. Collection Experience. Demonstrated experience of company providing the requested or similar services to other jurisdictions. If the proposer is a joint venture, demonstrated experience of parties working together.
2. Service Initiation Experience. Demonstrated experience of company's ability to implement new collection services and new franchise agreements and obligations that are similar to the SBWMA's services in comparable sized communities.
3. Management and Customer Service Systems. Demonstrated capabilities of the company's existing management and customer service systems' abilities to track and monitor contract compliance, quality of collection service, and call center responsiveness and to report data required by the Collection Agreement. In the event the company proposes use of a new or modified system, the extent to which such system has the potential to meet the SBWMA and Member Agency needs and contract requirements will be evaluated.

4. Key Personnel Qualifications. Extent and relevance of the qualifications and experience of key personnel proposed for the transition team and on-going management of the SBWMA collection operations.
5. Past Performance Record. Review of company's history with litigation and regulatory action (e.g., nature of past and pending civil, legal, regulatory, and criminal actions; history and nature of payments of liquidated damages); regulatory compliance related to equipment and facilities including compliance with land use permits, storm water discharge permits, state highway requirements, etc.).
6. Financial Stability. Financial strength and ability of company to acquire equipment and provide financial assurance of performance based on review of its audited financial statements and its proposed financing plan and the relationship of the SBWMA contract to the company's total annual revenues.
7. Jurisdiction Satisfaction. Satisfaction of company's references with the services received in the past 10 years (including, but not limited to, implementation, customer service, call center, billing, payment of fees, reporting, and the handling of contractual issues).

6.2.3 Proposal for Collection Services (150 points)

1. Collection Approach – Reasonableness and reliability of the proposed collection methods (e.g., technology, equipment, and containers); reasonableness of productivity and operating assumptions (i.e., number of routes, route drivers, route hours, stops per route, and other operating statistics), if applicable; and reasonableness of assumptions.
2. Diversion Ability – The nature, reliability, and innovation of proposed diversion programs and potential of such programs to divert solid waste from landfill disposal.
3. Public Education and Promotion Program – Compatibility of the proposed education program, staffing level, and program ideas with the needs of the SBWMA and Member Agencies and the requirements of the Collection Agreement; and, the quality of public education samples relative to other proposers.
4. Customer Service – Compatibility of customer service approach, staffing levels, and training programs and capabilities of the call center and customer service software system with the needs of the SBWMA and Member Agencies and the requirements of the Collection Agreement.
5. Billing System – Compatibility of billing approach, procedures for handling customers, and coordination plans with Member Agencies who perform some or all of the billing activities.
6. Facilities for Equipment, Maintenance, and Administration. Compatibility of plan for providing the facilities needed for equipment storage and parking, maintenance, and administration. Level of assurance provided, if any, with regard to site acquisition and timely development of necessary facilities.
7. Implementation Plan - Reasonableness of implementation schedule and ability to meet deadlines (e.g., reasonableness of equipment procurement schedules, implementation staffing levels, new corporation or maintenance yard development, and contingency plans).

8. Potential Collection Impacts. Compatibility of plans for vehicle compliance with State of California Air Resources Board rules; ability to respond to issues identified during the environmental review, compliance, and permitting process associated with the development of new facilities (if any are to be developed), and hauling impacts (in terms of total annual miles traveled compared to others) related to distance between vehicle maintenance and parking facilities and Shoreway facility.
9. Additional Member Agency Services. Reasonableness and reliability of proposed collection methods, technology, equipment, and containers; reasonableness of productivity and operating assumptions (i.e., number of routes, route drivers, route hours, stops per route, and other operating statistics) for:
 - a. San Mateo County service area
 - b. Atherton
 - c. Hillsborough
 - d. Redwood City
 - e. Burlingame
 - f. Foster City
 - g. City of San Mateo
10. Other Proposed Services. Compatibility of other services proposed by company as per Section 3.15 of this RFP.

6.2.4 Cost Proposal (200 points)

1. Reasonableness of Cost Proposals. Logical relationship between proposed costs and operational assumptions for the base cost proposal and the cost proposal for additional Member Agency services.
2. Competitiveness of Cost Proposals. Cost competitiveness relative to other proposals.
3. Value to Member Agencies. The level of value provided given the relative cost for that service.

6.2.5 Alternative Technical Proposals (Maximum Score, if any, to be determined)

SBWMA and Member Agencies are not obligated to evaluate or select alternative proposals. Alternative proposals will be considered by the SBWMA and Member Agencies if the SBWMA and Member Agencies conclude, in their sole discretion, that the alternative proposals warrant evaluation and analysis. Such evaluation will consider the reasonableness and reliability of proposed collection methods, technology, equipment, and containers; and the reasonableness of productivity and operating assumptions (i.e., number of routes, route drivers, route hours, stops per route, and other operating statistics).

At the SBWMA's and/or Member Agencies' option, the reasonableness and competitiveness of one or more alternative proposal(s) may be evaluated.

6.2.6 Number and Materiality of Exceptions (50 points)

The number, nature and materiality of exceptions to the model Collection Agreement (Attachment 2) will be taken into account in evaluating proposals.

6.2.7 Environmental Enhancements (50 points)

Proposals that include Environmental Enhancements including, but not limited to those specified in Section 3.16.3 of this RFP, may be eligible to receive additional evaluation points. Proposed Environmental Enhancements that address the following will be eligible to receive points:

1. Mitigating Environmental Impacts. Reducing or minimizing the negative environmental impacts associated with providing collection services (e.g., air and water impacts, depletion of natural resources).
2. Recycled Materials. Ensuring the highest and best use of recycled materials and the highest feasible quantity of recycled content is achieved.”

Comment #18

Page 4 – “How the Proposal was Scored” section
The Grand Jury report states:

“Each evaluation criterion was divided into two parts: a “competitive” part and a “reasonableness” part. In determining the “reasonableness” points of a proposer’s cost proposal, equipment selection, labor, and operating assumptions were to be “considered against industry standards” and against other proposals. The point allocation process was described by Grand Jury witnesses as “highly theoretical and subjective,” with a potential for a limitless amount of “theoretical points” being combined with “actual competitive points” by the individual Evaluation Committee members, up to the maximum score in each Evaluation Criteria category. Neither the individual members of the Evaluation Committee nor the Selection Committee were required to report how many overall points assigned to each criterion were based on “reasonableness” or “competitiveness.””

This entire statement is incorrect. While the terms “reasonableness” and “competitiveness” were specifically prescribed in five (5) of the twenty-four (24) sub-criteria, it is incorrect to state that “Each evaluation criteria was divided into two parts: a “competitive” part and a “reasonableness” part.”

In addition, it is incorrect to state that the scoring process was “highly theoretical” or that there was a “potential for a limitless amount of theoretical points being combined with actual competitive points...” The five primary criteria contained numerous sub-criteria and points were achieved or deducted based on the company’s strengths or weaknesses for each relative to the other proposals. There was no “theoretical” scoring.

Comment #19

Page 4 – “How the Proposal was Scored” section
The Grand Jury report states:

“The Grand Jury received a paper titled “Solid Waste Management-A Guide for Competitive Contracting for Collection” written by a SBWMA consultant and was told that it was the guideline for the RFP.”

In 1996, JM Sloan co-authored "Solid Waste Management – A Guide for Competitive Contracting for Collection". The paper was published as a part of a policy series of the Reason Foundation – Privatization Center. While JM Sloan, of Sloan Vazquez, LLC, is a consultant to SBWMA, Mr. Sloan's consultation was specifically limited to the Facility Operations RFP, and not the Collection Services RFP. While Mr. Sloan supports the general principles set forth in the paper, he did not submit the paper to the SBWMA, nor was he asked to provide input to the development of the Collection RFP.

To emphasize, the paper was neither offered by SBWMA consultants, nor used by the SBWMA, the SBWMA Board or the SBWMA Subcommittee that drafted the RFP.

Comment #20

Page 5 – "How the Proposal was Scored" section

The Grand Jury report states:

"Members of the Evaluation Committee independently analyzed and scored the proposals. The results were jointly discussed at four separate meetings with the Selection Committee. The Selection Committee unanimously approved the Evaluation Committee's recommendation to select Norcal."

These statements are misleading and need to be framed in context. The roles and responsibilities of both the Evaluation and Selection Committees were significantly more involved than conveyed.

Comment #21

Page 5 – "How the Proposal was Scored" section

The Grand Jury report states:

"On August 28, 2008, Norcal was chosen by the SBWMA to be awarded the Collection Services Contract for the ten-year period from 2011 to 2021."

This statement is incorrect. While the SBWMA Board of Directors did unanimously pass a motion to approve the Selection Committee recommendation to select Norcal as the future collection services provider, the Board did not recommend awarding the contract, but in fact recommended presenting this selection to the City of San Carlos and the individual governing bodies of the respective Member Agencies for consideration of awarding a contract.

Comment #22

Page 5 – "Cost Evaluation" section

The Grand Jury report states:

"Cost for services was worth 33% of the total evaluation, more than any other criterion."

This statement is correct. Two of the five criterion were worth 25%, two were worth 8.3% and one 33%. It was determined during development of the RFP that while cost is certainly an important factor, it was not the most important factor which is why roughly one-third of all achievable evaluation points were allocated to cost. This procurement was never intended to be a Public Works "bid" procurement based solely on cost due to the technical and customer service nature of the scope of work required but rather a contract for services that is based on several important and weighted criteria - including cost.

Comment #23

Page 5 – “Cost Evaluation” section

The Grand Jury report states:

“The SBWMA and consultants entered the cost information provided by each of the four proposers into a Comprehensive Cost Proposal Summary. That summary was used to compare and evaluate their “competitiveness.” The final proposed costs for servicing the entire SBWMA jurisdiction are summarized in item four of Table 1.”

The first sentence is correct, while the second and third are not. The Cost Proposal Summary was used as a tool to evaluate the cost proposals with respect to all three Cost Proposal sub-criteria, including Reasonableness of Cost Proposals, Competitiveness of Cost Proposals, and Value to Member Agencies. At no point was the summary solely used, as all of the Evaluation Team members thoroughly vetted all aspects of all cost forms submitted by the proposers. The third sentence is incorrect since “Table 1” in the report reflects scores achieved and does not provide information on cost (*“the final proposed costs for servicing the entire SBWMA jurisdiction”*).

Comment #24

Page 5 – “Cost Evaluation” section

The Grand Jury report states:

“SBWMA gave Allied fewer points based on the Evaluation Committee’s subjective ‘reasonableness’ determination.”

This statement while correct; however, needs to be framed in proper context. All proposers were potentially subtracted points with regard to the reasonableness of their cost proposals relative to the other companies. The reason this is highlighted with regard to Allied is likely because Allied submitted the lowest cost of the four companies. However, once again, it should be pointed out that this was not a Public Works “bid” procurement but rather a contract for services with several detailed and important selection criteria being considered. In addition, several aspects of Allied’s proposal contributed to points reduction with regard to the reasonableness of the costs as they were omitted or not plausibly documented, including: start-up fuel, other direct and other vehicle capital costs.

What is also important to note is that Allied was awarded the most points for competitiveness of its cost proposal since the company submitted the lowest cost proposal.

Comment #25

Page 5 – “Cost Evaluation” section

The Grand Jury report states:

“The SBWMA was informed by Allied that its costs were lower because, as a large company, it had the potential advantage of hedging fuel costs.”

This statement is not true. At no time during the proposals evaluation process did Allied disclose any information on its local or corporate fuel purchasing practices. In addition, it is not clear that there is any benefit to the City of San Carlos and SBWMA’s Member Agencies regarding whether or not Allied *“had the potential advantage of hedging fuel costs.”* It is hard to imagine that a company the size of Allied would omit such a significant attribute, if indeed there is one, in submitting its proposal.

Comment #26

Page 5 – “Cost Evaluation” section

The Grand Jury report states:

“Also, due to Allied’s size, the company that supplies new bins had agreed to roll out the bins to residents free of charge.”

This statement is incorrect. During the discovery question and answer process in evaluating proposals, Allied was asked by the SBWMA Staff about where the cost to assemble and distribute bins was located in the cost forms submitted, and the company responded by stating that: “The assembly and delivery cost is included in our base cost per container, located on Form #4.” (Allied response #34, letter dated 04/15/08).

Comment #27

Page 6 – “Cost Evaluation” section

The Grand Jury report states:

“Additionally, personnel and equipment were already in place because they were the present operators.”

While this statement is correct, it is irrelevant to the RFP process. While the incumbent inherently has competitive and cost advantages over the other proposers, it would not be prudent to allow these considerations to be included if a fair and impartial procurement was the goal.

Comment #28

Page 7 - “Environmental Enhancements & Other Considerations” section

Footnote number 4 states:

“No mention was made of an opt-in proprietary program called Recyclebank, implemented successfully in Delaware and Philadelphia and awarded by the United Nations, that would supply Recyclebank’s dollars to incent household recycling; <http://www.bulq.com/1/80048?un-program-spotlights-recycle-bank>”

The information submitted by Allied pertaining to its RecycleBank program was not compliant with the RFP. Awarding or subtracting points for an alternative program that was not submitted in compliance with the RFP requirements would have compromised the fundamental due diligence of ensuring a fairly managed competitive procurement.

Comment #29

Page 7 – “SBWMA’s Due Diligence Process” section

The Grand Jury report states:

“The Grand Jury asked the SBWMA Board members who were on the Selection Committee if they were aware of Norcal’s previous, well-publicized history in the City of San Jose (San Jose) and San Bernardino County. SBWMA reported that Norcal’s problematic history was discussed. However, many of the SBWMA Board members mentioned they had no knowledge of these discussions. During a Menlo Park City Council meeting, the SBWMA consultant, who was tasked to verify the competitors’ references, publicly testified that he phoned San Jose to confirm Norcal’s recommendations, but he never followed-up.”

During interviews, the Grand Jury learned that the SBWMA consultant worked in a consulting firm that helped create the RFP for waste management collection services in 2000 for San Jose and their subsequent RFPs after Norcal's problems were revealed. This consultant and his partner were on the SBWMA Evaluation Committee.”

All proposers were required to submit detailed information about contract issues and litigation in their proposals, as well as additional information requested during the evaluation process. This included contract issues and litigation related to Norcal's contracts in San Jose and San Bernardino County. All of this information was taken into careful consideration during the evaluation and selection process.

Two members of the Evaluation Team had firsthand knowledge of Norcal's and Green Waste Recovery's (one of the partners in BEST) operational performance and contract compliance in the City of San Jose. This was shared and discussed, and further taken into consideration during the evaluation and selection process.

In fact, both principals of R3 consulting (Ric Hutchinson and Richard Tagore-Irwin) were key members on the primary consultant teams that worked on San Jose's last two RFPs for collection services in 2000 and 2006. The scope of their prior work for San Jose included RFP development, evaluation of proposals, facilitation of proposals scoring, and final contract negotiation and program implementation. This experience in San Jose was one of the key attributes that set the R3 consultant team apart from the others that responded to the SBWMA's competitive procurement request for qualifications for RFP consultant services.

Upon release of the recommendation to select Norcal as the next service provider, one of the proposing companies asserted that: “Over the course of the contract [between Norcal and San Jose] these problems exacerbated to a level that caused the City of San Jose to not offer an automatic extension of the contract to Norcal and put there [their – San Jose] collection and recycling services out to bid.”

To which, the SBWMA responded with the following:

“This assertion is not true given the following information:

- Norcal held separate contracts with the City of San Jose for collection of recycling and garbage, and collection of yard trimmings and street sweeping.
- Norcal did in fact receive an automatic extension offer for yard trimmings/street sweeping on December 21, 2005 (refer to **Exhibit D** – letter from San Jose City Manager to Norcal).
- Norcal did not receive an automatic extension offer for recycling and garbage collection service on December 21, 2005, due to Section 2.02 of the collection agreement that conditioned an automatic extension based upon meeting certain diversion requirements (i.e., processing of collected recyclables at the materials recovery facility (MRF) (refer to **Exhibit E** – letter from San Jose City Manager).

- Lastly, a letter from San Jose staff was issued to Norcal on October 17, 2005 (refer to Exhibit F) which invited Norcal to make a written proposal to the City of San Jose for consideration regarding the potential extension of the agreement for recycling and garbage collection and conveying that the City's rationale for not providing an extension offer was due to issues related to not meeting diversion requirements at the processing facility (owned and operated by California Waste Solutions),..."

Comment #30

Page 7 – "SBWMA's Due Diligence Process" section

The Grand Jury report states:

"The 2004-2005 Santa Clara County Civil Grand Jury Report stated, That the [San Jose] Mayor's June 26, 2000 recommendation of Norcal to the Council describes Norcal's history and serious legal problems. The history also discusses San Bernardino County's lawsuit against Norcal alleging bribery, fraud, and unjust enrichment. An 18-month jail sentence for a Norcal employee, who admitted taking bribes and a \$6.5 million settlement payment by Norcal to San Bernardino County were also discussed. The 2008-2009 San Mateo County Civil Grand Jury could not determine if the Selection Committee were aware of these issues or explored them or other issues in any depth. Further, there is no evidence that the SBWMA did a diligent search of the other proposers that might have influenced the selection."

Regarding the last sentence, the SBWMA's outside counsel performed a thorough litigation review and the results of this review and follow-up research was shared with the Selection Committee. This information was provided to the Grand Jury.

Comment #31

Page 12 – "SBWMA's Due Diligence Process" section

The Grand Jury report states:

"The Grand Jury learned that SBR planned to run the Shoreway Facility as a 'satellite' operation from its headquarters in Los Angeles. At what point the SBWMA discovered this fact is not clear to the Grand Jury. SBR expects to receive additional funds annually from SBWMA because of its "miscalculations and omissions." The Grand Jury has learned, subsequent to SBR's selection as Shoreway Operations Contractor, that it renegotiated, on May 19, 2009, to decrease its recycling revenue guarantee to \$6.75 million. However, SBWMA is still in deliberations with SBR and has not established a final amount to operate the Shoreway Facility."

SBR proposed that the executive and financial management of Shoreway would be directed from their headquarters and that all operations management functions would be completed by local Shoreway-based managers. While the type of management structure proposed by SBR is not unusual in municipal proposals, it was deemed inappropriate for the Shoreway operation and was rejected by the SBWMA Staff and Selection Committee. The SBWMA Staff and Selection Committee directed SBR to add the cost of local executive management to their cost proposal.

Comment #32

Page 12 – “SBWMA’s Due Diligence Process” section

The Grand Jury report states:

“On March 29, 2009, HBC wrote a letter to the SBWMA contesting its basis for the selection of SBR. (see Attachment 1)”

The referenced letter was written by a competitor/proposer that was not recommended to receive the contract. The letter contained no new information, and nothing that had not been made public in the Evaluation and Selection Committee reports. Each of the competitor’s points had already been fully investigated, analyzed, evaluated and were already reflected in the scoring of the proposals. The SBWMA Board prepared and transmitted a full response to the competitor/proposer’s letter.

Comment #33

Page 12 – “SBWMA’s Due Diligence Process” section

The Grand Jury report states:

“Additionally, the Grand Jury learned from different sources that there is concern about ongoing problems with Community Recycling, one of the two SBR partners. The Local Enforcement Agency for Los Angeles has issued forty-two outstanding Notices of Violations to Community Recycling Sun Valley Recycling and Transfer operations. Twenty-six of the violations concern permitting. Community Recycling is operating without the correct permit. The other sixteen violations are for vector, bird and animal control; training; hazardous, liquid, or special waste containment; scavenging; traffic control; cleaning; reporting; and load checking. In addition, on February 26, 2009, during a SBWMA Board meeting, a member of the Teamsters Union distributed a letter from Teamster’s Local 396 of Southern California. The letter stated the union had ‘major labor problems’ and ‘horrible working conditions’ with Community Recycling. SBR claims it has good union relationships.”

Each of the points listed in this paragraph were fully investigated, analyzed, evaluated, and reflected in the scoring of the proposals. All of the findings of the Evaluation Committee related to these issues were discussed by the Selection Committee, presented to the SBWMA Board, and discussed in open public meetings.

Comment #34

Page 12 – “SBWMA’s Management Conduct” section

The Grand Jury report states:

“Allied was one of the proposers that submitted for the contract to haul garbage and run the Shoreway Facility. The decision to recommend either HBC or SBR to operate the Shoreway Facility in August 2008 meant that Allied’s bid to operate the Shoreway Facility was rejected. Shortly after its bid was rejected, Allied submitted an alternative proposal to the SBWMA that addressed the ever-increasing cost proposed by the SBWMA to build the new Shoreway Facility. The request to consider this alternate proposal for building the MRF was denied by the SBWMA, due to what the SBWMA had described as ‘non-compliance with the RFP requirements.’ The denial prompted Allied to contact the press and city council members for a hearing.”

It should be noted that Allied Waste's retrofit proposal dated August 26, 2008 was submitted outside of the RFP process, and was released to the news media prior to the SBWMA Board's receipt of the document.

The August, 2008 retrofit proposal was thoroughly evaluated by the SBWMA and its consultant, Sloan Vazquez, LLC and the results of that review were presented to the SBWMA Board. The Consultant's prepared analysis demonstrated that the retrofit plan included many shortcomings including the fact that while it required lower capital cost, it would add over \$35 million in additional operating costs over the 10-year term of the contract. An analysis of Allied's pro forma costs did not include items such as profit, interest and depreciation. In addition, the plan did not address life-cycle costs and seismic concerns, costs for upgrading the existing MRF building to comply with new universal building codes and ADA requirements, among others. Lastly, the plan disregarded the product quality standard or residue standards set by the SBWMA in the RFP, resulting in a risk of lower commodity revenue.

In public meetings, the SBWMA Board concluded that Allied's retrofit plan did not merit abandonment of the RFP process, including implementation of the Shoreway Master Plan.

"With this email, the copy of a newspaper article about Allied (see Attachment 2) was also sent to the proposers. The newspaper article contained controversial information about Allied, as admitted to by staff in a SBWMA meeting on August 28, 2008. Allied's lawyer attempted to elicit an apology from the executive at a SBWMA Board meeting, but the apology was denied on the grounds that it was not legally necessary."

This matter has been legally settled with Allied, pursuant to a confidential written settlement that resolves use of plant material delivered to Newby Island by the SBWMA Board.

Comment #35

Page 13 – "SBWMA's Management Conduct" section

The Grand Jury report states:

"With this email, the copy of a newspaper article about Allied (see Attachment 2) was also sent to the proposers. The newspaper article contained controversial information about Allied, as admitted to by staff in a SBWMA meeting on August 28, 2008. Allied's lawyer attempted to elicit an apology from the executive at a SBWMA Board meeting, but the apology was denied on the grounds that it was not legally necessary."

This matter has been legally settled with Allied, pursuant to a confidential written settlement agreement that resolves the use of plant material delivered to Newby Island by the SBWMA Board.

Comment #36

Page 14 – "SBWMA Hires External Consultant" section

The Grand Jury report states:

"The consultant's analysis was based primarily on interviews with the committee members, not on written documents. He found that the RFP evaluators submitted combined scores, which did not distinguish the point allocation between what were "competitiveness" points and what were 'reasonableness' points in the RFP scoring process."

This statement is incorrect with regards to the Collection Services RFP. The SBWMA Board did not hire an external consultant. The City of San Mateo retained an independent consultant to review the Collection Services RFP evaluations of two proposals to ensure they were done appropriately.

The independent consultant's findings concurred with the recommendation for the future service provider and stated that the evaluations were appropriately executed and fair. The report specifically stated the following:

- "The selection process provided multiple opportunities for each of the Proposers to provide details on their proposal.
- The Evaluation Committee members rated the proposals independently, not in a group setting.
- The Evaluation Committee did not come to agreement before the scores were tallied.
- When the scores were compared, each of the evaluators had ranked each of the Proposers in the same order.
- The Cost Proposals were fairly evaluated. The evaluation of cost not only evaluated the base fee, but also the reasonableness of the amount.
- The process for the evaluation of the proposals was fair.
- The evaluation of the proposals was fair."

As it relates to the Facility Operations RFP, this statement is also factually incorrect. No consultant interviewed the evaluators. The scoring of the proposals did, in fact, separately account for reasonableness and competitiveness.

Comment #37

Page 14 – "Governance Structure of the SBWMA" section

The Grand Jury report states:

"When a restated JPA was presented to the Board of Supervisors in late 2005, it deferred approval of the new JPA until it could learn the answers to questions that had been raised by other members. One concern was the City Council of Belmont's suggestion that the membership of the SBWMA Governing Board should permit elected officials to serve on the Governing Board. SBWMA responded that the JPA governance benefited from the technical expertise of staff and that although the SBWMA Board had considered the possibility of adding elected members to its Governing Board, it had decided to 'leave the SBWMA board membership the way it has been since the organization's inception'."

This statement is not correct. Any decision to amend the JPA regarding the constitution of Board members is not a decision for the SBWMA Board, but for the elected officials of the Member Entities (Member Agencies) pursuant to Sec. 17.1 of the JPA agreement. There has never been a positive response from the Member Entities to change the Board composition. In 2005, several of the powers of the Board were moved to the Member Entities (such as approving any Franchise agreement for Operation of the Transfer Station, or for SBWMA bonding and financing decisions).

The JPA was amended then to provide for City Manager or other entity Department Head or high level staff members to be designated to serve on the Board to both provide for specific qualified staff members and also to have a consistent group of high level, highly qualified staff members participating as Board members.

The Member Entities had to vote on the Amended JPA Agreement, and did so in 2005, approving it by a 2/3 vote. In doing so, the Member Entity governing bodies (e.g., city councils) rejected the notion of elected officials being on the Board.

Subsequently the issue has been raised by the members of the Board of Supervisors (past and present) to the Member entities and by one of the other JPA Members. From the standpoint of the SBWMA Board, it is not its decision but one for the governing bodies of the Members of the JPA. The City of San Carlos concurs with this view.

Comment #38

Page 15 – “*Governance Structure of the SBWMA*” section

The Grand Jury report states:

“However, city council members from different member agencies within the SBWMA jurisdiction contacted the Grand Jury during the course of this investigation and informed the Grand Jury that it was their goal to get elected officials onto the SBWMA Board. These council members testified that they would be actively pursuing such a goal and have wanted to be on the SBWMA Board for a number of years.”

It is worth noting here that elected officials from SBWMA Member Agencies have contacted the SBWMA Board on this matter on both sides of this question (favoring no change to the JPA and advocating for a change). For example, at one meeting the SBWMA Board received a resolution from the Foster City Council indicating that all 5 members of that City Council were opposed to a change in the Governance Structure of the SBWMA and had voted against the proposal at a public meeting of that governing body. While the Civil Grand Jury may have heard from a few Member Agency elected officials on one side of this issue, it is misleading to suggest that this, by itself, represents sufficient support for a change to the JPA provisions in this area. These may be the same minority of elected officials from the same jurisdictions who have already failed to sway 2/3 of the JPA Member Agencies to support an amendment that would put elected officials on the JPA Board. Nothing that the Board has done has prevented these individuals from pursuing an amendment of the JPA agreement. We question why this issue is made a part of a report on the SBWMA RFP process since it is not related to the RFP process to select firms to provide Solid Waste Collection and Shoreway Operations services to the SBWMA and its member agencies.

Comment #39

Page 15 – “*Investigation*” section

The Grand Jury report states:

“The 2008-2009 San Mateo County Civil Grand Jury interviewed South Bayside Waste Management Authority (SBWMA) Board members, staff members, Requests For Proposal competitors, city council members, consultants, and attorneys.”

This statement is inaccurate. During the SBWMA Board review of the accuracy and truthfulness of the statements contained in the Civil Grand Jury report, the attorneys that provide legal advice and services for the SBWMA were contacted. None of these individuals was interviewed by the Civil Grand Jury.



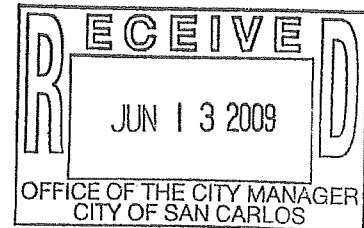
Superior Court of San Mateo County

Hall of Justice and Records
400 County Center
Redwood City, CA 94063-1655

John C. Fitton
Court Executive Officer
Clerk & Jury Commissioner

(650) 599-1711
FAX (650) 363-4698

July 10, 2009



City Council
City of San Carlos
P. O. Box 3009
San Carlos, CA 94070-1309

Re: TrashTalk: Rethinking the Waste Management RFP Process by the South Bayside Waste Management Authority Report

Dear Councilmembers:

The 2008-2009 Grand Jury filed a report on July 10, 2009 which contains findings and recommendations pertaining to your agency. Your agency must submit comments, within 90 days, to the Hon. George A. Miram. Your agency's response is due no later than October 8, 2009. Please note that the response should indicate that it was approved by your governing body at a public meeting.

For all findings, your responding agency shall indicate one of the following:

1. The respondent agrees with the finding.
2. The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

Additionally, as to each Grand Jury recommendation, your responding agency shall report one of the following actions:

1. The recommendation has been implemented, with a summary regarding the implemented action.
2. The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
3. The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
4. The recommendation will not be implemented because it is not warranted or reasonable, with an explanation therefore.

Please submit your responses in all of the following ways:

1. Responses to be placed on file with the Clerk of the Court by the Court Executive Office.
 - Prepare original on your agency's letterhead, indicate the date of the public meeting that your governing body approved the response address and mail to Judge Miram.

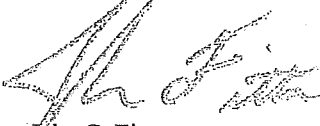
Hon. George A. Miram
Judge of the Superior Court
Hall of Justice
400 County Center; 2nd Floor
Redwood City, CA 94063-1655.

2. Responses to be placed at the Grand Jury website.
 - Copy response and send by e-mail to: grandjury@sanmateocourt.org. (Insert agency name if it is not indicated at the top of your response.)
3. Responses to be placed with the clerk of your agency.
 - File a copy of the response directly with the clerk of your agency. Do not send this copy to the Court.

For up to 45 days after the end of the term, the foreperson and the foreperson's designees are available to clarify the recommendations of the report. To reach the foreperson, please call the Grand Jury Clerk at (650) 599-1711.

If you have any questions regarding these procedures, please do not hesitate to contact Brenda B. Carlson, Chief Deputy County Counsel, at (650) 363-4760.

Very truly yours,



John C. Fitton
Court Executive Officer

JCF:ck
Enclosure

cc: Hon. George A. Miram
Brenda B. Carlson

✓ Information Copy: City Manager



Issue | Background | Findings | Conclusions | Recommendations | Responses | Attachments

TRASHTALK: Rethinking the Waste Management RFP Process by the South Bayside Waste Management Authority

Issue

Did the South Bayside Waste Management Authority follow its stated goal to “conduct the RFP process with integrity and transparency” for the Collection Services Contractor and the Facility Operations Contractor?

Background

South Bayside Waste Management Authority’s Request For Proposal Goals

In July 2005, five years before the contract with Allied Waste (Allied) was due to expire, the South Bayside Waste Management Authority (SBWMA) initiated two Requests For Proposals (RFP). The RFP process involved a four-year period for planning, soliciting and evaluating proposals, and selecting and negotiating with the selected contractors, and a one and one half year implementation period leading to commencement of services on or before January 1, 2011.

The stated goals of the SBWMA during the RFP process were:

- “Integrity, Competition in Selection Process, and Industry-Standard Contract Terms
- Conduct the RFP process with integrity and transparency
 - Maintain the association of Member Agencies
 - Select contractors that meet Member Agency and SBWMA needs
 - Enter into contracts with fair terms and conditions
 - Set high performance standards and use incentives/disincentives to achieve standards related to:
 - Collection quality
 - Customer service
 - Diversion from landfill disposal
 - Deliver high quality cost-effective services to customers
 - Stimulate competition among proposing companies”

The South Bayside Waste Management Authority

The SBWMA was first formed in 1982 as the South Bayside Transfer Station (SBTSA) Joint Powers Authority (JPA). Its purpose was to consolidate local collection services and address the need for coordinated municipal efforts to manage solid waste disposal, ensuring that its 12 member agencies (Atherton, Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, Redwood City, San Carlos, San Mateo, West Bay Sanitation District, and unincorporated portions of San Mateo County) would collectively have lower collection and

solid waste management costs. The SBWMA has delivered the lowest garbage rates in the Bay Area. A key consideration for managing costs was the construction of the transfer station in San Carlos in 1984, which is the only such facility in central San Mateo County. Browning Ferris Industries (BFI) built and operated the facility from its inception until the SBTSA purchased the transfer station and adjacent Material Recycling Facility (MRF) from BFI in 1999.

Since the inception of the JPA, one company, Allied, previously known as BFI, operated both the collection services and the disposal services of solid waste. The current SBWMA contract with Allied is due to expire on January 1, 2011. In anticipation of the contract's expiration, the SBWMA decided to initiate an RFP process for collections services and facility operations for the next ten years to:

1. Introduce a single-stream recycling system to increase the use of recyclables and divert garbage from the landfills and
2. Execute the new Shoreway Master Plan Facility (Shoreway Facility), which includes a transfer station, MRF, and Environmental Educational Center; and

The SBWMA has stated that the Collection Services Contract will be one of the largest in the United States.

Selecting the Collection Services Contractor

1. The proposals for collection services were submitted to the SBWMA for review and recommendation. After the SBWMA recommendation was made, each member agency was to negotiate an individual contract with the recommended provider, depending on the agency's individual needs.
2. There would be a one-year truing up period, after which "the adjustment to costs is objectively based on CPI-type indices. The only other adjustment, besides the annual index based adjustments, to a proposer's cost is related to service level changes for the Collection Agreement. Since the RFP stated that certain assumptions must be used by all proposers, there are two cost adjustments, one for 2011 and another in 2013, for changes in service levels from the RFP data to actual data [e.g., the number of single family accounts, commercial bin lifts and drop box pulls, requiring the driver to get out of the truck]. The process to adjust for service level changes is also objectively prescribed in the Agreement. No adjustments to costs to reflect changes in service levels shall be made after the change made in 2013, when setting compensation for 2013 and beyond."
3. All proposers were required, when preparing their proposals, to use the same operational assumptions for key items such as residential cart sizes, use of new collection vehicles for core services, and use of new commercial collection containers. This requirement was for the purpose of obtaining comparable cost proposals from proposers. Member agencies retain the right to establish cart sizes for residents, use of used equipment, etc., as part of the final negotiated scope of services and costs with their selected contractor.
4. The proposers will be held to their bid assumptions during the contract. For example, if a company states that the price of gas is \$ 2.50 a gallon in its bid, and the price of gas goes up, the base contractual obligation will not change. Fluctuations are limited to some CPI-

type index. Presumably, the company will buy, or has bought, oil futures that secure the price.

5. For collective bargaining agreement (CBA) employees, labor and benefit costs would be adjusted to reflect the CBA pay and benefit rates for the Rate Year during the term of the CBA contracts in effect at the start of the Agreement. Both a worker-retention and prevailing-wage clause would be in the contract, but no labor-peace clause was included.
6. In order to submit a proposal, the competitors had to agree not to appeal the process.
7. Alternate proposals were allowed, but the SBWMA was not required to consider them.
8. The new contract was designed for ease of oversight.
9. In the current SBWMA contract, Allied collects the garbage and also operates the Shoreway Facility where the garbage is sorted and processed. In the new contract, the operation of the collection and processing will be split between two separate companies.
10. The collection company can increase its profit by lowering cost and meeting a specified diversion percentage. The facility operator can increase its profit by increasing revenues from recyclables and is dependent on the collector to bring recyclables to the facility in good condition.

The Evaluation Process For Selecting A Collection Services Contractor

On November 1, 2007, the SBWMA released the Collection Services Contract RFP to select the contractor to serve the SBWMA service area. By the March 11, 2008 deadline for submission of proposals, the SBWMA received four proposals from companies qualified to provide the collection services described in the RFP.

The four competitors for the Collection Services Contract were:

1. Allied Waste Services of San Mateo County (Allied)
2. Bayside Environmental Services & Transfer (BEST), a joint venture of Peninsula Sanitary Group, South San Francisco Scavenger Company, Green Waste Recovery and Zanker Road Resource Management
3. Norcal Waste Systems of San Mateo County (Norcal), an Employee Stock Ownership Plan (ESOP)
4. Republic Services of California, Inc. (Republic)

Evaluation and Selection Committees

The SBWMA divided the judging process for the Collections Services Contract into two committees: an Evaluation Committee and a Selection Committee. The Evaluation Committee analyzed and scored the proposals. The Selection Committee considered the recommendations of the Evaluation Committee and selected a Collection Services Contractor.

The Evaluation Committee was chaired by the SBWMA Executive Director and also included the SBWMA Recycling Programs Manager, the SBWMA Finance Manager, a representative from a nearby regional waste management district, and two consultants, who were partners in the same consulting firm.

The Selection Committee consisted of six SBWMA Board member representatives and included the SBWMA Board Chairman, who chaired the Selection Committee.

How the Proposal was Scored

The Evaluation Committee evaluated and numerically scored the companies' proposals. The ratings from the evaluators were compiled and discussed during several Evaluation Committee meetings to determine a preliminary ranking of the proposals based solely on the evaluation criteria.

Each evaluation criterion was divided into two parts: a "competitive" part and a "reasonableness" part. In determining the "reasonableness" points of a proposer's cost proposal, equipment selection, labor, and operating assumptions were to be "considered against industry standards" and against other proposals. The point allocation process was described by Grand Jury witnesses as "highly theoretical and subjective," with a potential for a limitless amount of "theoretical points" being combined with "actual competitiveness points" by the individual Evaluation Committee members, up to the maximum score in each Evaluation Criteria category. Neither the individual members of the Evaluation Committee nor the Selection Committee were required to report how many overall points assigned to each criterion were based on "reasonableness" or "competitiveness."

The Grand Jury received a paper titled "Solid Waste Management—A Guide for Competitive Contracting for Collection" written by a SBWMA consultant and was told that it was the guideline for the RFP.¹ Addressing "reasonableness," the paper states, "The municipality may choose to give each of the selection criteria equal consideration or to weight the factors in accordance with specific interests of the community. If the selection criteria are to be weighted, the municipality should precisely state the 'weighting formula.'" The criteria for judging contractors qualifications included:

- "Experience providing like services – The municipality may not wish to risk contracting with an inexperienced company. Most municipalities prefer to have contractors that have experience providing similar services and a good track record with favorable references.
- Legal encumbrances – Cities need to know with whom they are doing business. Are there financial or character issues regarding the company that has been determined in a court of law?
- Labor issues –This includes union and non-union lawsuits, for example. Does the company have a good relationship with its employees?"

Members of the Evaluation Committee independently analyzed and scored the proposals. The results were jointly discussed at four separate meetings with the Selection Committee. The Selection Committee unanimously approved the Evaluation Committee's recommendation to

¹ "Solid-Waste Management" – A Guide for Competitive Contracting for Collections –August 1996, p.7; Scarlett, Lynn; Sloan, J.M.

select Norcal. On August 28, 2008, Norcal was chosen by the SBWMA to be awarded the Collection Services Contract for the ten-year period from 2011 to 2021.

Each Evaluation Committee member individually reviewed and scored each evaluation criterion based on a maximum allowed score for each category. The total maximum score was 3,000 points. Table 1 shows the Evaluation Criteria, the maximum allowed scores for each criterion and the actual scores as totaled from individual evaluations.

Cost Evaluation

Cost for services was worth 33% of the total evaluation, more than any other criterion. The SBWMA and consultants entered the cost information provided by each of the four proposers into a Comprehensive Cost Proposal Summary. That summary was used to compare and evaluate their “competitiveness.” The final proposed costs for servicing the entire SBWMA jurisdiction are summarized in item four of Table 1.

Table 1: Proposer Evaluation Score² for Collections Services Contract

	EVALUATION CRITERIA	MAX EVALUATION	SCORE	ALLIED	BEST	NORCAL	REPUBLIC
				P	P	P	P
1	RESPONSIVENESS TO RFP	PASS/FAIL	N/A	P	P	P	P
2	COMPANY'S QUALIFICATIONS AND EXPERIENCE	750	25%	551	665	647	661
3	PROPOSAL FOR COLLECTION SERVICES INCLUDES CORE AND OPTIONAL SERVICES	750	25%	453	638	653	51
4	COST PROPOSAL	1,000	33.30%	802	719	884	649
5	ENVIRONMENTAL ENHANCEMENTS AND OTHER CONSIDERATIONS	250	8.30%	40	190	225	40
6	NUMBER AND MATERIALTY OF EXCEPTIONS	250	8.30%	250	215	250	20
	TOTAL POINTS	3000	100%	2096	2427	2659	1421
	PERCENT OF TOTAL AWARDED			69.70%	80.90%	88.60%	62.60%
	RANKING			3	2	1	4

In Table 2, the following cost summaries were used to compare the four proposers’ costs to evaluate their “competitiveness.” SBWMA gave Allied fewer points based on the Evaluation Committee’s subjective “reasonableness” determination. The SBWMA was informed by Allied that its costs were lower because, as a large company, it had the potential advantage of hedging fuel costs. Also, due to Allied’s size, the company that supplies new bins had agreed to roll out the bins to residents free of charge. Additionally, personnel and equipment were already in place because they were the present operators.

² All the tables are from the SBWMA selection committee reports, although the tables are arranged differently in this report.

Table 2: Cost Summaries

ACTUAL COSTS	<u>Allied</u>	<u>BEST</u>	<u>Norcal</u>	<u>Republic</u>
TOTAL ANNUAL COST	\$44,949,227	\$52,165,632	\$46,239,552	\$63,811,856
TOTAL OPERATING COST	\$43,502,035	\$49,717,944	\$44,470,447	\$61,433,400
TOTAL CAPITAL AND STARTUP	\$53,052,230	\$78,910,864	\$58,518,543	\$63,782,666

Cost Proposal Appraisal by the SBWMA

On August 28, 2008, when Norcal was selected to be the Collection Services Contractor, the following explanation was presented:

“Norcal: Awarded the most points for its cost proposal due to the strength of its cost proposal in both competitiveness and reasonableness.

Allied: Awarded the second most points for its cost proposal primarily due to submitting the lowest cost proposal; however, the company lost considerable points based on reasonableness. The company’s proposal based many costs on its ability to get a rolling start as the incumbent service provider; thus, according to the SBWMA report, various costs were omitted from its proposal.

BEST: Awarded the third most points for its cost proposal, primarily due to the high overall cost proposed. BEST’s capital and start-up costs (i.e. \$78.9 million) were significantly higher than the other proposers: 49% above Allied, 35% above Norcal, and 24% above Republic.

Republic: Awarded the fewest points for its cost proposal because it had the highest overall annual cost, and many costs, according to the Evaluators, ‘simply weren’t competitive.’”³

Environmental Enhancements & Other Considerations

Table 1 above shows that the Environmental Enhancements accounted for 8.3% of the total score.

SBWMA concluded the following about each company in that category:

³ SBWMA Collection Services RFP, Selection Committee Report: Evaluation and Scoring of Proposals, August 21, 2008

“Norcal: [awarded 225 points]

The proposal included Environmental Enhancements such as: use of B40 fuel (i.e., 40% biodiesel), regular carbon footprint monitoring and reporting, use of hybrid trucks for route supervisors, and incorporating green building design practices and standards at its facilities.

BEST: [awarded 190 points]

The company is committed to using the highest percentage of biodiesel fuel available. The company will use hybrid vehicles for its route supervisors.

Allied: [awarded 40 points]

The Environmental Enhancements proposed include continuing the current practice of using B20 fuel (i.e., 20% biodiesel) in its collection fleet. In addition, the company provided an Alternative Proposal to operate CNG [Compressed Natural Gas] collection trucks for its collection fleet at an additional capital cost of approximately \$6 million.⁴

Republic: [awarded 40 points]

None specifically noted or called out in the proposal.”⁵

SBMWA’s Due Diligence Process

The Grand Jury asked the SBWMA Board members who were on the Selection Committee if they were aware of Norcal’s previous, well-publicized history in the City of San Jose (San Jose) and San Bernardino County. SBMWA reported that Norcal’s problematic history was discussed. However, many of the SBWMA Board members mentioned they had no knowledge of these discussions. During a Menlo Park City Council meeting, the SBWMA consultant, who was tasked to verify the competitors’ references, publicly testified that he phoned San Jose to confirm Norcal’s recommendations, but he never followed-up. During interviews, the Grand Jury learned that the SBWMA consultant worked in a consulting firm that helped create the RFP for waste management collection services in 2000 for San Jose and their subsequent RFPs after Norcal’s problems were revealed. This consultant and his partner were on the SBWMA Evaluation Committee.

The 2004-2005 Santa Clara County Civil Grand Jury Report stated, “That the [San Jose] Mayor’s June 26, 2000 recommendation of Norcal to the Council describes Norcal’s history and serious legal problems. The history also discusses San Bernardino County’s lawsuit against Norcal alleging bribery, fraud, and unjust enrichment. An 18-month jail sentence for a Norcal employee, who admitted taking bribes and a \$6.5 million settlement payment by Norcal to San Bernardino County were also discussed.” The 2008-2009 San Mateo County Civil Grand Jury could not determine if the Selection Committee were aware of these issues or explored them or other issues in any depth. Further, there is no evidence that the SBWMA did a diligent search of the other proposers that might have influenced the selection.

⁴ No mention was made of an opt-in proprietary program called Recyclebank, implemented successfully in Delaware and Philadelphia and awarded by the United Nations, that would supply Recyclebank’s dollars to incent household recycling; <http://www.huliq.com/1/80048?un-program-spotlights-recycle-bank>

⁵ SBWMA Collection Services RFP, Selection Committee Report: Evaluation and Scoring of Proposals, August 21, 2008

Selecting the Shoreway Facility Operations Contractor

On November 1, 2007, SBWMA released an RFP for operation of the Shoreway Facility. By the March 4, 2008 deadline, SBWMA received seven proposals.

The seven competitors for the Shoreway Facility Operations contractor were:

1. Allied Waste Systems of San Mateo County (Allied)
2. Bayside Environmental Services & Transfer (BEST), a joint venture of Peninsula Sanitary Group, South San Francisco Scavenger Company, Green Waste Recovery and Zanker Road Resource Management
3. Greenstar, LLC (Greenstar)
4. Hudson Baylor Corp (HBC) with Waste Solutions Group (WSG)
5. Norcal Waste Systems of San Mateo County (Norcal)
6. Republic Services, Inc. (Republic)
7. South Bay Recycling, LLC (SBR), a joint venture of Community Recycling & Resource Recovery and Potential Industries

The Evaluation Process for Selecting the Shoreway Facilities Operations Contractor

The SBWMA divided the judging process for the Shoreway Facility Operations Contract into two committees: an Evaluation Committee and a Selection Committee. The Evaluation Committee analyzed and scored the proposals. The Selection Committee considered the recommendations of the Evaluation Committee and selected a Shoreway Facility Operations Contractor.

On April 23, 2009, SBWMA selected SBR as the Shoreway Facilities operator.

Evaluation Committee and Selection Committee

The SBWMA divided the judging process for the Shoreway Facility Operations Contract into two committees: an Evaluation Committee and a Selection Committee. The Evaluation Committee analyzed and scored the proposals. The Selection Committee considered the recommendations of the Evaluation Committee and selected a Shoreway Facility Operations Contractor.

Members of the Evaluation Committee independently analyzed and scored the proposals. The results were jointly discussed at three separate meetings with the Selection Committee. The Selection Committee unanimously approved the Evaluation Committee's recommendation to short list SBR and HBC/WSG.

On April 23, 2009, SBWMA selected SBR as the Shoreway Facility operator.

How the Proposal was Scored

The Evaluation Committee members numerically scored proposing companies using the evaluation criteria and the weighting described in the RFP. The Evaluation Committee envisioned a short-list being developed prior to technical interviews. All seven proposers participated in the technical interview and presentation process.

Each Evaluation Committee member individually reviewed and scored each evaluation criterion based on a maximum allowed score for each category. The total maximum score was 500 points. Table 3 shows the Evaluation Criteria, the maximum allowed scores for each criterion, and the actual scores as totaled from individual evaluations. The Table also illustrates the SBWMA's point evaluation score of each firm's qualifications, technical proposal, cost proposal, and other considerations.

The results were jointly discussed at three separate meetings with the Selection Committee. At the last meeting on June 25, 2008, the Selection Committee unanimously approved the Evaluation Committee's recommendation to short list SBR and HBC/WSG.

Table 3: Proposer Evaluation Score for the Facility Operations Contract

	CRITERIA	MAX SCORE	<u>Allied</u>	<u>BEST</u>	<u>Greenstar</u>	<u>HBC</u>	<u>Norcal</u>	<u>Republic</u>	<u>SBR</u>
1	Responsiveness to RFP	Pass/Fail	P	P	P	P	P	P	P
2	Company's Qualifications & Experience	100	81.5	88	73.5	85.8	84.5	74.5	84
3	Cost Proposal	100	81.8	70.4	64.9	79.1	72	62	86
4	SRDC Operations Proposal MRF Design, & Installation	100	67.8	80	64.5	87.3	75.5	63.8	86
5	Start-up Proposal	75	58.5	65.3	63	68.6	61.9	65.3	59.6
6	Materials Marketing Plan	75	62.5	60.8	42.8	66	60.8	55.9	74.3
7	Environ. Enhancements	25	15	15	15	10	22.5	10	18.8
8	Number & Materiality of Exceptions	25	25	25	0	25	25	0	22.5
	TOTAL SCORE	500	392	405	324	422	402	332	431
	<u>RANKING</u>		<u>5</u>	<u>3</u>	<u>7</u>	<u>2</u>	<u>4</u>	<u>6</u>	<u>1</u>

The scores assigned to each of the proposal's criteria reflect the extent to which the proposer fulfills the requirements of the evaluation criteria and meets the needs of the SBWMA relative to the other competitors. Each evaluator reviewed each of the proposals and cost information using a set of established criteria.

SBWMA's Recommendation for Shoreway Facility Operator

Based on a review of the seven proposals submitted, technical interviews, site visits, follow-up questions and answers, and reference checks and litigation review, the Selection Committee, which was chaired by the SBWMA's Executive Director, initially recommended that SBR and HBC be short listed for negotiations to determine the selected facility operations contractor.

The Selection Committee announced that SBR, a joint venture of Community Recycling & Resource Recovery and Potential Industries and HBC (with Waste Solutions Group) stood clearly apart from the other five proposers for the following reasons (as quoted from the SBWMA Selection Committee report of July 17, 2008):

- “The entirety of their responses (original proposals, written answer to technical questions, and technical interview performance) was the most thorough and complete.
- These companies offer a combination of experience, technical capability, and pricing that set them apart from the rest of the field. These two firms had the two lowest overall cost proposals.
- These two firms are the two most qualified single stream MRF operators and offer the best commodity marketing capabilities. This is critical given the growing importance of commodity revenues to fund SBWMA operations.
- Each of the two firms stand out financially with HBC offering the highest commodity revenue guarantee at \$10.1 million and SBR offering the lowest overall cost proposal.
- Each firm has a strong plan for increasing diversion at the transfer station and unique attributes to their proposed transfer station operations. HBC put together the most innovative base proposal for transfer station diversion, while SBR offers the highest payloads and lowest cost transfer operation.”

Operating Costs

The scores for the operating cost proposals were considered 20% of the total possible points. SBR’s original operating cost proposal was \$4.2 million less per year than the next lowest proposal.

Table 4: Annual Operating Costs Including Interest (as of July 24, 2008)

	Proposed Annual Cost to SBWMA
Allied	\$15,870,629
BEST	\$17,703,982
Greenstar	\$16,599,003
HBC	\$15,216,385
Norcal	\$17,549,549
Republic	\$19,775,788
SBR	\$11,648,528

Cost Evaluation Explanations

SBWMA stated:

- “1. South Bay was ranked highest by virtue of the lowest overall cost proposal at \$11.6 million. South Bay’s scoring was reduced somewhat on ‘reasonableness’ due to the Evaluation Committee’s concerns regarding their extremely low transportation costs and management/administration staffing levels.
2. Allied was ranked second due to its low overall cost, third lowest overall at \$ 15.9 million, and lowest total capital cost for the MRF equipment and installation at \$15.2 million.
3. Hudson Baylor was ranked third due to its low overall cost, second lowest overall at \$15.2 million, and the highest commodity revenue guarantee at \$10.1 million. Their scoring was reduced somewhat on “reasonableness” due to proposing the highest capital cost for MRF equipment and installation at \$19.8 million.
4. & 5. Norcal and BEST were ranked fourth and fifth, respectively, due to their high overall costs. Both had the highest costs for the transfer station operations, and Norcal had the second highest MRF costs. These firms’ overall costs are \$6 million and \$6.1 million, respectively, higher than SBR.
6. Greenstar had the fourth lowest overall cost at \$16.6 million but was scored even lower due to the ‘reasonableness’ evaluation of their transfer station and transport costs.
7. Republic was ranked lowest on cost because, by far, they had the highest overall cost at \$19.8 million. Their proposed costs simply weren’t competitive, and in several cases, for MRF costs and transport costs, their costs were considered unreasonable.”⁶

Table 5: Recycling Revenue Guarantee

	COMMODITIES GUARANTEE	REVENUE SHARE
Allied	\$6,750,000	80/20
BEST	\$8,500,000	75/25
Greenstar	\$6,750,000	75/25
HBC	\$10,100,000	75/25
Norcal	\$8,000,000	75/25
Republic	\$6,750,000	75/25
SBR	\$7,250,000	75/25

⁶ SBWMA Facility Operations RFP, Selection Committee Report: Evaluation and Scoring of Proposals, July 17, 2008

Commodities Guarantee

Commodity sales, along with tipping fees, are SBWMA's main sources of revenue. Tipping fees are the charges levied upon a ton of waste, which is delivered to various landfills, depending on the waste category. The guarantees, offered by proposers that they will deliver a set commodity amount, is as crucial as operating costs to the SBWMA. Commodities are recyclables. They consist of aluminum cans that can be turned into the state for CRV funds, glass sold to bottlers, paper and cardboard sold to overseas mills. Commodity prices have been historically high in the last few years, but market prices fell dramatically in October 2008, making commodity guarantees questionable.

SBWMA's Due Diligence Process

The Grand Jury learned that SBR planned to run the Shoreway Facility as a "satellite" operation from its headquarters in Los Angeles. At what point the SBWMA discovered this fact is not clear to the Grand Jury. SBR expects to receive additional funds annually from SBWMA because of its "miscalculations and omissions." The Grand Jury has learned, subsequent to SBR's selection as Shoreway Operations Contractor, that it renegotiated, on May 19, 2009, to decrease its recycling revenue guarantee to \$6.75 million. However, SBWMA is still in deliberations with SBR and has not established a final amount to operate the Shoreway Facility.

On March 29, 2009, HBC wrote a letter to the SBWMA contesting its basis for the selection of SBR. (see Attachment 1)

Additionally, the Grand Jury learned from different sources that there is concern about ongoing problems with Community Recycling, one of the two SBR partners. The Local Enforcement Agency for Los Angeles has issued forty-two outstanding Notices of Violations to Community Recycling Sun Valley Recycling and Transfer operations. Twenty-six of the violations concern permitting. Community Recycling is operating without the correct permit. The other sixteen violations are for vector, bird and animal control; training; hazardous, liquid, or special waste containment; scavenging; traffic control; cleaning; reporting; and load checking. In addition, on February 26, 2009, during a SBWMA Board meeting, a member of the Teamsters Union distributed a letter from Teamster's Local 396 of Southern California. The letter stated the union had "major labor problems" and "horrible working conditions" with Community Recycling. SBR claims it has good union relationships.

SBWMA's Management Conduct

Allied was one of the proposers that submitted for the contract to haul garbage and run the Shoreway Facility. The decision to recommend either HBC or SBR to operate the Shoreway Facility in August 2008 meant that Allied's bid to operate the Shoreway Facility was rejected. Shortly after its bid was rejected, Allied submitted an alternative proposal to the SBWMA that addressed the ever-increasing cost proposed by the SBWMA to build the new Shoreway Facility. The request to consider this alternate proposal for building the MRF was denied by the SBWMA, due to what the SBWMA had described as "non-compliance with the RFP requirements." The denial prompted Allied to contact the press and city council members for a hearing.

In response to letters and articles questioning the RFP process, the SBWMA Executive Director solicited letters attesting to the transparency and integrity of the RFP process from proposers actively competing for an SBWMA contract. The email request, dated August 23, 2008, is quote below:

“Subject: Special request

Hello. Im sure you all saw the articles friday in three different papers re: Allied’s desperate plea for consideration of their alternative proposal. Allied’s intentions are quite clear: they want the results of both procurements thrown out and for cities to negotiate a package deal to keep them as the hauler and shoreway opearator.

Given the above, i have a special and awkward request to make: can...write a letter stating that, while you are certainly disappointed wth the results and you not being selected, you feel the rfp processes were conducted professionally, thoroughly, and with the highest level of transparency and integrity. Can you write this letter? If so, can you email a signed copy to me by monday morning? My intent would be to attach this to my response. Im making a similar request of [other proposers].

If one of you can call me on my cell this weekend to confirm if you can meet this special request. My cell no is..... Thanks for the consideration.”

With this email, the copy of a newspaper article about Allied (see Attachment 2) was also sent to the proposers. The newspaper article contained controversial information about Allied, as admitted to by staff in a SBWMA meeting on August 28, 2008. Allied’s lawyer attempted to elicit an apology from the executive at a SBWMA Board meeting, but the apology was denied on the grounds that it was not legally necessary. (see Attachment 3)

One proposer refused to comply with the Executive Director’s request to validate the fairness of the RFP process. Instead, he sent a copy of the Executive Director’s email to a member of the San Mateo County Board of Supervisors, who in turn publicized it to the press and to the elected officials of the member agencies. The Executive Director learned of this, and on August 28, in the San Mateo Library, during a SBWMA Board meeting break, confronted said proposer with vulgar language.

As a result of the events, the following actions were taken by the SBWMA Board of Directors to curtail the Executive Director’s power as quoted in a letter from the Chairman of the SBWMA Board to a San Mateo County Supervisor dated September 4, 2008. An excerpt of the letter follows:

1. “The Executive Director will no longer participate as a member of the Facility Operations Contractor Selection Committee;
2. The Executive Committee (Chair or Vice Chair of SBWMA Board) will review and approve direct correspondence with proposers or the member agencies regarding the selection process;
3. The Executive Committee’s role in contract negotiations with the shortlisted Facility Operations firms will be increased to provide direct oversight of the process;”

SBWMA Hires External Consultant

The consultant's analysis was based primarily on interviews with the committee members, not on written documents. He found that the RFP evaluators submitted combined scores, which did not distinguish the point allocation between what were "competitiveness" points and what were "reasonableness" points in the RFP scoring process.

Governance Structure of the SBWMA

The Joint Powers Agreement (JPA) for the SBWMA defines the governance structure of the organization. Section 8.1 of the current SBWMA JPA states:

"The SBWMA shall be governed and administered by a Board of Directors composed of one Director from each Member. The Board shall exercise all powers and authority on behalf of the SBWMA. Each member must select its Director or the Director's designee alternate from among the following positions:

- a. County, District, City or Town Manager or the equivalent position.
- b. County, District, City or Town Assistant Manager or the equivalent position.
- c. Finance Director or Assistant Finance Director or the equivalent position.
- d. Public Works Director or Assistant Public Works Director or Environmental Programs Manager or equivalent position."

Since its inception, the SBWMA Governing Board has been comprised of "agency staff members." The original and subsequent versions of the JPA provided that each member shall designate one Director from among the positions or their designate: City/County Manager, City/County Assistant Manager, Finance Director, Director of Public Works. There is no provision in the current JPA that authorizes an elected official to serve as a member of the SBWMA Governing Board.

When a restated JPA was presented to the Board of Supervisors in late 2005, it deferred approval of the new JPA until it could learn the answers to questions that had been raised by other members. One concern was the City Council of Belmont's suggestion that the membership of the SBWMA Governing Board should permit elected officials to serve on the Governing Board. SBWMA responded that the JPA governance benefited from the technical expertise of staff and that although the SBWMA Board had considered the possibility of adding elected members to its Governing Board, it had decided to "leave the SBWMA board membership the way it has been since the organization's inception."

Section 17.1 of the restated JPA provides that "subject to all legal obligations of the SBWMA, this Agreement may be amended by one or more supplemental agreements executed by a vote of two thirds (2/3) of all Equity and Non-Equity members of the SBWMA." Such an amendment would be required to allow elected officials to serve on the SBWMA Board.

When the Grand Jury questioned board members as to why elected officials were excluded from the SBWMA Board, the Grand Jury learned that board members had asked some council members about serving and the council members showed no interest. A SBWMA Board member mentioned that (s)he acts as a buffer between the council members and the public. However, city council members from different member agencies within the SBWMA jurisdiction contacted the Grand Jury during the course of this investigation and informed the Grand Jury that it was their goal to get elected officials onto the SBWMA Board. These council members testified that they would be actively pursuing such a goal and have wanted to be on the SBWMA Board for a number of years. When a member agency's staff attends a SBWMA Board meeting, there is a cost and a loss of work hours incurred by member cities.

Investigation

The 2008-2009 San Mateo County Civil Grand Jury interviewed South Bayside Waste Management Authority (SBWMA) Board members, staff members, Requests For Proposal competitors, city council members, consultants, and attorneys. The Grand Jurors read numerous SBWMA reports, SBWMA meeting minutes, newspaper articles, in addition to visiting websites. Jurors attended SBWMA meetings, member agency meetings and watched tapes of SBWMA and city council meetings.

Findings

The 2008-2009 San Mateo County Civil Grand Jury found that:

1. In the proposal process, the requirement that all proposers use the same operational assumptions to obtain comparable costs was useful to evaluators but does not apply to the actual costs and contracts that the individual member agencies can negotiate.
2. The process allowed for alternative proposals, yet they were not required to be considered.
3. As a condition of participation, proposers had to agree not to appeal decisions.
4. In the evaluation process, the "reasonableness" points were not distinguished from the "competitiveness" points.
5. Neither the individual members of the Evaluation Committee nor the individual members of the Selection Committee were required to report how many of the overall points assigned to each criterion were based on "reasonableness" or "competitiveness."
6. The South Bayside Waste Management Authority's (SBWMA) consultant reported that Norcal's references in San Jose were not checked.
7. South Bay Recycling (SBR) was the only proposer that did not provide for on-site management in its original cost proposal.
8. SBR has asked the SBWMA to cover \$1.2 million for mistakes and omissions in its original proposal.

9. It appears that SBWMA did not give sufficient consideration to SBR's notices of violation in the operation of its Southern California operations.
10. The Grand Jury could not confirm that the proposals were adequately evaluated or reflected a thorough analysis of the proposal content and contractor background.
11. SBWMA Executive Director chaired three of the four Evaluation and Selection Committees until removed from the Shoreway Facility Contract Selection Committee by the Chairman of the SBWMA Board.
12. The SBWMA Executive Director solicited emails from active proposers, asking them to attest to the integrity of the RFP process.
13. No elected officials are on SBWMA's Board of Directors.

Conclusions

The 2008-2009 San Mateo County Civil Grand Jury concludes that the SBWMA did not follow its stated goal to "conduct the RFP process with integrity and transparency." The Grand Jury has no opinion on which contractors should have been selected. However, the Grand Jury has no confidence in the RFP processes by which the Collections Services Contractor and the Shoreway Master Plan Facility Contractor were selected.

The Grand Jury further concludes that:

1. The structure of the Evaluation and Selection Committees lent itself to the appearance of undue influence.
2. Whether or not elected officials from the member agencies are on the SBWMA Board of Directors, these elected officials are ultimately responsible for all actions taken by the SBWMA.
3. After four years of preparation, staff time, and consultant fees, the RFP process was poorly executed.

Recommendations

The 2008-2009 San Mateo County Civil Grand Jury recommends that the South Bayside Waste Management Authority (SBWMA) and its Board and designated elected officials of the 12-member agencies [Atherton, Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, Redwood City, San Carlos, San Mateo, West Bay Sanitation District, and the San Mateo County Board of Supervisors (on behalf of the unincorporated portions of San Mateo County)]:

1. Meet and reconsider pending contracts with Norcal and South Bay Recycling in light of the information contained in this Grand Jury report.
2. In future Request For Proposal processes:
 - a. Clearly define and objectively and consistently apply the evaluation criteria,
 - b. Provide for an appeals process before the final contracts are signed,
 - c. Assure the proposers that alternative proposals will be considered,
 - d. Ensure that representatives from other jurisdictions are participants on the committees, and
 - e. Ensure that no one individual chair both committees.
3. Amend the Joint Powers Authority Agreement to include elected officials from member agencies onto the SBWMA Board of Directors.

Attachment 1

March 23, 2009

Hilary Gans
South Bayside Waste Management Authority
610 Elm St. Suite 202
San Carlos, CA 94070

RE: Evaluation and Selection Committee Reports

Dear Hilary:

Hudson Baylor strongly disagrees with the Staff recommendation in the recently issued Evaluation and Selection Committee reports, and with the basis for the recommendation. We believe that the facts, as laid out in your report, and as further elaborated below, should lead to your choice of Hudson Baylor to operate the Shoreway Environmental Center. As stated in your report, the decision is based solely on your calculation of the cost differences between our proposal and SBR's. We want to provide you and the local elected officials with a more accurate and factual analysis with updated information.

To summarize, we are confident that our commodity sales structure will generate a minimum of **\$700,000 in incremental revenue** to the Authority; that our transfer station diversion plan will generate at least **\$200,000 in cost avoidance**, and that a fair presentation of our labor position results in at least **\$800,000 of cost equalization**. In total, the swing in benefits to the SBWMA and its member cities is **at least \$1.7 million in HBC's favor**.

Commodity sales can be a complicated issue, but the numbers under this contract are straightforward. SBR clearly provided a formula to you within the last several weeks, tying their prices to OBM LA Export prices (an indicator that has only included ONP Export since January 2009). We provided a comparable formula tied to OBM SF High prices in our original bid. Our formula is OBM SF High +\$10. Analyzing the worksheet titled "Exhibit B" in the report package results in SBR's formula being approximately OBM LA Export Average -\$18.50 (its formula appears to have several moving components, but the example shown calculates to \$18.50 below).

The table shown in *Exhibit 1* in the appendix to this letter outlines the result of the two formulas applied to the February 7 OBM data used in SBR's example (leaving aside any floor price issues for the moment). HBC's formula actually results in *higher* revenue for the same tons. Applying this formula to the first quarter of 2009 (the only time that it is possible to apply SBR's formula) results in HBC generating an incremental \$57,000 in sales revenue in the quarter, or approximately \$225,000 annualized. Assuming that we are over the revenue guarantee, this would generate an incremental \$170,000 to SBWMA.

Moreover, we learned that SBR now has a floor pricing arrangement to cover half the fiber volume at the MRF. HBC, as you know, has an agreement with ACN that provides floor pricing for *all* fiber tons (as well as for plastics). Up to this point, we and ACN have not divulged the prices for proprietary and competitive reasons. However, with the recommendation report out, ACN has now agreed to let us disclose that our floor prices for fiber (ONP and OCC) are 00per ton. We are providing these floor prices at this time so we can further explain our position to SBWMA decision makers with regard to material sales revenue. We do request that these floor prices are kept confidential.

As our floor prices are currently higher than the formula or market, we would be selling at our floor price today when markets are down. The table in *Exhibit 2* of the appendix to this letter shows our floor price revenue, compared with SBR's floor price revenue (same tons as in prior table). We note that for SBR, we used their floor prices for half the volume (since that is their guarantee), and their formula for the remainder of the volume. This results in \$78,442 higher revenues per month with the HBC floors, which annualizes to \$941,302 in higher sales. Assuming that we are over any guarantee levels, this would result in approximately **\$706,000 in incremental revenue to SBWMA.**

We have consistently explained to you that we felt that the Authority's analysis was lacking in understanding our ability to market material, and these figures demonstrate that either using our floor prices, or using our representative formulas, **HBC will generate higher revenues for SBWMA.**

Finally, we appreciate the kind words in the Staff report with regard to the "well thought out and innovative approach" to HBC and WSG's transfer station diversion program. The original evaluation report said that WSG offered an "excellent transfer station operation plan to maximize diversion and improve operational efficiencies". We believe that this transfer station incentive program will conservatively return **up to \$200,000 or more** in incremental revenue to the Authority. An example of this calculation is included in *Exhibit 3* in the appendix to this letter.

Adding these up, it appears that there is in fact a cost advantage for HBC over SBR. We find it unfortunate that the reports issued by the Authority reflect the opposite conclusion.


We trust that the SBWMA and its member cities will accept the above facts in the constructive spirit in which they are being offered. We want to make sure that elected and appointed representatives of the SBWMA member cities and County ultimately make a fair and informed decision for their ratepayers. We continue to look forward to work with you for the very best operation of the Shoreway facility.

Sincerely,

Scott Tenney
President
Hudson Baylor Corporation

Attachment 2

Yard waste wasted

Comments 

Aug 4, 2008 6:00 AM (327 days ago) by Mike Rosenberg, The Examiner

[SEE HOW THIS STORY DEVELOPED](#)

[EMAIL STORY](#)

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» 327 days ago: Yard waste wasted «

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(Juan Carlos Pometta Betancourt/Special to The Examiner)

Down in the dumps: The South Bayside Waste Management Authority is asking Allied Waste to pay back residents for composting services it allegedly did not provide.

[San Mateo County \(Map, News\)](#) -

The money and work of environmentally minded Peninsula residents have been partially wasted after Allied Waste garbage trucks were found to have dumped tons of recyclable material into a landfill, authorities said recently.

Allied Waste, which provides garbage services from Burlingame to the southern San Mateo County border, has dumped up to 64,722 tons of plant materials into the Ox Mountain landfill near Half Moon Bay during the last four years, according to the South Bayside Waste Management Authority.

Allied is contractually obligated to send the yard trimmings to its Newby Island compost site in Milpitas so the material can be recycled and used in local gardens and agriculture.

Now the South Bayside Waste Management Authority, which oversees Allied in San Mateo County, has demanded the garbage company pay back its residents between \$560,000 and \$1.8 million for the composting services. Allied Waste charges residents a fee for composting plants from yard trimmings. The exact fine would depend on the precise number of tons Allied did not divert to composting.

SBWMA board member Diane Dryer said neglecting to compost yard trimmings increases local greenhouse gas emissions.

"It would probably be a good idea to think about banning plant materials altogether from landfills due to the global warming problems," Dryer said.

If Allied refuses to pay, the SBWMA said it would seek legal action based on the contract violation.

"This material was set out for recycling and it was put in a landfill. It's a breach of public trust," said Hilary Gans, SBWMA's facility operations contract manager.

To conduct the investigation, the SBWMA in April hired Walnut Creek-based consulting agency HF&H, which presented a nine-page report on the accusations to the group's board of directors recently.

Evan Boyd, Allied Waste's general manager for the county, admitted some of the plant material did end up in the landfill but argued the SBWMA's numbers may be inflated a little bit.

Boyd acknowledged his company dumped 14,159 tons of plants into a landfill in 2005 and 2006. He said his company faced an unusual situation those years, due to the relocation and shrinking

of their compost pad. Allied contacted the SBWMA board about the infractions but the two could not reach a solution, he said.

“We’ve got to sit down and figure out if there’s going to be a compromise made,” Boyd said.

Despite the controversy, Boyd said the two groups still have a decent working relationship. The dispute between Allied and SBWMA comes as the two prepare to part ways on the local recycling center, a \$15 million contract.

Allied, which has operated the county’s Shoreway Recycling and Disposal Center in San Carlos, will be let go by the SBWMA when its contract expires at the end of 2010.

mrosenberg@sfxaminer.com

Uncovering the compost

The South Bayside Waste Management Authority has demanded that Allied Waste pay back residents for composting service payments after Allied was found to have dumped recyclable material into landfills.

64,722 Plant tons dumped into landfill that should have been composted

14,159 Plant tons Allied admitted it dumped into landfill

4 Years Allied dumped plants into landfill

2 Years Allied admitted it dumped plants into landfill

\$560,000 to \$1.8 million Fine levied on Allied Waste

12 County cities or agencies that supplied the plant material

Source: South Bayside Waste Management Authority, Allied Waste

Attachment 3

ROBERT J. LANZONE
JEAN B. SAVAREE
MARC L. ZAFFERANO
GREGORY J. RUBENS
LINDA J. NOESKE*
*Certified Specialist, Family Law
The State Bar of California
Board of Legal Specialization

KATHLEEN A. KANE
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MICHAEL AARONSON
(1910-1996)

KENNETH M. DICKERSON
(1926-2008)

MELVIN E. COHN
(Superior Court Judge/Retired)
OF COUNSEL

September 2, 2008.

Jeff Andrews
c/o Allied Waste
6800 Koll Center Parkway, Suite 320
Pleasanton, CA 94566

Re: HFH Consultants Composting Compliance Review

Dear Mr. Andrews:

We represent the South Bayside Waste Management Authority (SBWMA) and have been asked to respond to your letter of August 27, 2008 to Kevin McCarthy the Executive Director of SBWMA.

Your letter addresses a staff report and information presented to the Board of Directors of the SBWMA at a public meeting on July 24, 2008. As your attorneys will confirm, statements made by public officials and their representatives at a public meeting are excepted from the rules with respect to so called defamatory statements or communications made "in any other official proceeding authorized by law". California Civil Code Section 47 (b). It is well established in California law that statements made in the course of local government proceedings are privileged. Therefore, the statements made in the SBWMA staff report of July 24, 2008, and made at the public meeting of July 24, 2008 are privileged communications and not subject to the rules of defamation. The fact that a newspaper may have published articles about statements or reports made at the meeting is not relevant here.

Further, the comments made with respect to the City of Milpitas and use of its plant materials as ADC, were corrected, at the meeting of July 24, 2008, on the record, by the representative from HFH Consultants. With respect to comments made as to Allied's contract compliance with the City of Fremont and use of its plant material as ADC, we understand that the issue is still pending.

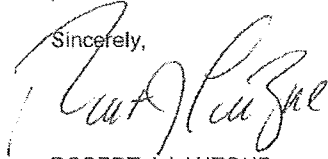
At this point in time, while we will look into the matter further, we will not be

Jeff Andrews
c/o Allied Waste
September 4, 2008
Page 2

complying with your request for "an immediate and final retraction" of statements and reports made at the July 24, 2008 meeting.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert J. Lanzone".

ROBERT J. LANZONE

RJL:jm
cc: Kevin McCarthy, Executive Director, SBWMA

OFFICE OF THE MAYOR

September 11, 2009



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San Mateo, California 94403-1388
Telephone (650) 522-7048
FAX: (650) 522-7041
TDD: (650) 522-7047
www.cityofsanmateo.org

The Honorable George A. Miram
Judge of the Superior Court
Hall of Justice
400 County Center, 2nd Floor
Redwood City, CA 94063-1655

Subject: Grand Jury Report: TrashTalk: Rethinking the Waste Management RFP Process by the South Bayside Waste Management Authority

Dear Judge Miram:

The City of San Mateo has reviewed the 2008-2009 San Mateo Grand Jury report entitled "Trash Talk: Rethinking the Waste Management RFP Process by the South Bayside Waste Management Authority", dated July 10, 2009 (Attachment 1).

The City of San Mateo concurs with the detailed response by the South Bayside Waste Management Authority (SBWMA) dated July 28, 2009 (Attachment 2). We strongly object to the tone and implications within the Grand Jury report. The Grand Jury findings and recommendations reflect an underlying concern with contractor selection process but their report does not provide any credible information to substantiate this concern. The SBWMA response to the findings and recommendations details the inaccuracies and misinterpretations within the Grand Jury report.

The Grand Jury recommends that the member agencies should meet and reconsider the pending contracts with Recology San Mateo (formerly Norcal) and South Bay Recycling in light of the information contained in the Grand Jury report. The City of San Mateo does not support this recommendation. We have every confidence in the selection process and have been active participants throughout the process as illustrated by the attached summary of public meetings within which the selection process has been considered (Attachment 3). In addition, our Public Works Director serves on the Board and provided the City Council and City Manager with regular updates on the process. Our SBWMA representative and the City Council have been active participants throughout the four-year contractor selection process. The process has been hailed by informed observers as exceptional in terms of its technical quality and public transparency.

The Grand Jury recommended a number of ways in which future Request for Proposal processes could be improved. The City of San Mateo believes that all of these recommendations were addressed in the current RFP process and that the evaluations and selection committee structure worked very well as conceived by the SBWMA Board. The

The Honorable George A. Miram
Judge of the Superior Court
September 11, 2009
Page Two

City of San Mateo strongly believes that the public process that accompanied the selection process provided an appropriate appeal process. Those contractors that were not selected had ample opportunity both to address the SBWMA Board and member agencies expressing any concerns they had with the selection process and resulting contractor selection recommendations. A separate appeal process was not warranted or appropriate.

The City of San Mateo considered SBWMA governance when it considered the First Amended and Restated Joint Powers Agreement in November 2005. The Council was unanimous in its support for the current Board composition. The City Council reconsidered inclusion of elected officials on the SBWMA Board at its meeting of September 8, 2009 and reaffirmed its support for the current Board composition and does not support inclusion of elected officials on this highly technical and specialized Board.

The City of San Mateo respects the role of the Civil Grand Jury. However, their evaluation of the SBWMA contractor selection process was flawed, inaccurate and subjective. It appears politically driven rather than an objective review of the contractor selection process. This conclusion was reinforced by the early release of the report to the press.

We appreciate this opportunity to respond to the Grand Jury report. Please let me know if you have additional questions or wish to discuss our response further.

Sincerely,

City of San Mateo

A handwritten signature in black ink, appearing to read 'B. Grotte', with a stylized flourish underneath.

Brandt Grotte
Mayor

cc: City Council
City Manager
Public Works Director



RethinkWaste

South Bayside Waste Management Authority

July 28, 2009

Honorable George A. Miram
Judge of the Superior Court
400 County Center, 2nd Floor
Redwood City, CA 94063-1655

Re: San Mateo County Civil Grand Jury Report 2009 – SBWMA RFP Process

Dear Judge Miram:

The following is the response of the Board of Directors of the South Bayside Waste Management Authority (SBWMA) to the above referenced Report by the 2008-2009 San Mateo County Civil Grand Jury. This response was approved by the Board at a public meeting held on July 23, 2009. We have responded directly to the Recommendations of the Civil Grand Jury in this letter, and address the Findings and Conclusions in the attached Addendum 1, and the facts/comments in the Background Section in Addendum 2.

I - Initial Comments

The SBWMA's goal for the RFP process was to select the best companies through a detailed and open evaluation process of the responses that could provide the desired services in the most cost-effective and environmentally superior manner. We believe that goal was accomplished. In selecting Norcal (now known as Recology) and South Bay Recycling (SBR) for consideration by the Member Agencies as the future service providers, the SBWMA did exactly as it had promised it would do through the RFP process - select the highest-rated, best firm for each service.

The SBWMA went through a very thorough and intensive process in developing, issuing and evaluating the RFPs for both the collection services and facility operations services. The RFPs clearly prescribed the proposal requirements, evaluation process and scoring system. This process took place over a four-year period to ensure that the SBWMA Member Agencies' staff and elected officials, potential proposers, other stakeholders and the public had multiple opportunities for review and input. SBWMA Board of Directors, potential proposers, consultants, legal counsel and other stakeholders helped develop and write the RFPs, selection criteria and the scoring system before the RFPs were issued. There were no objections to the RFPs received from the proposers until the recommendations for the selected companies were announced. The City of San Mateo retained an independent consultant to review the Collection Services RFP evaluations of the proposals to ensure they were done appropriately. The independent consultant's findings concurred with the recommendation for the future service provider and stated that the evaluations were appropriately executed and fair.

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The RFP process has been vetted before all 12 SBWMA Member Agencies. Member Agencies will have additional opportunities for review as the final agreements proposed for Norcal for the Collection Franchise and SBR for the Operations Agreement come before them for approval.

II. Response to Recommendations

"The 2008-2009 San Mateo County Civil Grand Jury recommends that the South Bayside Waste Management Authority (SBWMA) and its Board and designated elected officials of the 12-member agencies [Atherton, Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, Redwood City, San Carlos, San Mateo, West Bay Sanitation District, and the San Mateo County Board of Supervisors (on behalf of the unincorporated portions of San Mateo County)]:

1. *Meet and reconsider pending contracts with Norcal and South Bay Recycling in light of the information contained in this Grand Jury report."*

Response:

Each of the two RFPs, one for collection services and another for facility operations, included key milestones to allow for Member Agency input and action. All governing boards of Member Agencies will be asked to give consideration to their individual franchise agreements for collection, and the agreement for the operation of Shoreway Environmental Center over the coming months, as prescribed in the RFP process. To date, ten of the Member Agencies, representing 85.6% of the Solid Waste tonnage in the SBWMA service area, have already considered and approved the Selection of Norcal (now known as Recology) as their future franchised hauler for solid waste, recyclables and organics. These votes of the Member Agencies have led to the preparation and negotiation of lengthy Franchise Agreements with Norcal to be considered individually by each Member Agency over the next few months, a process that began with these 10 Agencies in March 2009. The Town of Atherton also gave direction to its City Manager on July 15, 2009 to proceed with informal negotiations with Norcal. A JPA Member Agency is free to contract with any company it wants for collection. All documentation related to the RFP process, including vendor responses are available to Member Agencies for additional evaluation. The SBWMA will cooperate with any Member Agency that wishes to reevaluate responses to the RFP process.

The SBWMA Board at its July 23, 2009 Board considered approval of an Agreement with South Bay Recycling (SBR) to operate the Shoreway facility. As approved, it will be presented to the governing bodies of the Member Agencies for review and approval pursuant to Section 7.1.1 of the JPA Agreement. The SBR Operators agreement needs 2/3 of the Member Agencies to approve it.

Action:

The recommendation will effectively be implemented during finalization of the RFP process.

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- "2. *In future Request For Proposal processes:*
a. Clearly define and objectively and consistently apply the evaluation criteria,"

Response:

The SBWMA did clearly define evaluation criteria, and to the extent practical provided objective guidelines for the application of evaluation criteria. We believe that the two concurrent RFP processes, one for collection services and another for facility operations, were both conducted professionally and thoroughly. The Evaluation and Selection Committees for each RFP meticulously followed and implemented the evaluation processes spelled out in the respective RFPs.

- "b. Provide for an appeals process before the final contracts are signed,"*

Response:

A survey of 44 other California jurisdictions that issued similar RFPs in recent years revealed that only two had bid protest provisions in their RFPs. Since these two RFPs are not Public Works "bid" type procurements, inclusion of an appeals process is not standard practice. In fact, the SBWMA RFP processes afforded stakeholders multiple opportunities to comment on the RFP documents. In addition, since the recommendations resulting from the RFP processes are made via publicly noticed SBWMA Board meetings and later considered at individual Member Agency meetings, there have been multiple opportunities for public input from companies that participated in the RFP processes and/or other interested parties. In fact, this is what has happened since September 2008 as dozens of public meetings have been held by the SBWMA Board and Member Agencies and many RFP participants voiced their opinions regarding the RFP recommendations. Lastly, the RFP process as proposed by the SBWMA was reviewed in advance by potential proposers and none commented on the lack of an appeals process or requested such a process.

In summary, every decision made regarding issuance of the RFPs, Member Agency participation in the RFP processes, recommendations resulting from the RFP processes, Member Agency consideration of the recommendations, and Member Agency approval of the recommendations via authorizing the SBWMA to prepare a contract in the case of Facility Operations or executing their own contract for Collection Services has been or will be done at publicly noticed meetings.

- "c. Assure the proposers that alternative proposals will be considered,"*

Response:

The RFPs did provide assurance that alternative proposals would be considered if submitted in compliance with the RFP. The submittal of an alternative proposal was to be treated with the same guidelines as a base proposal, which required evaluation if submitted in accordance with the RFP documents. Both RFPs addressed the submittal of alternative proposals in the same manner. During the RFP process one alternative proposal was submitted by Allied Waste and given consideration. The alternative proposal provided incomplete information, and was not responsive to the RFP. Following legal review, it was determined that the SBWMA had no legal obligation to evaluate the Allied alternative proposal as it was

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submitted because it did not comply with the RFP cost and exception requirements. Nevertheless, the SBWMA actually accorded the lone alternative more consideration than legally required.

Had the SBWMA proposal evaluation process blindly included review of alternative proposals submitted not in compliance with the RFP documents or during the proposal submission period, the fundamental premise of ensuring a fair, non-biased and transparent procurement would have been compromised.

"d. Ensure that representatives from other jurisdictions are participants on the committees, and"

Response

This recommendation is unclear as to the whether the Grand Jury is recommending representatives from SBWMA Member Agencies are participants in the committees or representatives from outside of the SBWMA are participants. The RFP process did include representatives from the Member Agencies. The Evaluation and Selection Committees for both the Collection Services and Facility Operations RFPs were comprised of different SBWMA Board members, and all of the Member Agencies were represented on the PAF and PAC committees.

If the intent of the recommendation is to include representatives from non-SBWMA jurisdictions, we cannot understand why they should have any decision-making authority in a local RFP process. We know of no other jurisdictions that follow such a process.

"e. Ensure that no one individual chair both committees."

Response:

This recommendation will be considered.

Action (Applies to Responses to Recommendation #2, including items a-e):

At such time as there is a future RFP process for either franchise agreement, the concerns of the Civil Grand Jury Report will be taken into consideration by the SBWMA. This holds true for each of the successive recommendations in this section regarding future RFP processes. A future RFP process may not occur for ten (10) years.

"3. Amend the Joint Powers Authority Agreement to include elected officials from member agencies onto the SBWMA Board of Directors."

Response:

This recommendation is one for consideration by the individual governing bodies of the JPA Member Agencies which have sole authority to amend the JPA agreement. The last restatement of the JPA agreement in 2005 confirmed Member Agencies' intent to continue to appoint staff to the SBWMA Board.

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Action:

The SBWMA Board lacks legal authority to take action on this recommendation. However, the Board will review the responses to the Report from the Member Agencies and if sufficient support (8 or more Agencies) is indicated, the Board will facilitate the preparation and circulation of an appropriate amendment to the JPA Agreement.

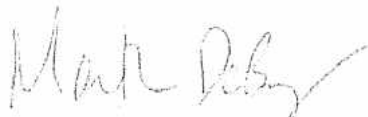
III. Response to Findings and Conclusions (See attached Addendum 1)

IV. Response to Background (Facts and Comments) (See attached Addendum 2)

As can be seen from our Initial Comments, the Board firmly believes the RFP process used was professionally implemented, was fully vetted to the proposers, the SBWMA Member Agencies, and the public, and resulted in recommendations of the best firms for Collection Services and for Operation of the Facilities.

Thank you for your consideration.

Very truly yours,



Martha DeBry
SBWMA Board Chair

Attachments:

- Addendum 1
- Addendum 2

ADDENDUM 1 FINDINGS AND CONCLUSIONS

FINDINGS

The 2008-2009 San Mateo County Civil Grand Jury found that:

1. *In the proposal process, the requirement that all proposers use the same operational assumptions to obtain comparable costs was useful to evaluators but does not apply to the actual costs and contracts that the individual member agencies can negotiate.*

Response: (Respondent disagrees with this Finding.)

Proposers were not required to use the same operational assumptions. To ensure a comparable analysis of cost proposals and ensure a fair cost evaluation process, proposers were required to base their cost proposals on purchasing new collection trucks and containers. Since the \$50+ million in capital equipment would primarily consist of trucks and containers, allowing proposers to include a myriad of different scenarios for the key capital purchases would certainly have resulted in apples-to-oranges cost proposals that could not be fairly compared against one another. The policy decision to require that cost proposals to include all new vehicles and containers was made in 2006 by the Process and Contracts Committee consisting of representatives from several Member Agencies. The RFP required that a Contractor is held to all operational assumptions and costs included in its proposal. If a Member Agency chooses to deploy used vehicles or equipment, then this would be negotiated by that specific agency. Specifically, Section 5.5 of the RFP, states in relevant part:

“New vehicles are required for residential and MFD/Commercial/Member Agency collection services. (This requirement is primarily to ensure that comparable cost proposals are submitted. Member Agencies reserve the right to allow the contractor to provide used collection vehicles.) New or used vehicles may be used for on-call collection services, drop box service, and support vehicles.”

Lastly, it is important to note that drafts of the RFP and contract documents were submitted to the proposers for their review and comment several months prior to the official release of the RFP and none objected to these cost provisions.

2. *The process allowed for alternative proposals, yet they were not required to be considered.*

Response: (Respondent agrees partially with this Finding.)

The statement is correct but requires that it be framed in the proper context. Section 6.2.5 of the RFP, in part, states: “SBWMA and Member Agencies are not obligated to evaluate or select alternative proposals. Alternative proposals will be considered by the SBWMA and Member Agencies if the SBWMA and Member Agencies conclude, in their sole discretion, that the alternative proposals warrant evaluation and analysis.”

In addition, the RFP explicitly required proposers to state exceptions to the collection agreement attached to the RFP and support any alternative proposal, as follows:

“Each exception or alternative must be presented separately by stating the specific exception or alternative, the suggested changes, if any, to the program or services related to the exception or

alternative, and the reason for the proposed exception or alternative. Proposers may submit suggested changes in the Collection Agreement language related to the exception or alternative, and the specific dollar change in each of the affected cost items, as proposed by the Proposer in response to this RFP, that would take place if the exception or alternative was accepted by the Member Agency. Proposers should note that if exceptions are taken, all required information as set forth above must be submitted. Exceptions taken or alternatives provided, without providing the required information will not be considered.”

Despite a follow-up request from the collection services RFP Evaluation Committee, Allied Waste Services of San Mateo County failed to provide the information required to have its alternative proposal comply with the RFP submittal requirements.

The SBWMA determined that Allied’s alternative proposal resulted in a complete abandonment of the competitive RFP process initiated by the SBWMA for both the collection contracts and the Shoreway facility operations. Lastly, in light of the fundamental incompatibility between the alternative proposal and the contract process envisioned in the two RFPs, and the lack of any detailed explanation of how the compensation arrangements in the collection contracts would actually operate (despite providing Allied ample opportunity and encouragement to provide this information), the Evaluation Committee could have omitted any reference to the Allied alternative proposal in its report to the Selection Committee. However, the Evaluation Committee did address the alternative proposal, noting that:

- Allied did not provide a cost estimate for the Recycle Bank program.
- Allied had not provided any detail about how the key compensation provisions in the collection contracts would have to be rewritten to accommodate the plan suggested in the alternative proposal.

Following legal review, it was determined that the SBWMA had no legal obligation to evaluate the Allied alternative proposal as submitted.

3. *As a condition of participation, proposers had to agree not to appeal decisions.*

Response: (Respondent disagrees with this Finding.)

This statement is incorrect. The only conditions on participation by proposers in the RFP process were related to the submittal requirements specified in the RFP that included attending the pre-proposal conference, making a public presentation, facilitating site visits upon request and submitting the required documents. In fact, the RFPs were silent on the issue of an appeal process because appeals are not standard practice for procurements of this type. A survey of 42 other California jurisdictions that issued similar RFPs in recent years revealed that only two had bid protest provisions in their RFP. Again, the SBWMA RFP was silent on the issue of protesting the process. However, since no binding recommendation would arise from the RFP process, it was clear from the beginning that any proposer choosing to protest the process would have ample opportunity when the SBWMA Board and individual Member Agencies considered the recommendation resulting from the RFP process.

4. *In the evaluation process, the “reasonableness” points were not distinguished from the “competitiveness” points.*

Response: (Respondent disagrees with this Finding.)

This statement is incorrect. The Collection Services RFP specified five criteria that contained 24 distinct and specific sub-criteria, as follows:

- Qualifications and Experience – 7
- Proposal for Collection Services – 10
- Cost Proposal – 3
- Alternative Technical Proposals – none, since no points were specified
- Exceptions – 2 (specific to the number and materiality of exceptions)
- Environmental Enhancements – 2

The Cost Proposal criterion was the only one where the “reasonableness” and “competitiveness” sub-criteria were used. Actually, the Cost Proposal criterion specified three sub-criteria, as follows: “reasonableness of cost proposals,” “competitiveness of cost proposals,” and “value to member agencies.”

The achievable evaluation points for Cost Proposals were split equally between reasonableness/competitiveness/value by each Evaluation Committee member.

As it relates to the Facility Operations RFP, this Finding is also factually incorrect. The scoring of the Cost Proposals did, in fact, separately account for reasonableness and competitiveness.

5. *Neither the individual members of the Evaluation Committee nor the individual members of the Selection Committee were required to report how many of the overall points assigned to each criterion were based on “reasonableness” or “competitiveness.”*

Response: (Respondent agrees partially with this Finding.)

This statement is primarily incorrect. As stated above, only the Cost Proposal criterion was the only one where the specific “reasonableness” and “competitiveness” and “value” sub-criteria were used in the Collection Services RFP. Roughly 90% of the evaluation points were reported by the Committees

The Evaluation Committee provided the Selection Committee and SBWMA Board information on exactly how many of the overall points were assigned to each criterion, by each evaluator. This information was provided to the San Mateo County Civil Grand Jury.

The following additional information was also provided to the Grand Jury: “...Allied submitted the lowest cost proposal and was awarded the maximum points from each evaluator for [Cost Proposal] sub-criterion #2 ‘Competitiveness of Cost Proposals,’ however, the proposal lost points based on the ‘Reasonableness’ and ‘Value’ sub-criteria as compared to the other proposers and was ranked second overall in the Cost Proposal criteria behind Norcal.”

As it relates to the Facility Operations RFP, the scoring of the proposals did, in fact, separately account for reasonableness, competitiveness and value.

6. *The South Bayside Waste Management Authority's (SBWMA) consultant reported that Norcal's references in San Jose were not checked.*

Response: (Respondent agrees partially with this Finding.)

This statement is partially correct. R3 Consulting was charged with making the reference checks and despite attempting to contact San Jose representatives in accordance with the reference checks protocol used, they were unable to do so in order to include a reference from San Jose in the analysis. This does not mean that Norcal's experience in San Jose was not discussed and included in the evaluation of proposals. In fact, one of the primary attributes in selecting R3 Consulting to assist the SBWMA was the firm's direct experience with two recent RFP processes and contract negotiations in San Jose. This information was also provided to the Civil Grand Jury. In fact, letters from San Jose staff were also shared with the Grand Jury that documented the City's appreciation for all Norcal had done for the community.

The implication that Norcal's experience in San Jose was overlooked is without merit. The five members of the Evaluation Committee have a combined 120 years of recent experience in this industry in the Bay Area and large roll-outs of service are highly publicized, especially as noted, those that have problems. In addition, the knowledge and experience of this group, specific to the situation with Norcal in San Jose, was shared with the Selection Committee.

7. *South Bay Recycling (SBR) was the only proposer that did not provide for on-site management in its original cost proposal.*

Response: (Respondent disagrees with this Finding.)

This statement is incorrect. SBR proposed that the executive and financial management of the Shoreway facility would be directed from its headquarters and that all operations management functions would be completed by local Shoreway-based managers. While the type of management structure proposed by SBR is not unusual in municipal proposals, it was deemed inappropriate for the Shoreway operation and was rejected by SBWMA. The SBWMA directed SBR to add the cost of local executive management to its cost proposal.

8. *SBR has asked the SBWMA to cover \$1.2 million for mistakes and omissions in its original proposal.*

Response: (Respondent disagrees with this Finding.)

This statement is incorrect. While SBR did submit a revised cost proposal in late 2008 following requests from the Evaluation Committee for additional information, some of the cost changes were SBWMA directed. The Evaluation Committee was concerned by the increases and the limited explanation and justification offered by the company for some of the revised cost proposal items. After several rounds of questions between the SBWMA and SBR, the SBWMA received sufficient detail from the company to understand the reasons for company's proposed increase in costs. The cost changes fell into three categories: A.) operating costs changes that were directed by the SBWMA, B.) cost changes that were the results of proposer error or oversight, and C.) cost changes that were not discussed or approved by the SBWMA. The cost changes that were "directed by the SBWMA" are changes that the SBWMA feels are essential to providing the proper level of service and management required for this service area.

The March 18, 2009 Evaluation Committee report further stated that, "If SBR is selected as the facility operator, the final decision for SBR to operate the Shoreway facility should be predicated upon successful negotiation of a MRF sorting system equal to or less than the cost proposed by the company." The SBWMA is in current negotiations with SBR for the final agreement that is subject to approval by the SBWMA Board.

9. *(Listed as a second #8 in the Report) It appears that the SBWMA did not give sufficient consideration to SBR's notices of violation in the operation of its Southern California operations.*

Response: (Respondent disagrees with this Finding.)

This statement is factually incorrect. The cited notices were investigated, analyzed, evaluated, and the company's initial and final scoring was downgraded due to these notices. Further, SBWMA staff continues to monitor monthly inspection activities at the Community Recycling facility per the direction of the SBWMA Board.

10. *The Grand Jury could not confirm that the proposals were adequately evaluated or reflected a thorough analysis of the proposal content and contractor background.*

Response: (Respondent disagrees with this Finding.)

The SBWMA and member agencies went to great lengths to ensure that open, transparent, competitive and effective procurement processes were pursued.

As we shared with the Grand Jury, during the proposal evaluation process, all of the proposers were interviewed, numerous site visits were conducted by the respective RFPs Evaluation Committee members; a thorough litigation history review and analysis was conducted by outside counsel; and, each proposer provided public presentations in support of its proposal, which were also made available to all interested parties on the SBWMA website. After an exhaustive proposals review and evaluation process by both the Evaluation and Selection Committees which required hundreds of hours to complete, recommendations were presented to the SBWMA Board as to the selection of the future collection services and facility operations providers, and the recommendations to select Norcal and SBR were then presented to the Member Agencies for consideration.

11. *SBWMA Executive Director chaired three of the four Evaluation and Selection Committees until removed from the Shoreway Facility Contract Selection Committee by the Chairman of the SBWMA Board.*

Response: (Respondent agrees partially with this Finding.)

While this statement is accurate, it is misleading in that the statement does not disclose what the role of the Executive Director was as chairman. As chairman, the Executive Director's role was primarily an administrative one that consisted of setting committee meetings, setting agenda, etc. All evaluations of the proposals were done independently by the individual committee members separate from the committee meetings. The evaluations and scoring were done blindly by each committee member without any influence by the Chairman. The SBWMA has no reason to believe the Executive Director exerted undue influence on the process, and the Grand Jury Report did not identify any specific instances of concern in this regard.

12. *The SBWMA Executive Director solicited emails from active proposers, asking them to attest to the integrity of the RFP process.*

Response: (Respondent agrees with this Finding.)

This statement is correct.

13. *No elected officials are on SBWMA's Board of Directors.*

Response: (Respondent agrees partially with this Finding.)

This statement is correct and reflects the desire of a 2/3 majority of the SBWMA's Member Agencies. Any decision to amend the JPA regarding the constitution of Board members is not a decision for the Board, but for the elected officials of the Member Agencies pursuant to Sec. 17.1 of the JPA agreement. There has never been a positive response from the Member Agencies to change the Board composition. In 2005, several of the powers of the Board were moved to the Member Agencies (such as approving any Franchise agreement for Operation of the Transfer Station, or for SBWMA bonding and financing decisions).

The JPA was also amended in 2005 to provide for specific City Manager or other entity staff members to be designated for the Board to both provide for specific qualified staff members and also to have a consistent group of staff members attending as Board members. The Member Agencies had to vote on the Amended JPA Agreement, and did so in 2005, approving it by a 2/3 vote. In doing so, the Member Agency governing bodies (e.g., city councils) rejected the notion of elected officials being on the Board as a minority of the JPA Members had requested.

Subsequently the issue has been raised by the Board of Supervisors to the Member Agencies and by one of the other JPA Members, and received no support. From the standpoint of the SBWMA Board, it is not its decision but one for the governing bodies of the Members of the JPA and it will of necessity go along with what those bodies decide under the terms of the JPA to do.

CONCLUSIONS

The 2008-2009 San Mateo County Civil Grand Jury concludes that the SBWMA did not follow its stated goal to "conduct the RFP process with integrity and transparency." The Grand Jury has no opinion on which contractors should have been selected. However, the Grand Jury has no confidence in the RFP processes by which the Collections Services Contractor and the Shoreway Master Plan Facility Contractor were selected.

The Grand Jury further concludes that:

- 1. The structure of the Evaluation and Selection Committees lent itself to the appearance of undue influence.*
- 2. Whether or not elected officials from the member agencies are on the SBWMA Board of Directors, these elected officials are ultimately responsible for all actions taken by the SBWMA.*
- 3. After four years of preparation, staff time, and consultant fees, the RFP process was poorly executed.*

Response – Conclusions #1 & #3:

Conclusions 1 and 3 are unfounded, and the SBWMA strongly disagrees with the statements. The SBWMA and Member Agencies went to great lengths to ensure that open, transparent, competitive and effective procurement processes were pursued.

The SBWMA and its Member Agencies initiated the Collection Services and Facility Operations Services request for proposals (RFP) process in July 2005 to plan future programs and services, and select future contractors. The decision to proceed with the RFP process was made in concurrence by all 12 Member Agencies of the SBWMA. One of the primary reasons was the fact that none of the existing contracts for Collection Services and Facility Operations Services had ever been subject to a competitive procurement/review process. Another reason was the declining performance of the incumbent collection/operator contractor.

It should be noted that the contract with the SBWMA to operate the Shoreway facility and the twelve individual contracts with the Member Agencies to provide Solid Waste collection services represent perhaps the largest exclusive contracts of their nature in the country. As such, this process has been closely monitored and highly anticipated by many in the solid waste industry.

Feedback received from many Member Agencies and other jurisdictions praised the SBWMA RFP process as being one of the most thorough they had ever seen. Most importantly, the RFP process was lauded by the proposers and other stakeholders. It was only after the release of the selection results that a few of the companies who were not selected began questioning the process and the results. This is an unfortunate outcome of many public solid waste procurement processes – and one that is not unique to the SBWMA. It is perhaps not totally unexpected in light of the significance of some of these contracts and efforts and costs expended by the proposing companies.

The SBWMA'S RFP process entailed a four-year period for planning, soliciting, evaluating and selecting the future contractors to ensure that the Member Agencies' staff and elected officials, potential proposers, other stakeholders and the public had multiple opportunities for review and input. The SBWMA's goal was to select the best companies through a detailed and open evaluation process of the responses that could provide the desired services in the most cost-effective and environmentally superior manner. The SBWMA strongly believes this goal was achieved with the two companies selected.

To ensure that the RFP process for both services was conducted with integrity and transparency, input was solicited from elected officials, potential proposers, consultants and other stakeholders on draft copies of the RFP documents. The final RFPs issued incorporated this valuable input, and each was a comprehensive document that clearly and concisely detailed the rights reserved by the SBWMA and Member Agencies, and the future companies, how the evaluations would proceed, the make-up of the evaluation teams, the specific evaluation criteria and distribution of evaluation points, and specifically how items such as exceptions or alternative proposals were to be submitted and the implications for not complying with these requirements.

The RFPs were issued in November 2007 after a thorough review and approval process that included a governing body resolution from each SBWMA Member Agency. A pre-proposal meeting was attended by all proposers. Several necessary addenda were subsequently issued providing clarifications and improvements to the RFP processes. Four responses to the Collection Services RFP and seven to the Facility Operations RFP were received in March 2008. During the proposal evaluation process, all of the proposers were interviewed and numerous site visits conducted by the respective RFPs Evaluation Committee members. A thorough litigation history review and analysis was conducted by outside counsel. Each proposer provided public presentations in support of its proposals.

The RFPs prescribed that an Evaluation Committee and Selection Committee for the Collection Services procurement, and a separate Evaluation Committee and Selection Committee for the Facility Operations Services would be created to review and evaluate the proposals. SBWMA purposefully created two separate committees for each RFP comprised of different individuals to ensure a checks-and-balance approach to selecting the next service providers. Once again, it is important to note that these documents were vetted over several months and ultimately approved via resolution by each governing body of the SBWMA Member Agencies.

The Evaluation Committees' role was to conduct a detailed evaluation of the proposals, rank proposals, and provide comparative descriptions of the proposals. The Selection Committees were tasked with reviewing the proposals and the evaluation summary information presented by their respective Evaluation Committee, requesting additional data and analysis as necessary, and developing their recommendations for consideration by the SBWMA Board. All four committees were provided with clear guidelines on how to proceed with the evaluations and scoring. These guidelines were based on the detailed criteria and maximum scoring that was prescribed in the RFP documents for the proposers to ensure that the evaluations were independent, thorough and fair.

The SBWMA Board was tasked with reviewing the Selection Committees' separate recommendations for Collection Services and Facility Operations Services and either approving the recommended companies or proceeding with different options. Once approved by the Board, there was a final opportunity to review the RFP process and SBWMA's recommendations when they were presented to each Member Agencies' governing body for consideration and approval.

In addition, the City of San Mateo retained an independent consultant to review the Collection Services RFP evaluations of two proposals to ensure they were done appropriately. The independent consultant's findings concurred with the recommendation for the future service

provider and stated that the evaluations were appropriately executed and fair. The report specifically stated the following:

- “The selection process provided multiple opportunities for each of the Proposers to provide details on their proposal.
- The Evaluation Committee members rated the proposals independently, not in a group setting.
- The Evaluation Committee did not come to agreement before the scores were tallied.
- When the scores were compared, each of the evaluators had ranked each of the Proposers in the same order.
- The Cost Proposals were fairly evaluated. The evaluation of cost not only evaluated the base fee, but also the reasonableness of the amount.
- The process for the evaluation of the proposals was fair.
- The evaluation of the proposals was fair.”

In conclusion, this exhaustive four-year process yielded two top-rated companies that met the goals and objectives of the RFP process as established by the SBWMA and its Member Agencies in a manner that was fair and with no undue influence.

Response – Conclusion #2:

The SBWMA Board strongly concurs with this conclusion. The SBWMA JPA agreement defers all significant decisions affecting ratepayers to the governing bodies of the Member Agencies, e.g. setting collection rates, authorizing franchises and approving the Shoreway operation contract.



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September 21, 2009

Honorable George A. Miram
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Re: Grand Jury Report: *Trashtalk: Rethinking Waste Management RFP Process by the South Bayside Waste Management Authority?*

Dear Judge Miram:

The Town of Atherton (the "Town") has received the above referenced report of the San Mateo County Civil Grand Jury dated July 10, 2009. The City Council reviewed the report and approved this response at its regular City Council meeting on September 16, 2009.

Grand Jury Findings.

- A. Findings 1 through 12 pertain to the SBWMA internal operations. The Town has conducted no independent investigation of these findings, and therefore neither agrees nor disagrees with these findings.
- B. The Town, as a signer of the SBWMA Joint Powers Agreement, agrees with Finding 13 that the JPA provides for the appointment of staff members, not elected officials, to the Board of Directors.

Grand Jury Recommendations.

- A. Recommendation No. 1 that the SBWMA meet and reconsider pending contracts in light of the information contained in the Grand Jury report is a recommendation to the SBWMA and not to the Town of Atherton. Therefore, the Town of Atherton will not be implementing this recommendation.

The composition and process used by the Evaluation and Selection committees was less than perfect and lacked transparency. The Executive Director was allowed to be a far greater "influence" in the process, by the Board of Directors, than should have been tolerated.

However, the Atherton City Council has authorized the City Manager on July 15, 2009 to begin negotiations with Recology (formerly Norcal Waste, Inc.) although we believe that the evaluation process should have investigated San Jose's experience with that firm more thoroughly.

The Council's action was undertaken in light of the fact that surrounding agencies have decided in favor of using Recology, making it more difficult for Atherton to go it alone.

- B. Recommendation No. 2 concerning future Requests for Proposal processes is directed to the SBWMA and not the Town of Atherton. Therefore, the Town of Atherton will not be implementing this recommendation.

The membership of the Evaluation Committee demonstrated a lack of "independence" from the influence of the Executive Director since it was mostly made of his staff and consultant in his employ.

The evaluation criteria system allowed for a maximum subjectivity to be used in awarding points to the proposed waster carriers. There was a complete lack of transparency as to how individual members scored each firm. The Selection Committee was also headed by the Executive Director, thereby giving him an influential position in the selection process. The Selection Committee should have had the opportunity to consider appeals fro the competitors in the selection process.

The bottom line is that the Board of Directors failed to ensure a transparent and unbiased basis for the selection of the waste carrier.

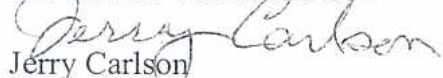
- C. Recommendation No. 3 that the JPA be amended to include elected officials from member agencies requires action by a super-majority of the member agencies. The Town of Atherton will undertake further investigation of the advantages and feasibility of this recommendation, in consultation with other member agencies, a process which will be completed within six months.

Elected officials of member agencies need to be more directly involved in an oversight role of SBWMA. Many issues to be considered by the Board of Directors affecting residents of member agencies are not brought for consideration before the agency boards before the SBWMA votes on the proposals. Although the Board members may be well qualified in their respective fields they are not directly accountable to the residents of the agency which they represent. The formation of an oversight committee composed of an elected official from each member agency should be formed with a charter outlining its oversight functions and submitted to each member agency for a vote.

The Town of Atherton appreciates the time and effort the Grand Jury put into investigating and compiling its report. Given the significant amount of money involved in the SBWMA contracts and the industry's past checkered record, the Grand Jury played a very important and appropriate role.

Sincerely,

TOWN OF ATHERTON


Jerry Carlson

Mayor



TOWN OF HILLSBOROUGH

1600 FLORIBUNDA AVENUE

HILLSBOROUGH

CALIFORNIA

94010-6418

September 14, 2009

Honorable George A. Miram
Judge of the Superior Court
Hall of Justice
400 County Center, 2nd Floor
Redwood City, CA 94063-1655

Re: Response to Civil Grand Jury Report 2009 - "TrashTalk"

Dear Judge Miram,

Thank you for the opportunity to comment on the Grand Jury report entitled "TrashTalk: Rethinking the Waste Management RFP Process by the South Bayside Waste Management Authority." The Town appreciates the thorough review of the SBWMA request for proposal (RFP) process by the Grand Jury. This response was approved at the September 14, 2009 regular meeting of the City Council.

Hillsborough has been a member of the SBWMA since its inception in 1982, and has been represented for the past 13 years by its Public Works Director Martha DeBry, who is currently Chair of the SBWMA Board.

Like most SBWMA agencies, the Town noticed a significant decline in the quality and affordability of service offered by Allied Waste services in past years, and was eager to see if an RFP process could yield competitive pricing for a new menu of services. Responses from residents to a Town-wide survey and to an SBWMA survey suggested the need for improved recycling services, such as single-stream recycling and organic material collection to maximize recycling potential. The Town has actively participated in the RFP process and believes it has yielded recommendations for two qualified companies, Recology (formerly Norcal) and South Bay Recycling, which are capable of operating with competitive costs over the next 10 years. The methodology laid out in the RFP documents was comprehensive. We believe the RFP processes and results are valid.

Response to Findings

- In the proposal process, the requirement that all proposers use the same operational assumptions to obtain comparable costs was useful to evaluators but does not apply to the actual costs and contracts that the individual member agencies can negotiate.*

Disagree with finding. The detailed assumptions regarding cart specifications and new truck purchases were needed during the RFP process to make good comparisons between the proposals for capital investments, which are substantial cost centers for the collection operation. Proposers were able to design their operations to meet their business goals, and develop cost proposals based on those assumptions. Proposers determined the number of vehicles and routes needed to complete the work, which influenced the actual cost of service. For example, in Hillsborough the route assumptions varied widely with BEST proposing the use of smaller pup trucks to service all accounts, while all others assumed more traditional automated loaders. As a result, the cost for both equipment and labor varied greatly between the vendors.

2. *The process allowed for alternative proposals, yet they were not required to be considered.*

Agree with finding. While we agree with the finding, the Town notes that an alternative submitted by Allied Waste was considered.

3. *As a condition of participation, proposers had to agree not to appeal decisions.*

Disagree with finding. The RFP did not contain an appeals process, and did not ask proposers to make any pledge not to appeal the process.

4. *In the evaluation process, the “reasonableness” points were not distinguished from the “competitiveness” points.*

Partially disagree with finding. As it relates to the Facility Operations RFP, this statement is factually incorrect. The scoring of the cost proposals did, in fact, separately account for reasonableness and competitiveness.

The Cost Proposal criterion in the Collection Services RFP was the only portion of the RFP where “reasonableness” and “competitiveness” sub-criteria were used. The achievable evaluation points for cost proposals were split equally between reasonableness and competitiveness/value by each Evaluation Committee member.

5. *Neither the individual members of the Evaluation Committee nor the individual members of the Selection Committee were required to report how many of the overall points assigned to each criterion were based on “reasonableness” or “competitiveness.”*

Partially disagree with finding. As it relates to the Facility Operations RFP, the Grand Jury statement is incorrect. The scoring of the proposals did separately account for reasonableness and competitiveness.

The Cost Proposal criterion was the only portion of the RFP where the “reasonableness” and “competitiveness” sub-criteria were used in the Collection Services RFP. The Evaluation Committee provided the Selection Committee and SBWMA Board information exactly how many of the overall points were assigned to each criterion, by each evaluator.

6. *The South Bayside Waste Management Authority’s (SBWMA) consultant reported that Norcal’s references in San Jose were not checked.*

Partially agree with finding. It is the Town's understanding that an effort was made to check the reference, but San Jose staff did not respond.

7. *South Bay Recycling (SBR) was the only proposer that did not provide for on-site management in its original cost proposal.*

Agree with finding.

8. *SBR has asked the SBWMA to cover \$1.2 million for mistakes and omissions in its original proposal.*

Partially agree with finding. While a substantial portion was the result of errors and omissions, some cost adjustments, such as that for an on-site executive are appropriate changes made after the SBWMA requested their inclusion in the proposal. It should be noted that, even with the increases, SBR's proposal remains more than a million dollars less than the nearest competitor.

9. *It appears that SBWMA did not give sufficient consideration to SBR's notices of violation in the operation of its Southern California operations.*

Disagree with finding. The SBWMA gave a great deal of consideration to the violations. The notices of violation given to one SBR partner, Community Recycling and Resource Recovery at Sun Valley, were explained in detailed staff reports. SBWMA concluded that the violations were unique to the Sun Valley site and not likely to be repeated at the Shoreway facility. Potential Industries, the other SBR partner, did not receive notices of violation.

10. *The Grand Jury could not confirm that the proposals were adequately evaluated or reflected a thorough analysis of the proposal content and contractor background.*

Disagree with finding. The evaluation of the proposals by staff, consultants and SBWMA board members was exhaustive. The reports from the evaluation and selection committees provide detailed analysis of the proposals.

11. *SBWMA Executive Director chaired three of the four Evaluation and Selection Committees until removed from the Shoreway Facility Contract Selection Committee by the Chairman of the SBWMA Board.*

Agree with finding.

12. *The SBWMA Executive Director solicited emails from active proposers, asking them to attest to the integrity of the RFP process.*

Agree with finding.

13. *No elected officials are on SBWMA's Board of Directors.*

Agree with finding. The SBWMA Board has been comprised of member agency staff members since its formation in 1982.

Conclusions

The 2008-2009 San Mateo County Civil Grand Jury concludes that the SBWMA did not follow its stated goal to “conduct the RFP process with integrity and transparency.” The Grand Jury has no opinion on which contractors should have been selected. However, the Grand Jury has no confidence in the RFP processes by which the Collections Services Contractor and the Shoreway Master Plan Facility Contractor were selected.

Disagree with conclusion. While the Town agrees with some findings stated above, it disagrees with the conclusion that the entire process lacked integrity and transparency.

The Grand Jury has not presented any information questioning the accuracy of information disseminated by the SBWMA or noting conduct on the part of the SBWMA Board, staff or consultants that would have a material impact on the outcome of the process. The Town has been actively involved in the SBWMA RFP process since its inception. The SBWMA and Town staff provided numerous updates on the progress of the RFP process, including approval of the RFP documents. The defined criteria used to evaluate the RFP responses was published and available for review to any agency, proposer or member of the public. SBWMA staff are all experienced professionals who have worked in both private industry and the public sector, and offer member agencies the benefit of the subject matter expertise. Similarly, the consultants hired by the SBWMA are industry professionals with extensive experience in the evaluation of garbage industry RFP’s. The City Managers, Public Works Directors and Finance Directors who served on the selection committees are all reputable executives from the cities of Redwood City, San Mateo, Burlingame, Foster City, San Carlos and the County of San Mateo.

As a result, the Town has confidence in the outcome of the process and the contracts and contractors selected.

- 1. The structure of the Evaluation and Selection Committees lent itself to the appearance of undue influence.*

Partially agree with conclusion. While the Town agrees with findings 11 and 12; the single instance of overlap in membership and error in judgment did not influence the recommendations made to City Councils. Specifically, the Executive Director solicited support after the recommendation to select Norcal was public, and months before the recommendation of SBR was made.

- 2. Whether or not elected officials from the member agencies are on the SBWMA Board of Directors, these elected officials are ultimately responsible for all actions taken by the SBWMA.*

Agree with conclusion.

- 3. After four years of preparation, staff time, and consultant fees, the RFP process was poorly executed.*

Disagree with conclusion. The RFP process was well executed in a thorough and timely manner. Member agencies were given many opportunities to participate in the process. The surveys of the public and public input process allowed individuals and proposers many opportunities to shape the programs proposed and the RFP documents themselves. The SBWMA RFP processes for collections and



In reply, please refer to our
File No.

October 7, 2009

Honorable George A. Miram
Judge of the Superior Court
Hall of Justice
400 County Center, 2nd Floor
Redwood City, CA 94063-1655

RE: Grand Jury Findings and West Bay Sanitary District Responses

Dear Judge Miram:

At its regular meeting of September 23, 2009, the Board of Directors of the West Bay Sanitary District ("West Bay") considered the San Mateo County Civil Grand Jury's "Trash Talk: Rethinking the Waste Management RFP Process by the South Bayside Waste Management Authority Report" and directed that this response be submitted. As a preliminary matter, it should be noted that West Bay is a sanitary district organized and existing under the Sanitary District Act of 1923 (Cal. Health & Safety Code §6400, *et seq.*). West Bay's jurisdictional boundaries encompass the City of Menlo Park and portions of the Cities of East Palo Alto, Redwood City, the Towns of Atherton, Woodside and Portola Valley and portions of Unincorporated San Mateo and Santa Clara Counties. Throughout West Bay's jurisdictional area, its primary function is operation of over 200 miles of sewer collection system. Sewer effluent that is collected by West Bay is transported to and treated by the South Bayside System Authority (SBSA), a joint powers authority of which West Bay is a member along with Redwood City and the Cities of Belmont and San Carlos.

West Bay also serves as a member of the South Bayside Waste Management Authority—the subject of the Grand Jury's report—and provides solid waste collection services. However, this function is only provided within a very small portion of West Bay's jurisdictional boundaries in unincorporated San Mateo County. Throughout most of West Bay's service area it provides exclusively sewer collection services, and solid waste collection services are provided by the above-mentioned municipalities. Therefore, solid waste collection services comprise a very small portion of West Bay's overall function, and the amount of solid waste generated within the service area currently controlled by West Bay is a relatively insignificant percentage of the total amount of solid waste collected and processed by SBMWA member agencies collectively. West Bay's influence over SBWMA functions and processes is correspondingly limited. For these reasons, several months ago West Bay initiated discussions with the County of San Mateo about

the possibility of assigning West Bay's solid waste franchise service area to the County. Those discussions are ongoing and it is anticipated that an assignment of West Bay's solid waste collections franchise to the County of San Mateo will be considered concurrently with individual agency negotiations with the approved Collections Services Contractor and Shoreway Master Plan Facility Contractor. West Bay's responses to the Grand Jury's findings and recommendations, therefore, are reflective of West Bay's relatively minor role in the contractor selection process.

Grand Jury Findings:

The 2008-2009 San Mateo County Civil Grand Jury found that:

1. In the proposal process, the requirement that all proposers use the same operational assumptions to obtain comparable costs was useful to evaluators but does not apply to the actual costs and contracts that the individual member agencies can negotiate.

West Bay agrees to the extent that the operational assumptions used to evaluate proposal would not necessarily reflect actual costs for individual member agencies.

2. The process allowed for alternative proposals, yet they were not required to be considered.

West Bay agrees in the sense that alternative proposals were not necessarily *required* to be considered. It is West Bay's understanding, however, that alternative proposals were, in fact, considered, though perhaps not accepted.

3. As a condition of participation, proposers had to agree not to appeal decisions.

West Bay disagrees with this finding, inasmuch as, to West Bay's knowledge, there was no provision in the RFP that required proposers to agree not to appeal an adverse decision. However, it is West Bay's understanding that the RFP did not provide an appeal process and that, therefore, proposers did not necessarily have a recourse to appeal.

4. In the evaluation process, the "reasonableness" points were not distinguished from the "competitiveness" points.

West Bay partially agrees with this finding, inasmuch as the evaluation process did not clearly distinguish "reasonableness" points from "competitiveness" points in certain aspects.

5. Neither the individual members of the Evaluation Committee nor the individual members of the Selection Committee were required to report how many of the overall points assigned to each criterion were based on “reasonableness” or “competitiveness.”

West Bay partially agrees with this finding, insofar as it relates to the “Cost Proposal” criterion portion of the RFP.

6. The South Bayside Waste Management Authority’s (SBWMA) consultant reported that Norcal’s references in San Jose were not checked.

West Bay partially agrees with this finding, insofar as it relates to statements made in a public meeting concerning the consultant’s unsuccessful attempts to check Norcal’s references in San Jose.

7. South Bay Recycling (SBR) was the only proposer that did not provide for on-site management in its original cost proposal.

West Bay partially agrees with the Grand Jury’s finding to the extent that SBR’s original cost proposal assumed that executive and financial management of the Shoreway facility would be directed from its Los Angeles headquarters.

8. SBR has asked the SBWMA to cover \$1.2 million for mistakes and omissions in its original proposal.

West Bay partially agrees with the Grand Jury’s finding, to the extent that SBR’s amended proposal addressed both errors and omissions in its original proposal and changes directed by SBWMA, including additional on-site management.

9. It appears that SBWMA did not give sufficient consideration to SBR’s notices of violation in the operation of its Southern California operations.

West Bay neither agrees nor disagrees with this finding, insofar as it relates to the Grand Jury’s opinion as to what constitutes “sufficient consideration” as well as the difficulty of ascertaining how much weight individual SBWMA decision-makers gave to various considerations in the proposal process.

10. *The Grand Jury could not confirm that the proposals were adequately evaluated or reflected a thorough analysis of the proposal content and contractor background.*

West Bay neither agrees nor disagrees with the Grand Jury's finding, insofar as it relates to the Grand Jury's own perception of its ability or inability to confirm whether the proposals were adequately evaluated.

11. *SBWMA Executive Director chaired three of the four Evaluation and Selection Committees until removed from the Shoreway Facility Contract Selection Committee by the Chairman of the SBWMA Board.*

West Bay agrees with the Grand Jury's finding.

12. *The SBWMA Executive Director solicited emails from active proposers, asking them to attest to the integrity of the RFP process.*

West Bay agrees with the Grand Jury's finding.

13. *No elected officials are on SBWMA's Board of Directors.*

West Bay agrees with the Grand Jury's finding.

Grand Jury's Recommendations:

The 2008-2009 San Mateo County Civil Grand Jury recommends that the South Bayside Waste Management Authority (SBWMA) and its Board and designated elected officials of the 12 member agencies [Atherton, Belmont, Burlingame, East Palo Alto, Foster City, Hillsborough, Menlo Park, Redwood City, San Carlos, San Mateo, West Bay Sanitation District, and the San Mateo County Board of Supervisors (on behalf of the unincorporated portions of San Mateo County)]:

1. *Meet and reconsider pending contracts with Norcal and South Bay Recycling in light of the information contained in this Grand Jury report.*

While West Bay appreciates the sentiment of the Grand Jury's recommendation, West Bay does not believe that implementation of this recommendation is feasible insofar as it relates to the West Bay Sanitary District.

October 7, 2009

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2. ***In future Request For Proposal processes:***
 - a. ***Clearly define and objectively and consistently apply the evaluation criteria,***
 - b. ***Provide for an appeals process before the final contracts are signed,***
 - c. ***Assure the proposers that alternative proposals will be considered,***
 - d. ***Ensure that representatives from other jurisdictions are participants on the committees, and***
 - e. ***Ensure that no one individual chair both committees.***


As described above, West Bay is in the process of negotiating with the County of San Mateo to transfer its solid waste collections function to the County, and therefore does not anticipate participating in future RFP processes for solid waste collection and processing.

3. ***Amend the Joint Powers Authority Agreement to include elected officials from member agencies onto the SBWMA Board of Directors.***

While West Bay agrees with the recommendation, as described above, West Bay is in the process of negotiating with the County of San Mateo to transfer its solid waste collections function to the County, and therefore does not anticipate participating in future negotiations toward amending the Joint Powers Authority Agreement.

Very truly yours,

WEST BAY SANITARY DISTRICT



Vivian Housen
Interim District Manager

cc: Board of Directors

operations contracts were highly competitive and carefully analyzed. The staffs of the SBWMA and its member agencies have diligently worked to make the process open and accessible. Elected officials, including Hillsborough's City Council were regularly consulted to solicit their input. While some aspects of the process could have been improved as noted by the Grand Jury, the net result of the process has presented SBWMA member agencies with a menu of new refuse and recycling services at competitive prices.

Recommendations

1. *Meet and reconsider pending contracts with Norcal and South Bay Recycling in light of the information contained in this Grand Jury report.*

All members of the City Council received a copy of the Grand Jury report in July 2009.

The Town of Hillsborough believes, although there were some flaws, on-balance the process was conducted with integrity and transparency, and believes the selections of SBR and Recology were appropriate and, therefore, does not see a need to reconsider the selections.

2. *In future Request For Proposal processes:*
 - *Clearly define and objectively and consistently apply the evaluation criteria,*
 - *Provide for an appeals process before the final contracts are signed,*
 - *Assure the proposers that alternative proposals will be considered,*
 - *Ensure that representatives from other jurisdictions are participants on the committees, and*
 - *Ensure that no one individual chair both committees.*

The City Council agrees with the recommendation and encourages the SBWMA to consider incorporating the above suggestions in future RFP processes.

3. *Amend the Joint Powers Authority Agreement to include elected officials from member agencies onto the SBWMA Board of Directors.*

The Town will give consideration to an amendment of the joint powers agreement to include elected officials on the SBWMA Board of Directors.

Respectfully submitted,



Christine Krolik
Mayor, Town of Hillsborough