



As a non-profit organization, Recycle Ann Arbor's mission is to develop and operate innovative reuse, recycling, and zero waste programs that improve the environmental quality of our community.

November 8, 2019

Submitted via email as directed by the Purchasing Manager

Attn: Colin Spencer, City of Ann Arbor Purchasing Manager cspencer@a2gov.org

**Recycle Ann Arbor's Protest of the Award of
RFP # 19-28 – MRF Operations and Recycling Processing to Emterra Environmental**

Recycle Ann Arbor ("RAA") hereby protests the tentative award to Emterra Environmental ("Emterra") on RFP # 19-28 – MRF Operations and Recycling Processing (the "RFP"). The City of Ann Arbor had two offerors in connection with the RFP – RAA and Emterra.

RAA is a 501(c)3 non-profit headquartered in Ann Arbor, Michigan. Founded in 1977, RAA is locally and nationally recognized as a leader in providing community-based recycling services. RAA submitted its timely bid in response to the RFP on September 17, 2019.

Emterra is a large Canadian waste management company.

On Friday, November 1, 2019, the Purchasing Manager sent RAA an email titled "Notice of Intent to Award - RFP# 19-28 - MRF Operations and Recyclable Processing" that stated:

The City has determined that the responsive and responsible offeror, Emterra Environmental USA Corp. is to be awarded a contract for the above referenced RFP contingent upon successful negotiations and approval by City Council. This award is in accordance with all the terms, conditions, and specifications as outlined in the RFP Document and any issued Addenda as applicable.

Although your firm was not the successful offeror, on behalf of City of Ann Arbor, the Purchasing Department would like to thank you for taking the time to submit a proposal and participating in the process. We look forward to your firm's continued interest and future responses to the ongoing needs of the City.

If you have any questions or concerns, please reach out to me via e-mail to cspencer@a2gov.org and thank you again for your interest.

(the "Award Email"). The Award Email did not explain why Emterra was selected, or why RAA was not selected. Section III of the RFP sets forth how the bids were to be evaluated, including the 100 point system.

1. The RFP Criteria Was Arbitrary, Capricious, and Designed to Disadvantage RAA

The RFP was at best drafted in an arbitrary and capricious manner that disadvantaged local community-based vendors such as RAA, and at worst was intentionally designed to disadvantage RAA. This not only potentially discouraged other bidders, but unfairly hindered RAA's bid.

For example, Section III(B) awards up to 15 points (15% of the total points) based on the following criteria:

The written proposal must include a list of specific experience relating to the proposal. A complete list of contractor-owned facilities or facilities operated under contract must be provided. Three trade references shall be provided including the firm/agency name, address, telephone number, project title, and contact person.

This criteria unfairly advantages large companies (i.e. Emterra) and disadvantages local community-based vendors (i.e. RAA). A company that owns or operates three or more Material Recovery Facilities ("MRF") will necessarily be considered a medium/large company. There are more effective, proper, and fair ways to evaluate a bidders experience and reliability, and *ownership* of other MRF facilities is not related to the goals of this project. For example, RAA staff has over 30 years of experience operating all types and sizes of MRFs. By including *ownership* as part of the criteria, it is at best arbitrary and capricious, and at worst designed to ensure that RAA may not earn all of the potential bid points.

Similarly, RFP Section II(3)(A) includes:

The MRF facility will be provided to the selected contractor on an "as-is" basis; facility and equipment upgrades are the responsibility of the contractor and are to be included in the contractor's fee proposal (with ownership transferred to the City at the end of the initial contract term).

The requirement to transfer ownership at the end of the initial contract term again favors large companies and disadvantages local companies such as RAA. The RFP criteria has the impact of requiring a vendor to invest \$5.1 million in equipment, and then give the equipment to the City of Ann Arbor at the end of the term of the agreement. That means under the MRF redevelopment option, all equipment must be fully paid for and depreciated during the first term of the agreement with no asset at its conclusion.. Any local community based company (such as RAA) is severely disadvantaged over a multi-national company that can self-capitalize and/or build and depreciate an out-of-town facility over a longer period of time and not be bound by the 10 year

depreciation timeline. Further it disadvantages *any* proposal to redevelop the City of Ann Arbor facility by imposing a financial burden on the proposer to transfer ownership at the end of the ten-year contract term for all of the same reasons as listed in this paragraph.

2. The Bid Was Improperly Awarded to Emterra

The Award Email notifying RAA that it was not awarded the contract failed to include critical and necessary information regarding the bid award. For example, the Award Email did not identify how many points RAA earned, or how many points Emterra earned. It did not identify if there were any deficiencies in either the RAA or Emterra bid. And it did not explain why Emterra was selected over RAA.

Taken as a whole, RAA believes that it provided the superior bid. If the RFP was written and evaluated in a fair manner and proper manner, RAA is certain it would have been awarded the bid. Even under the RFP as written, if RAA's bid had been reviewed as a whole by unbiased staff, RAA believes the bid would have been awarded to RAA.

The fact that RAA does not own multiple MRF facilities is clearly outweighed by its experience (both with the City of Ann Arbor and otherwise) and the local support it has earned. For example, RAA's bid included letters of support and endorsements from local providers such as Southeastern Oakland County Resource Recovery Authority, the City Manager of Ypsilanti, the City Manager of Dexter, the Michigan Recycling Coalition, Knight Transfer Servicers, Pratt Recycling, Inc., Waste Management Inc. and Rumpke Waste & Recycling Services. RAA's bid even included an \$800,000 State grant to make it even more cost effective. This certainly outweighs the fact that Emterra, a Canadian waste management company owns multiple MRFs outside the United States.

The City's objective in the RFP was to evaluate proposals for both redevelopment and transfer, however the evaluation criteria does not include any measures for the additional benefits provided by the MRF redevelopment, including; 20 new union jobs, the opportunity to reopening a vital community education center, local economic development impacts, and re commissioning of a major community asset. Emterra seeks to compact recyclables using a high density compactor and transport the crushed recyclables over 70 miles away to a supposedly-to-be-built facility in Lansing. Emterra's plan to truck the recycling across Michigan is also

contrary to City Council's *unanimous* declaration that there is a climate emergency and Ann Arbor's goal to be carbon-neutral by 2030.

The recommendation also contradicts the City's Solid Waste Plan that endorses a regional approach to recycling, the County Solid Waste Plan and the States' support for expanded regional recycling capacity in Southeast Michigan.

The Award Email did not identify how the bids were analyzed, or what analysis went into the final decision. RAA hereby requests that it promptly be provided with copies of: (1) the Emterra bid; (2) all documents, analysis and communications related to RFP, the RAA bid, and/or the Emterra bid; (3) the points awarded on each bid, including the breakdown of how and why each point was awarded or not awarded; (4) all decision making notes and criteria that went into deciding the winning bid and losing bid; and (5) any and all other documents and communications relevant to the decision to award the bid to Emterra and/or not to award the bid to RAA. Because RAA does not have these critical documents prior to the 5-business day deadline to submit its protest, RAA hereby reserves its right and ability to revise the protest after receiving and analyzing these documents. RAA further incorporates all of the above requested documents into this protest.

Requested Relief

RAA hereby requests that the RFP be awarded to RAA. In the alternative, RAA requests that the RFP be re-written and re-bid to not arbitrarily and capriciously disadvantage local community based vendors, and that the RFP properly value redevelopment of the Ann Arbor MRF in its scoring.

If you have any questions, or if would like any additional information, I can be reached at (734) 662-6288 or bryanukena@recycleannarbor.org. Thank you for your time and consideration.

Recycle Ann Arbor



By: Bryan Ukena
Its: CEO

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2420 S. Industrial Hwy. Ann Arbor, MI 48104
734-662-6288 • Fax 734-662-7749 • www.recycleannarbor.org