



CITY OF ANN ARBOR, MICHIGAN

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November 26, 2019

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Re: Recycle Ann Arbor Protest RFP 19-28 MRF Operations and Recycling Processing
November 8, 2019

This letter is in response to the above-mentioned letter sent by Recycle Ann Arbor (RAA) to the City of Ann Arbor Purchasing Department as a protest regarding RFP 19-28 for the City of Ann Arbor's MRF Operations and Recyclables Processing.

The allegation of bias in your letter misidentifies City staff's analysis and professional judgement as a personally motivated attack on RAA. The City finds this position to be counterproductive to achieving our shared interests, and it also undermines public trust in City staff by relying on innuendo unsupported by fact. The City has enjoyed and benefitted from its long relationship with RAA and would like to maintain communications grounded in professionalism and accountability. Therefore, the City will reframe the conversation around our joint interest in maximizing recovery of our recycling resources and our shared goal to strengthen recycling infrastructure while minimizing undue risk to the larger community. The City offers the following response in the spirit of responsibility and professionalism that is shared by all stakeholders involved in this RFP process.

The City recognizes strong interest from some members of the community in redeveloping Ann Arbor's MRF. The City does not characterize our recommendation to Council as a preference for either MRF redevelopment or transloading operation; indeed, RFP 19-28 is equally receptive to either option. Rather, the City notes our analysis of qualifying proposals revealed strong evidence that RAA's proposal to redevelop the MRF did not meet RFP terms designed to protect the community and MRF staff from risk. Nor did RAA's proposal and subsequent follow-up data satisfactorily address City questions regarding essential elements including:

- Organizational structure
- Staffing
- Implementation
- Maintenance and safety
- Project funding
- Cost proposal/revenue share
- Materials marketing

The City lays out these concerns in more detail in the RFP proposal evaluation and memo to City Council, both of which the City will make public in preparation for the December 2, 2019 City Council meeting.

Given significant and unaddressed concerns about RAA’s proposal to redevelop the MRF, as well as the changing and dynamic nature of the present recycling market, City staff found RAA’s proposal presented more risk and less potential benefit to the City than the alternative proposals to continue transloading.

The following response addresses specific statements in RAA’s November 8, 2019 Protest Letter regarding RFP 19-28.

Item #1 from Protest Letter: RAA characterizes the RFP criteria as “Arbitrary, Capricious, and Designed to Disadvantage RAA”

RFP 19-28 follows the City of Ann Arbor’s procurement process, as outlined in the RFP document. As stated in the opening paragraph of the RFP *Objective*, the City sought “the services of a firm (private company, public company, non-profit organization, or government agency) or teams of firms to provide the labor, equipment and materials necessary to sort, process and market the City’s recyclable materials.” The City additionally clearly indicated interest in proposals for MRF redevelopment, transloading, and alternative proposals that met the conditions of the RFP. Again, as stated directly in the RFP *Objective*, “firms may propose to sort and process recyclables at the MRF, to use the MRF as a transfer facility to transload recyclables to another MRF for sorting and processing, a sequential combination of the foregoing, or an alternative approach to performing these services for the City” (page 3).

Contrary to claims made by RAA in their Protest Letter that the RFP was designed to disadvantage them, the City gave equal consideration to all types of vendors and qualified proposals as evidenced by the RFP language and the City’s reception of RAA’s MRF proposal as a qualifying RFP submittal. The following points address specific, related concerns RAA raises:

- **The City seeks vendors with past involvement with similar projects.** Given the complex nature of recyclables processing, marketing and MRF management, the City considers past specific experience with similar projects as a key criteria to evaluate and differentiate potential Offerors. The matter of whether the experience was gained at contractor-owned facilities or facilities operated under contract is immaterial and the City’s RFP gives equal consideration to Offerors meeting either of those criteria. RAA’s Protest letter states “ownership of other MRF facilities is not related to the goals of this project,” and the City agrees with this statement. Ownership of other MRF facilities is not, in-and-of-itself, a requirement of the RFP.

RAA contends their experience is equivalent to or more effective than the type of MRF management and recyclables processing experience sought by the City. RAA has over two years

of performing transloading only at the Ann Arbor MRF, as well as the City's Drop-Off Station, their ReUse Center, and a Materials Recovery Yard in Scio Township that handles construction and demolition debris and other bulky drop-off materials. RAA does not have direct organizational experience in MRF operations and commodity marketing. Although one individual in the RAA organization has experience of this nature prior to joining RAA, based on our evaluation of RAA's proposal, the City cannot identify other RAA employees with similar past experience. Therefore, the City finds RAA's organizational experience is neither equivalent nor more effective than the MRF operation experience sought by the City in the RFP.

- **The City seeks contract terms that meet its fiduciary responsibilities**, for example in regards to capital investment in recycling processing equipment to be operated in a City-owned facility. According to their proposal, RAA would provide the upfront capital investment in MRF equipment and other upgrades. Through a proposed 10-year monthly payment schedule requested in the RFP (page 28), the City will ultimately fully reimburse RAA's investment. Under this arrangement, it is logical that the City would retain equipment it has paid for at the end of the contract term. Alternatively, if RAA wants to retain the equipment assets at the end of the contract term, they could bear the capital investment costs instead of passing those costs to the City. Any proposal seeking the City's payment for capital costs AND retention of equipment assets at the end of the contract term does not meet the City's standard for fiduciary responsibility.

RAA contends "the requirement to transfer ownership at the end of the initial contract term... favors large companies and disadvantages local companies such as RAA." The City disagrees with this characterization and instead notes that the RFP protects the interest of the City, regardless of the size or type of organization performing the requested service. Multiple potential proposers, including larger entities, requested an extension of 4 – 8 weeks for the proposal development period and, when no extension was provided, no one other than RAA submitted a proposal for the option to re-equip the MRF.

Item #2 from Protest Letter: RAA claims the City improperly selected the recommended vendor

The City followed standard procurement practice in its proposal, evaluation, and award notification process. On September 17, 2019 the City received proposals from two offerors, Emterra Environmental USA Corp. (Emterra) and RAA. A selection committee comprised of City staff reviewed the proposals based on several criteria, all of which are fully detailed in the RFP proposal evaluation and related memo to City Council:

- Professional Qualifications (20% of Total Score)
- Past Involvement with Similar Projects (15% of Total Score)
- Proposed Work Plan (35% of Total Score)
- Fee Proposal (30% of Total Score)

The RFP selection process required an initial evaluation of proposals, after which the fee proposals were opened only for the top proposals. The City determined both Emterra and RAA were qualified. City staff held interviews with both offerors. Following the interviews and review of follow-up information requested from and provided by the offerors, staff reviewed and re-scored the proposals of the offerors. The final scoring of the two offerors is as follows:

1. Emterra (Option 1): 82.06 points
2. RAA (Option 1): 65.70 points
3. RAA (Option 2): 58.20 points

According to standard City practice, on Friday, November 1, the City provided Notice of Intent to Award RFP 19-28 to RAA indicating that Emterra was selected for recommendation to City Council for contract award.

City staff stand behind their evaluation and recommendation, which is discussed more detail in the related memo to Council. While we will not offer duplicative information in this response, we would like to take the opportunity to provide accurate information and address several opinions RAA raises in their protest letter:

- **The City’s evaluation process revealed RAA’s proposal is not as cost effective as transloading proposals.** RAA contends their MRF bid is cost effective because it includes an \$800,000 state grant in their pricing. In spite of this grant funding, based on our evaluation and scoring process, the City finds RAA’s MRF redevelopment proposal to be the lowest scored option.

As discussed in the previous paragraph regarding fiduciary responsibility and capital investment equipment, the City does not view RAA’s proposal as beneficial to the City; instead, their proposal exposes the City to risk without requiring RAA to bear an equitable portion of the risk. Additionally, proposed pricing is based on terms that do not meet the conditions of the RFP. Specifically, RAA’s price depends on re-furbishing unsafe MRF equipment that the City stated was not to be reused (RFP 19-28, page 11). Finally, RAA’s MRF redevelopment cost proposal does not meet industry standards and RFP requirements. RAA proposes to receive all of the recycling commodity revenue until its value reaches \$45/ton (it is currently approximately \$20/ton), and only then would the City receive any revenue. In conclusion, RAA’s proposal is not cost effective. Instead, it increases the City’s fiduciary risk and eliminates RAA’s incentive to market the recycling commodities aggressively, and reduces the likelihood of income stream to the City.

- **The City’s RFP, including its evaluation criteria, was developed with staff and Environmental Commission input.** The criteria were related to the proposal and the services requested by the City and did not include ancillary items such as those noted in the protest letter. The matter of the City giving preference in its ranking for the use of union labor was addressed in Addendum #1, which stated “the City cannot and does not give preference to a company that is or is not a union shop. The City requires that the contractor and their subcontractors pay a living wage per Chapter 23 of the Ann Arbor City Code.” The matter of the City ranking the educational value of the MRF was also addressed in Addendum #1, which stated “the City will be examining the potential use of the second floor education area in the MRF at a future date.” As to the matter of City Council’s declaration of a climate emergency, this action was taken on November 4, 2019 after the RFP evaluation process and was therefore not included in RFP scoring criteria.

- **The City’s recommended vendor has experience in MI and specializes in recycling.** RAA characterizes Emterra as a “Canadian waste management company” in its Protest Letter. The City provides a detailed description of Emterra in a related memo to Council, but for the purposes of this response, we would like to provide accurate information about the organization for the record. Emterra Group is a Canadian resource recovery company providing recyclables collections, processing and commodity marketing for over forty-three years. Emterra currently has over sixty municipal contracts in Michigan. Emterra operates 15 MRFs — including 6 single stream MRFs — processing and marketing 550,000 tons of recyclables annually. Although Emterra does handle some refuse disposal, as required by contract, Emterra originated as a recycling company, recycling remains the company’s focus, and most of its work and services are recycling operations.
- **The City’s recommended proposal results in City recyclables being processed efficiently and effectively in a new facility—using innovative technology to meet today's stricter recycling standards, and providing flexibility to adjust for future material streams and standards—and follows the Hub-and-Spoke method recommended by the Governor’s Recycling Council.** RAA states that the City’s recommendation is not a regional approach as recommended in the City’s Solid Waste Plan, County Solid Waste Plan and the State’s support for expanded regional recycling capacity. However, it is supportive of regional recycling providing material to a new, efficient MRF in the greater region, rather than a local MRF that will ultimately include unsafe equipment.

Conclusion

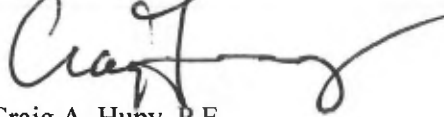
RAA requests several items from the City, including:

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
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

The requested items will be gathered and provided pursuant to the Freedom of Information Act (FOIA) and any appropriate redactions or omissions of exempt material will be applied. After these items are gathered and reviewed by the City Attorney’s Office for FOIA compliance, they will be forwarded to you within the statutory timeframe.

The City does not find that RAA's Protest Letter offers valid reason to re-bid the RFP. The City will accept Council's decision on the matter of the MRF redevelopment and is glad to offer carefully reviewed and documented analysis in support of Council's decision.

Regards,
CITY OF ANN ARBOR



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