

From: Councilmember Dan Kalb

Re: October 18, 2016 City Council Agenda Item No. 13 – Zero Waste Franchise Contracts

Honorable Morris D. Jacobson
Response to Grand Jury Report – Zero Waste Franchise Contracts
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Responses to Specific Grand Jury Findings and Recommendations

In accordance with the Grand Jury's findings, with which the City generally disagrees, the City will nonetheless analyze and consider implementing each of the recommendations. The City's responses to the Grand Jury's findings and recommendations are summarized in the following tables.

RESPONSES REQUIRED from Mayor, City of Oakland Findings 16-6 through 16-13

Number	Grand Jury Finding	Administration Response	Status of Implementation
16-6	Financial analysis of numerous contract provisions providing for economic benefits to the city was insufficient. Little or no analysis of the ultimate financial impact to ratepayers was performed.	<i>Partially Disagree</i>	<i>Analysis of the base rates was provided to the City Council and the public in several forms. TheAn single area where this was not the case was for commercial organics collection services, where service had been provided to businesses without local regulation of rates or terms of service. The rates of those existing services, which were determined solely by agreement between the service providers and their commercial clients, were unknown to the City, so rate comparisons could not be made. Attachment A to the 6/30/14 Agenda Report to City Council provided cost impacts of several policy options then under City Council consideration, the costs of including services that would be provided by EBMUD and Civicorps, options for collection of multifamily organics, and the location of the Waste Management call center.</i>
16-7	The City of Oakland's contracting process failed to achieve a competitive bidding environment.	<i>Disagree</i>	<i>The City implemented several measures to encourage competition: protocol for process integrity, early outreach, clarification of City's policy regarding Arizona-based business, extension of initial proposal deadline, and following StopWaste Franchise Task Force guidance on franchise goals and standards. In addition, the City incorporated several measures in its structure of the RFP to encourage competition: separating rather than</i>

			<p><i>bundling contracts to qualify a broader spectrum of proposers, using a refuse rate index for annual rate adjustment, soliciting rather than specifying vehicles and other equipment, allowing proposers to recommend changes to the contract and RFP during question period, allowing proposers to take exceptions to contract and RFP with proposal submittal, and reducing minimum reference requirements to allow new and small firms or joint ventures to propose. The following external factors may have suppressed participation: limited number of firms in the marketplace, market timing, cost of the labor market in Alameda County, Alameda County Measure D 15-mile rule on direct haul to disposal facilities, and Measure D fees. The RFP process qualified six companies as eligible proposers. These represented all of the service providers in the region who could reasonably be expected to have the capacity to provide the services described in the RFP to a city the size of Oakland. Two of those proposers, both of whom had current experience providing similar services to large cities in the region and state, withdrew from the process shortly before the submittal due date. The two incumbents developed their proposals over several months in competition with all the qualified proposers, including the two who withdrew.</i></p>
16-8	<p>The City drafted RFP provisions that favored the incumbents and suppressed competition.</p>	<p><i>Disagree</i></p>	<p><i>Incumbents' experiences providing the services, and their investments in facilities located in Oakland and nearby are a common condition in many markets, including this one, with which competitors are well accustomed. The non-incumbent competitors were well aware of the end-dates of the previous contracts and the City's interest in soliciting competitive proposals. The non-incumbent providers had the opportunity to develop cost-</i></p>

			<i>effective proposals that were responsive to the RFP.</i>
16-9	The City’s official contracting process was abandoned and replaced by the contractors’ closed-door negotiations.	<i>Qualified Disagreement</i>	<i>The phrase “abandoned and replaced” is inaccurate. The official contracting process was interrupted and superseded by the WMAC lawsuit and the resulting negotiations and settlement, which resulted in the <u>subsequent negotiation with City staff and conclusion of the new contracts very close in time to the termination of the prior contracts.</u></i>
16-10	Public transparency was undermined by the contractors’ closed-door negotiations.	<i>Agree, subject to the stated clarification</i>	<i>The contractors’ settlement negotiations were not as open to the public as the official contracting process.</i>
16-11	There was little to no public debate before the City council concerning disproportionately high franchise fees.	<i>Disagree</i>	<i>The amounts of the franchise fees and their allocation were presented by staff to the City Council in its public meetings (see Agenda Reports dated 7/21/14 and 9/22/14, and Adopted Resolutions Nos. 13253, 13254, and 13258), and the City Council and the public discussed the franchise fees. The revenue the City receives from the franchise fees did not change from the prior contract. Discussion at the meetings did not include the amounts charged by other municipalities. As stated in response to Finding No. 16-13, the franchise fees in the current contracts are not disproportionately higher than those charged by other jurisdictions (e.g. City of Berkeley has 26% franchise fees for its commercial franchises haulers).</i>
16-12	Collection rates paid by Oakland businesses and multi-family residences were markedly higher than those in surrounding communities.	<i>Partially Agree</i>	<i>It is commonplace that the highest rates in a region are those in communities with the most recently signed contracts, which are the most up-to-date with current market costs. As other communities sign new contracts, their rates will likely adjust for new programs or for annual cost of living increases. <u>For those ratepayers in Oakland paying for ancillary services such as push/pull, the total costs may be</u></i>

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			<i>higher as these push/pull services were previously provided free of charge.</i>
16-13	Franchise fees paid by the City's garbage collection contractor, passed on to Oakland ratepayers, are disproportionately higher than franchise fees paid to other Bay Area municipalities and special districts.	<i>Disagree</i>	<i>The Grand Jury did not provide the City with the data on which it based this finding. The City is aware that franchise fees paid to certain other municipalities range from zero to more than 20% of total revenues. The franchise fees under the City's current contracts total approximately \$25 million to both contractors, not \$30 million to WMAC alone as stated in the Grand Jury report, and those fees constitute approximately 20% of total revenues under the contracts, not 30% as stated in the Grand Jury report. Finally, the revenue the City receives from the franchise fees did not change from the prior contract.</i>

Recommendations 16-4 through 16-9

Number	Grand Jury Recommendation	Administration Response	Status of Implementation
16-4	Given the complexity and enormous financial impact of the existing franchise contracts, the City of Oakland should start planning and preparing to solicit competitive bids for contracts to be in place sufficiently in advance of the expiration of the existing agreements.	<i>Further Analysis</i>	<i>The MMO contract expires 6/30/25. Planning for the 5-year extension provided by contract, or solicitation or negotiation of a new contract, according to City Charter as allowed by state law, would begin in 2020, pending further analysis. The RR and Disposal contracts expire in 2035, and planning related to procurement of replacement contracts would begin in 2028, pending further analysis.</i>
16-5	The City of Oakland should ensure, when available, that the RFP processes be flexible enough to allow potential vendors to propose alternative, innovative	<i>Further Analysis Agree</i>	<i>The purpose of an RFP process is to solicit proposals for different means and methods that deliver the described services, and allow for fair evaluation of proposals that are comparable, and serve the City's adopted goals. In preparing for successor franchise agreements per the</i>

	responses.		<i>schedule noted in City's response to Recommendation 16-4, the City will consider the best ways to allow for innovative and alternative proposals with an eye on transparency, fairness, and responsiveness to City goals including many of the elements of the previous process as set forth in response to Finding 16-7 above.</i>
16-6	The City of Oakland must ensure that subsequent agreements are solicited and awarded with complete transparency to the ratepayers, the parties whom ultimately bear the cost of the services. Rates charged should be reasonably related to the cost of the services provided.	<i>Agreed</i>	<i>The City believes that the RFP process as developed and initially implemented was transparent. Should the City exercise its prerogative under its Charter to award successor franchises through competitive procurement processes, this will be done consistent with the goals of transparency and rate parity, in addition to environmental goals including waste diversion, as established by the City at that time.</i>
16-7	To ensure transparency, the City of Oakland must publicly report on and have public discussion regarding franchise fees (and how those fees are to be used) in any city contract.	<i>Implemented</i>	<i>Franchise fees apply only to franchises and not to public works construction or professional services contracts. The City will continue to provide information to the public on the amount of such fees and their designated uses such as supporting abatement of illegal dumping and graffiti.</i>
16-8	The Oakland City Council must ensure adequate resources to validate the completeness and accuracy of contract proposals. This may require the support of an independent financial analysis.	<i>Further Analysis</i>	<i>The City Administrator will continue to utilize the services of qualified consultants to validate contract proposals, including one qualified to perform independent financial analysis, per the schedule noted in the City's response to Recommendation 16-4. Additional resources for future Zero Waste procurements will be recommended. <u>The City Council also may choose to retain an expert financial analyst to review contractor proposals.</u></i>
16-9	The City of Oakland should immediately begin	<i>Further Analysis</i>	<i>The City does not agree that the Grand Jury report identifies shortcomings</i>

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<p>to consider a long term strategy to correction of the short-comings of the current contract, including:</p> <ul style="list-style-type: none">a) Specific timelines and milestones required to assure a truly competitive process is developed;b) Evaluation of innovations such as a city-owned transfer station;c) Regular financial review and assessment focused on the actual cost of services provided and ratepayer impact; andd) Involvement of impacted communities and public transparency.	<p>needing correction in any of the three franchises that the City executed at the end of this RFP process. <u>For the next contracting process:</u></p> <ul style="list-style-type: none">a) Timelines and milestones may be developed according to the schedule noted in the City's response to Recommendation 16-4, should the City elect to engage in a competitive process.b) As the City did in its preparation for the subject RFP, consideration may be given in the next procurement process to innovations that meet the then-current marketplace and the City's goals.c) The City may will perform the financial reviews described in its current contracts.d) Transparency of the process to the public, including how to involve rate payers in a more formal way early in the process, as well as discussion at public meetings will be part of the process.
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We appreciate the efforts of the Grand Jury and its recommendations to improve the transparency and outcomes of procurement of zero waste or related franchised services, should the City elect to obtain them through a competitive process when the current contracts expire in 2025 and 2035.

Sincerely,

Libby Schaaf
Mayor

Lynette Gibson McElhaney
Council President, District 3

cc: Oakland City Council
Sabrina Landreth, City Administrator