

December 7, 2016

**Via Electronic Mail and Messenger**

The Hon. Members of the Los Angeles City Council  
Los Angeles City Council  
City Hall  
200 N. Spring St., Ste. 470  
Los Angeles, CA 90012

Re: Response re: the Zero Waste LA Exclusive Franchise System for Commercial and Multifamily Solid Waste Collection and Handling

Dear Hon. Council Members:

The weakness of one's position is evident when one resorts to *ad hominem* attacks. That is precisely what Athens and LASAN have done in relation to CR&R. As detailed in our prior letters and as exemplified by the discussion below; CR&R's position is that it was not treated fairly in the process. In sum:

- 1) it appears that the top seven rankings were reserved for particular current City hauling providers;
- 2) it appears that certain infrastructure of certain proposers was not considered when LASAN scored the proposals;
- 3) CR&R has requested documents, including scoring materials, via a Public Records Act request but LASAN has not produced the backup scoring documents and will not produce these documents until January 2017; and
- 4) in another show of apparent bias, none of CR&R's various letters were published on the LA City Council website for this matter, the response letter to these unpublished letters were shared with Athens by one or more of the recipients, and Athens' response was immediately published on the LA City Council's website.

In its published response letter Athens uses terms like "flails", "frivolous" and "irresponsible" and refers to CR&R as one of the "worst ranked proposers" as it was ranked 9<sup>th</sup>. But Athens wholly fails to address the overarching substantive issue: ***namely that those other than the top seven current City haulers were not treated fairly in this process*** because, as evidenced by the almost statistically impossible rankings matching down to the exact same order of hauling levels, ***it seems evident that no other hauler could have ranked higher than 8<sup>th</sup>***. The top seven rankings were reserved for the seven current high level City haulers. Notably, not a single large zone was awarded to anyone other than one of the top seven current haulers. And it was only when two of these haulers withdrew that any small zone was made available to an

entity that was not one of the top seven. (See 9/26/16 Joint Board Report 1 at pgs. 16,18- 19.) Thus, *the point is that the process was not truly open to all proposers but rather was only open to the top seven.*

LASAN's response to CR&R's Public Record Act request bolsters the apparent bias in that LASAN has expressly stated that it cannot produce the detailed scoring information until January 2017. How can this be when LASAN likely relied upon at least some of these documents, and not just the memories of staff, in preparing a 15 page report to the Energy and the Environment Committee?

Athens' next contention is that the RFP states that providing City services was more heavily weighted. The provision upon which Athens relies, however, does not support its position. Indeed, the factor to which Athens cites is the provision of services in other jurisdictions, and in the City. This implies that the provision of these services in other jurisdictions would be given the same weight as providing services to the City. As detailed above and in previous letters, the outcome of the rankings exactly matching the level of hauling services to the City shows that a much greater weight was afforded to those currently providing City hauling services. CR&R specializes in providing franchise collection services, has over 2.5 million customers in over 50 municipalities, and has never lost any municipal client. If scoring in other jurisdictions carried the same weight as providing services to the City as suggested by the RFP, then certainly CR&R should have scored well in this category. Unfortunately, CR&R is unable to verify that this information was given due weight, or even scored at all, because LASAN has refused to produce even CR&R's own scoring back-up information until January 2017. This is so even though LASAN used this information to prepare its 15 page report for the Council.

Further discounting Athens' position on the ranking issue is LASAN's own response to this point in which it states that the rankings and the service levels matched exactly because those currently providing services simply tried harder than the other proposers.<sup>1</sup> (LASAN 11/28/16 Report at pg. 14.) Nowhere does LASAN reference the RFP and an increased weight given to City haulers. This is likely so because the RFP does not support this position but rather supports weighing similar services provided in any jurisdiction with equal weight.

Next, Athens states that "CR&R finished in the bottom half of proposers for both criteria [in which infrastructure investments were considered]." (Kieffer 11/29/16 letter at pg. 3.) Athens misunderstands CR&R's position regarding its "unique alternative method" of anaerobic digestion. (See Previously Submitted 2014 JBR1 at pg. 8.) CR&R does not contend that it should automatically receive a contract because it has an anaerobic digester. Rather, CR&R contends that because it has this LASAN admitted superior process, it should have scored

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<sup>1</sup> LASAN's position on the point is incredulous. First, by this logic, only those that currently have business in the City would expend effort to keep that business, thereby completely discounting the notion that those without business in the City would have an incentive to expend effort to get new business. Second, this logic suggests that each of the seven top ranked proposers expended the amount of effort in their proposals commensurate with the percentage of services they were providing. This makes the statistical probability of the rankings exactly matching the service levels provided, and now also matching their relative expended effort even more astronomically small.

well if LASAN gave this infrastructure its due weight. CR&R can only surmise from its raw score, because it does not have the backup scoring materials, that LASAN did not give this infrastructure due weight. The question then becomes why not. As for future investment, CR&R is committed to establishing additional infrastructure in the Harbor and had it had the opportunity to negotiate for this zone, it would have had specific plans, not just monetary promises. And while Athens touts its \$10 million commitment, as of the November 2, 2016 Energy & the Environment Committee meeting, it has yet to set forth any plans for any infrastructure even though Athens has had many months (approximately 8 months from the time of the Harbor vacancy) to contemplate this infrastructure.<sup>2</sup>

Athens also misconstrues the CAO's report in an effort to find support for its position. Although the November 2, 2016 CAO report makes reference to a possible delay if the Council were to disapprove two contracts, this statement was specifically made in relation to an exemption request for Republic, an Arizona company. The zones for which Republic was recommended are two large zones with accounts totaling almost 17,000. The Harbor zone, however, involves 3,393 accounts, less than 20% of the accounts affected by the Republic exemption issue, and approximately 5% of the entire franchise system. Athens may respond that the Council cannot parse out the contract and reject only the Harbor Zone portion. This is correct. However, prior to the Harbor Zone becoming available sometime after March 2016, LASAN and Athens had already been in negotiations for the two other zones encompassed by the current proposed contract. If expediency and the best interest of the City is truly the desire, then why wouldn't LASAN and Athens simply revert back to that contract? That would certainly minimize the impact on the franchise system and limit that impact to the Harbor Zone only. That, of course, is up to LASAN and Athens but certainly if they truly have the best interest of the City at heart, this would seem to be the only course to take should the Council disapprove the Athens contract that encompasses the Harbor Zone. Move forward where you can now.

As for the contention that every other hauler would have a "legitimate legal complaint" to a CR&R selection, this is hyperbole at best. Of the eight proposers that ranked higher than CR&R, some did not bid on the Harbor, one declined a large zone assignment, and still others completely withdrew from the process and therefore have no standing to complain. Even still, CR&R is not simply asking that it replace Athens in the Harbor Zone. Instead, CR&R is asking to be treated fairly. CR&R was the next highest ranked proposer, and believes that it would have had an even higher score had the scores been fairly arrived upon. CR&R requests that it be permitted to review the scoring materials, that it be permitted to challenge its score if the scoring materials reflect that certain aspects were not given the proper weight or not considered at all, and that it be permitted to do so before the Harbor Zone is awarded. LASAN has some of these documents available now as is evidenced by its apparent reliance upon such in its November 28, 2016 letter, but it has refused to produce any such documents, even on a rolling basis as we have requested, until January 2017.

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<sup>2</sup> Additionally, one of the recommended haulers halted their infrastructure plan *after* they were recommended by LASAN. Apparently this withdrawal from an infrastructure commitment has no impact on a score when this withdrawal comes from one of the top seven City haulers.

## BuchalterNemer

The Hon. Members of the Los Angeles City Council

December 7, 2016

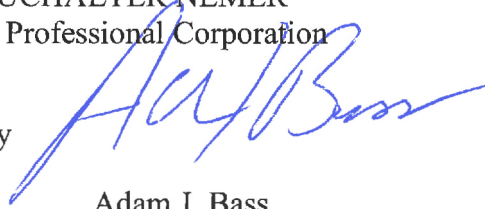
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While we agree that the RFP affords discretion, this discretion must be reasonably and fairly exercised. To do otherwise would deprive proposers of basic due process, and would render the RFP and scoring a mere sham.

Very truly yours,

BUCHALTER NEMER  
A Professional Corporation

By



Adam J. Bass

AJB:mg

cc: Enrique Zaldivar, Director LA Sanitation  
Energy and Environment Committee  
Los Angeles City Council Members  
Los Angeles Board of Public Works