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December 27, 2017

OFFICE OF THE MAYOR
HONORABLE CITY COUNCILMEMBERS
CITY ADMINISTRATOR
CITY ATTORNEY
RESIDENTS OF OAKLAND
OAKLAND, CALIFORNIA

RE: Zero Waste Requests for Proposals Performance Audit

Dear Mayor Schaaf, City Council President Reid, Members of City Council, City Administrator Landreth, City Attorney, Barbara Parker, and Oakland residents:

The Zero Waste franchise agreements at nearly \$2 billion, represent the largest contracting endeavor for the City of Oakland. The existing agreements with 2 long-time providers for waste and recycling collection were set to expire in 2015. City Council wanted a competitive process, to ensure reasonable, market-rate charges for the rate payers. They also wanted to incorporate the City's zero waste diversion goals into the new contracts. To accomplish this the City planned, developed, and executed a zero waste franchise procurement process.

The zero waste request for proposal (RFP) process encountered several obstacles and many stakeholders expressed concerns about the City's procurement process.

The objectives of this audit were to determine whether the procurement process was fair and equitable, that the process was communicated to the public, that Oaklanders were served well by it, and zero waste diversion goals were met.

Our overall conclusions frame the guidance for recommendations we provided to the City Administrator regarding future, multi-faceted, high impact waste collection contract renewals to ensure efficiency and effectiveness.

- Prepare a realistic assessment of the market and the competitive environment for the waste collection and recycling industry.
- Advocate for the RFP process and designate a project manager or coordinator for primary responsibility of the project.
- Plan for and anticipate unforeseen events, including tactics vendors may take that could derail and delay the project.
- Perform a thorough rate or costing analysis throughout the process, and include the community in regular communications.
- As the City works towards zero waste diversion goals, the progress made should be regularly communicated to the public.

We acknowledge that the City is already working towards identifying better contracting processes. For instance, City management is working with Mason Tillman Associates to study and analyze equity issues in the awarding of City contracts and grants—a study that will be released in the coming year. Considering the findings from such studies, and the lessons learned from our audit, which we have presented as recommendations in this audit report, will provide City leaders with a strong framework to adopt best practices for procurement.

I want to express our appreciation to the City Council, City Administrator, Department of Public Works, and to their staff for their cooperation during this audit and commitment to improving the procurement of new service contracts.

Respectfully submitted,



BRENDA D. ROBERTS
City Auditor

Enclosure

cc: Christine Daniel, Assistant City Administrator
Jason Mitchell, Director – Department of Public Works
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December 27, 2017

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**Performance Audit
Zero Waste
Request for Proposals**



CITY OF OAKLAND

OFFICE OF THE CITY AUDITOR

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Performance Audit Zero Waste Request for Proposals

OVERVIEW

In 2015, Waste Management of Alameda County (Waste Management) and California Waste Solution's (CWS) long standing franchise agreements with the City of Oakland were set to expire. They have been the City's sole providers of solid waste collection, disposal, and recycling collection services for many decades. As such, City Council desired a competitive Request for Proposals (RFP) process promoting a broad participation of vendors in the bidding for contract awards. The City also wanted to incorporate its zero waste goals into the new contracts, such as the expansion and improvement of local recycling efforts, reduction of landfill disposal, and land preservation for sustainable development. The RFP process encountered several obstacles and many stakeholders expressed concerns about the City's procurement process.

OBJECTIVES

Our audit objectives were to determine whether: (1) the RFP process was fair and equitable (2) the overall RFP process, the key components of the RFP, and the contractual agreements were fully communicated to the public (3) the residents and businesses of Oakland were well-served in this process, and (4) provide guidance to the City Administrator regarding future, multi-faceted, high impact contract renewals.

KEY FINDINGS

The findings from the audit include:

Finding 1: City management did not fully understand the competitive environment in the waste collection industry—an industry dominated by a few service providers. Seven vendors were initially interested in the RFP's, but only the incumbents, Waste Management and CWS, ultimately submitted qualified proposals.

Finding 2: There was no single advocate for the success of the RFP process.

Executive Summary

- Finding 3:** City leaders did not anticipate vendor negotiating tactics that could adversely impact a large public contract.
- Finding 4:** Final contract rates were not fully analyzed or communicated in a timely manner to the public.
- Finding 5:** It is uncertain whether Oakland will meet its zero waste diversion goals. The progress on these important goals is poorly communicated to residents.

RECOMMENDATIONS

To address the audit's findings, the report includes five recommendations:

1. **Promote a competitive bidding process** by (1) preparing a market assessment to form realistic expectations of the competitive environment, (2) making early efforts to involve vendors, and other stakeholders to better understand innovative ways to service Oakland, and (3) planning well in advance of pending contract expiration dates.
2. **Identify and assign advocates to the RFP process.** The City Administrator should be an advocate for the RFP process and designate a Project Manager, with primary responsibility for overseeing the project. City Council must guide only through its oversight and not assume the role of operational management. Throughout the RFP process, all parties should adhere to agreements, protocols and schedules.
3. **Understand vendor negotiating tactics.** City management should work with industry experts and various stakeholders to develop compensating strategies in advance of vendor negotiating tactics, such as lawsuits or referendums, that create delays and additional costs during the RFP process.
4. **Conduct a rate analysis and develop an early communication plan** to provide the public with an explanation of the impact of rates, fees and service changes well in advance of signed contracts.

Executive Summary

5. **The City Administrator should work toward the City's zero waste diversion goals** by communicating to the public how the goals are measured and what the outcomes mean for a cleaner and healthier Oakland.

WHY THIS AUDIT MATTERS

This audit includes valuable lessons learned for the contract renewal process and should be retained and referred to in future processes for similar city-wide contracting. Given the magnitude of the financial impact to the City (approximately \$2 billion dollars), and the increase in rates for all residents, applying our recommendations to future contracting processes will save the City valuable time and resources, increase efficiency, and make certain the RFP process remains transparent, equitable, and inclusive.

The City values sustainability and spent millions of dollars to ensure these franchise contracts included the City's zero waste goals. Relaying to residents the status of our progress and educating them about its zero waste diversion goals is a prudent and necessary next step to ensure Oakland remains one of America's most environmentally-friendly cities¹.

¹ Hazimihalis, Katina. The Fill. *The Five Greenest Cities in the U.S. in 2017*. <http://www.budgetdumpster.com/blog/greenest-cities-in-us-2017/>. 2017

Introduction

Waste Management of Alameda County (Waste Management or WMAC) has serviced Oakland since 1909 as the sole provider of solid waste collection and disposal services for both residential and commercial customers. Waste Management was also one of two providers of residential recycling collection services, a service shared with California Waste Solutions (CWS), which began in 1992. These franchise agreements were set to expire in 2015. New contracts were needed for (1) the collection of garbage and compostable materials, (2) residential recycling collection, and (3) landfill disposal services.

As Waste Management and CWS have been the only providers to the City of Oakland for decades, City Council desired a competitive Request for Proposals (RFP) process—one that would promote a broad participation of vendors in the bidding for the contract awards, ensuring market-rate pricing for the rate payers.

The City also wanted to incorporate its zero waste goals (in development since 1998), into the new contracts and sought to include other City social initiatives and programs, enhancing the economic development of Oakland.

The City planned, developed and executed a zero waste franchise procurement process resulting in new service contracts, effective on July 1, 2015. However, many stakeholders expressed concerns about the procurement process, the impact on services and rates, as well as the propriety of the contracts.

The Alameda County Grand Jury conducted an investigation of the City's zero waste contracts, prompted by complaints and allegations of improprieties in the RFP process and resulting contracts. In June 2016, they issued a report highlighting areas of concern related to the lack of a competitive bidding environment; little or no analysis of rates and the impact to ratepayers; abandonment of the City's contracting process; and poor communications to the public. The Mayor and City Council responded to the report and generally disagreed with the findings.

Audit Objectives

The objectives of this audit were to identify weaknesses in the contract renewal process, and provide guidance to the City Administrator regarding future, multi-faceted, high impact contract renewals to ensure efficiency and effectiveness.

Although our report findings complement and somewhat align with those of the Grand Jury, the conclusions from the Grand Jury report did not provide guidelines that the City

Introduction

Administrator could apply as lessons learned for renewals or renegotiations of future franchise contracts. The Grand Jury report also did not address the City's zero waste goals—one of the primary factors considered in the contract design—and whether these goals were attainable, communicated effectively to the public and how they would affect the Oakland community.

Our audit objectives were guided by the following questions:

- Was the RFP process fair and equitable?
- Was the overall RFP process, the key components of the RFP, and the contractual agreements fully communicated to the public?
- Were the residents and businesses of Oakland well-served in this process?
- What were the lessons learned for city-wide contracting?

Why this audit matters

Several factors influenced the need for this audit:

- **The magnitude of the financial impact to the City.** These contracts represent approximately \$2 billion - the largest contracting value for the City to date.
- **The infrequent and onerous contracting renewal process for large franchise agreements.** Since these contracts are long-term, oftentimes spanning 15 years or more, City staff rarely have an opportunity to work on such projects. Many stakeholders expressed concerns about the process, impact on services and rates as well as the propriety of the contracts. This audit includes lessons learned from the lengthy process leading up to the July 2015 contracts, and should be retained and referred to in future processes for similar City-wide contracting.
- **The significance to the rate payers.** The City negotiated and contracted with these vendors on behalf of rate payers – those paying for these mandated services. Rates for all customers increased from the prior contract from 24% to 39%.
- **The City's zero waste goals.** These goals (that have been in development for decades), are focused on diverting waste from shrinking landfill sites and addressing climate change concerns. The City deliberately integrated these goals into the design of the waste collection and disposal request for proposal (RFP).

Introduction

Steps taken to protect our environment and ensure future generations can live healthy lives are valued and important for Oakland's public health.

- **The need for inclusive contracting in local government:** The City's intention was to make certain the RFP process was equitable and broad because inclusive business participation in government contracting strengthens partnerships between government and local vendors, ensures market-rate pricing, and is an important source of income and jobs in the City.

Background



The pursuit of Oakland's zero waste goal began in 1989. A series of California State, Alameda County, and City of Oakland legislative and policy initiatives provided the framework for the pursuit of this goal.

In 2006, City Council resolved to adopt a Zero Waste Goal by 2020 and implemented a Zero Waste Strategic Plan. The aim was to increase recycling, create jobs, respond to the impact of climate change, and reduce landfill disposal, from the 2006 level of 400,000 to 40,000 tons per year by 2020.

Given that the WMAC and CWS contracts were set to expire in 2015, the City designed a process and schedule for soliciting franchise contracts that aligned with their zero waste goals. The design and implementation of the Zero Waste Strategic Plan was an important step prior to the renewal of the franchise contracts.

City staff prepared formal RFPs, issued in 2012, for the collection and disposal of 1) garbage and compostable materials, (2) recycling, and (3) landfill services. For the next several years, the City engaged in a procurement process that was both cumbersome and complex.

In May 2014, City staff made recommendations to City Council for contract awards. However, City Council did not accept these recommendations and voted to award all three franchise agreements to CWS.

A referendum initiative threatened to overturn City Council's decisions, although not successful. One vendor filed a lawsuit against the City for failing to adhere to contracting and RFP processes. Ultimately, the two vendors entered a Memorandum of Agreement (MOU) on the division of the three contracts without city or public involvement, which were

Background

then awarded through Ordinance amendments by City Council. Two of the franchise contracts were eventually signed 14 months past the deadline and one contract was signed 17 months past the expected completion date and just months before the initiation of these new services.

Audit Findings

1: Lack of a competitive environment

The City's intent was to provide a competitive process in securing Zero Waste contracts. The focus was to ensure fairness and transparency in identifying vendors and awarding future contracts. The RFP process is commonly used to maximize vendor participation.

The waste and recycling business is a \$75 billion per year industry, where companies must commit substantial capital investments in plant, equipment, and transfer stations,² and are subject to considerable environmental and regulatory requirements. Over the past decade, the pool of companies in this industry has decreased significantly due to mergers and acquisitions. The eight largest companies comprise nearly one-half of the waste collection market in North America, and Waste Management has an unparalleled dominance in the industry.

The City intended these agreements to be more than just business contracts to collect waste from city residents and merchants. These were to be regarded as partnerships that would promote economic development in Oakland. This is evident in the 32 RFP policy directives developed by City Council and staff which included the following requirements:

- An in-county call center;
- Competitive wages and benefits for workers;
- Local hires;
- Preference for in-county landfill;
- Local business participation by non-profits and public agencies;
- Third bin service for organic and compostable materials; and
- Bulky waste pickup for all Oakland residents including multi-family buildings.

Although these requirements are not unusual for large public contracts, the expanded vision of the Zero Waste RFP, through these multiple directives, may have discouraged service provider participation and the ultimate goal of a competitive procurement process.

While, seven service providers were initially interested in the RFPs, only the incumbents, Waste Management and CWS, ultimately submitted qualified proposals. The City was effectively in the same position as it was before the lengthy and costly RFP process began.

² Alameda County requires collectors to transfer solid waste from the pick-up vehicles to larger capacity transfer vehicles if they are more than 15 miles from a landfill.

Audit Findings

2: There was insufficient oversight and ownership of the RFP Process

There was no single advocate for the overall successful completion of the RFP process within the City administration. Without the proper level of oversight and advocacy, the process broke down and struggled to maneuver through the established framework and timeline. In addition, the process was under-resourced which resulted in chronic delays and missed milestones throughout. Overall, there was not a champion honoring the City's values of transparent contracting.

Frequent changes in City Administrators negatively impacted the oversight of the RFP process

There was one City Administrator at the outset of the process – from 2011 to early 2014. – during which time there was consistency and a foundation from which to build the framework of the RFP. Public Works staff developed, and City Council approved, the protocols including process communications and timelines.

Oakland then experienced a succession of four City Administrators with tenures ranging between four and eight months, until the appointment of Sabrina Landreth in July 2015. This change in leadership disrupted the oversight of the RFP process, as interim Administrators hesitated to make critical decisions for the project, pending a permanent hire.

City Administrators terms



Audit Findings

Timelines were not adhered to

The original RFP process timeline was designed so contracts could be finalized and executed 18 months prior to the expiration of the in-place contracts. This was an important milestone as vendors must have ample time to purchase new equipment and to set up the services to minimize disruptions in a potential transfer between providers.

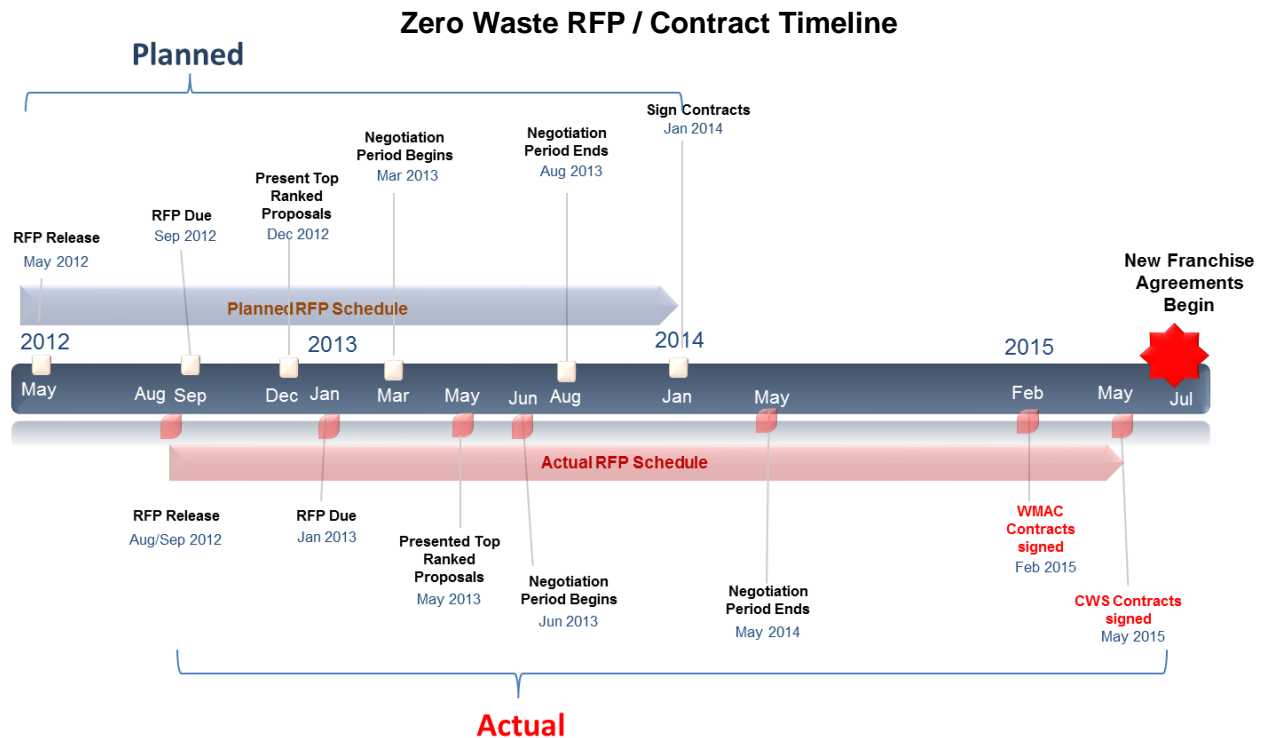
The process, however, was behind schedule nearly from the beginning and was already delayed more than three months by the time the RFPs were released. Two and a half years later, at final contract signing, the RFP process was 17 months past the original expected completion date.

Public Works staff did not anticipate events that could negatively impact the planned timeline. The November 2012 election, for example, resulted in turnover of three Councilmembers who then required a full orientation to the RFP process upon taking office in January 2013. Once in office, these new councilmembers wanted their viewpoints and specific requests to be considered in the RFP. This added to complications and consumed staff time originally dedicated to other tasks.

City Council requests throughout the process further compromised staff's ability to analyze contract rates approved in the final stages of the negotiations. Because the contracts were not signed in a timely manner staff was not able to provide a robust outreach program to the public prior to the start of the new contracts.

The table following summarizes the timeline of the planned and approved zero waste process schedule as compared to actual results.

Audit Findings



The RFP process was under-resourced

The City underestimated the capacity of human resources needed to manage the RFP process and, because of the compromised timeline, additional resources would not prove to be enough to bring the process back on schedule.

Many of the key staff assigned to the process were also still responsible for their usual job duties in the Public Works Department. Many had some expertise around waste collection, but none had worked on a project of this magnitude. The work to renew waste collection franchise agreements in the past consisted of renegotiating existing contracts with the incumbent service providers. This process was the first full-scale RFP for these services.

Consulting services used to provide expertise needed for the RFP process proved to be inadequate for a process of this magnitude. Ultimately by the end of 2015 the City spent over \$1.5 million on consulting services. However, \$1.5 million was ultimately reimbursed for the procurement process to the City by the providers who were awarded contracts, as per the conditions of the RFP and franchise agreement.

Audit Findings

Protocols of transparency and fairness were not adhered to

City staff developed protocols in the early stages of the process with the intention of fostering transparency, consistency, and fairness in soliciting and evaluating proposals, creating an impartial climate, and establishing a communication process between the City and potential respondents.

City Council approved the framework, timeline and protocols in February 2012, including the roles and responsibilities of City staff, Administrator and Councilmembers.

City Council was to authorize activities and financial transactions at several key milestones in the RFP process, including the approval for contract negotiation.

In May 2013, staff notified Council that the incumbents, Waste Management and CWS were the only proposers to the RFP and requested authorization to enter negotiations. In May of 2014, staff recommended awarding all three contracts to Waste Management.

In their intent to expand the field from the incumbents, City Council denied staff's recommendations for the contract awards, and set about to modify the RFP terms. These modifications were made nearly seventeen months after the bidding had closed. Some of the departures from the RFP terms are described as follows. City Council:

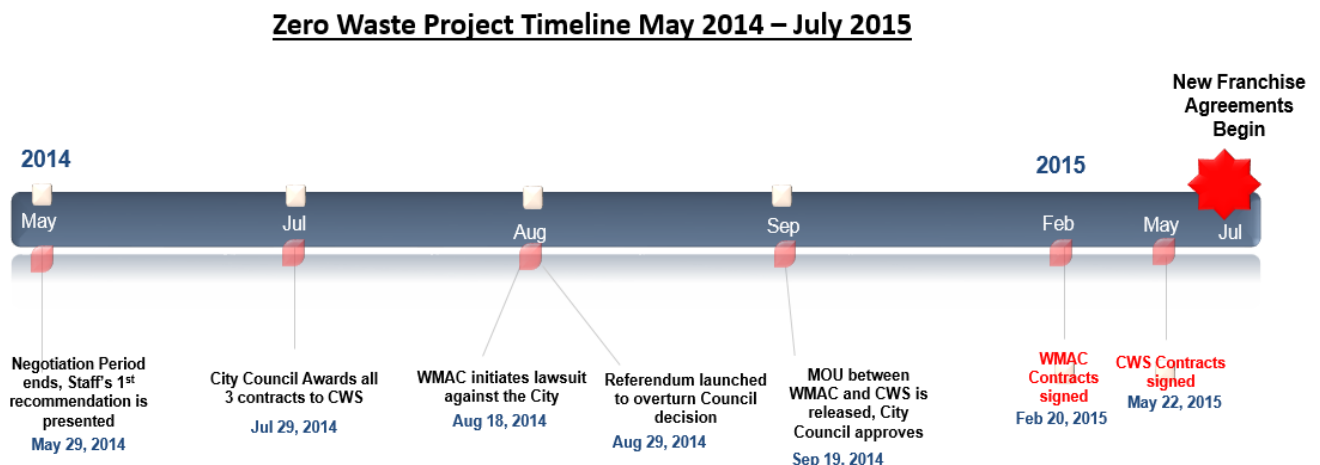
- Allowed new service providers to participate and were therefore not subjected to the same evaluation process as the original proposers. This potentially excluded other bidders that may have desired to submit offers under these new directives had they been a part of the original RFP.
- Opened the bidding of the landfill contract to CWS, though CWS did not own a landfill.
- Permitted CWS to partner with Republic (not a final bidder in the RFP process), a landfill facilities management and solid waste and recycling collection company.
- Required partnerships with EBMUD (also not a final bidder in the RFP process) for the development of a commercial organics processing program.
- Decided the contract terms, negotiated over many months with Waste Management, would then be offered to CWS.

Audit Findings

3: City leaders did not anticipate vendor negotiating tactics that could adversely impact a large public contract

Waste Management filed a lawsuit against the City for its failure to adhere to its contracting and RFP processes and a referendum was initiated to overturn City Council's decision. Though these tactics were ultimately unsuccessful, it is likely they distracted staff working on contract negotiations and required time and effort to address.

Two of the Ordinances that awarded contracts were amended in September 2014, based on a Memorandum of Agreement (MOU) between CWS and Waste Management. The contract details, including the rates charged to ratepayers, were not subject to the oversight procedures set forth in the RFP process. Waste Management received the garbage and compostable materials and landfill contracts that City Council previously awarded to CWS.



4: The final rates were neither fully analyzed nor communicated timely to the public

The initial staff recommendations provided to City Council in May 2014, were a culmination of negotiations and analysis of proposed rates and services that took approximately a year to complete. When City staff returned to City Council the second time in July 2014, and again recommended all 3 contracts be awarded to Waste Management, City Council denied these recommendations and awarded all the contracts to CWS.

Audit Findings

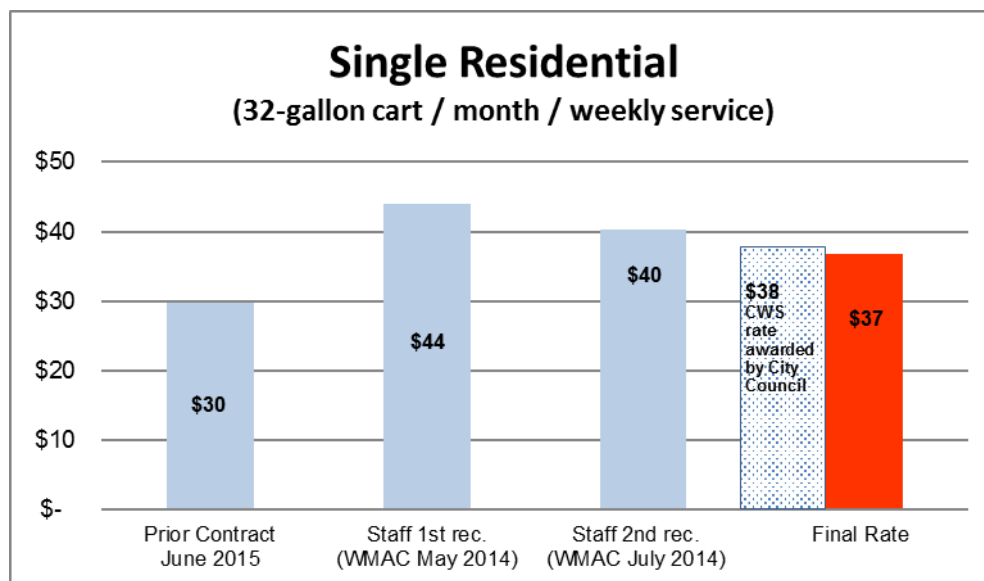
After negotiating with proposers for the best and final offer, City staff had less than 2 months to complete the same analysis of newly negotiated rates and services.

In September 2014, Waste Management and CWS agreed to share the 3 contracts for services and proposed final rates, which were approved by City Council.

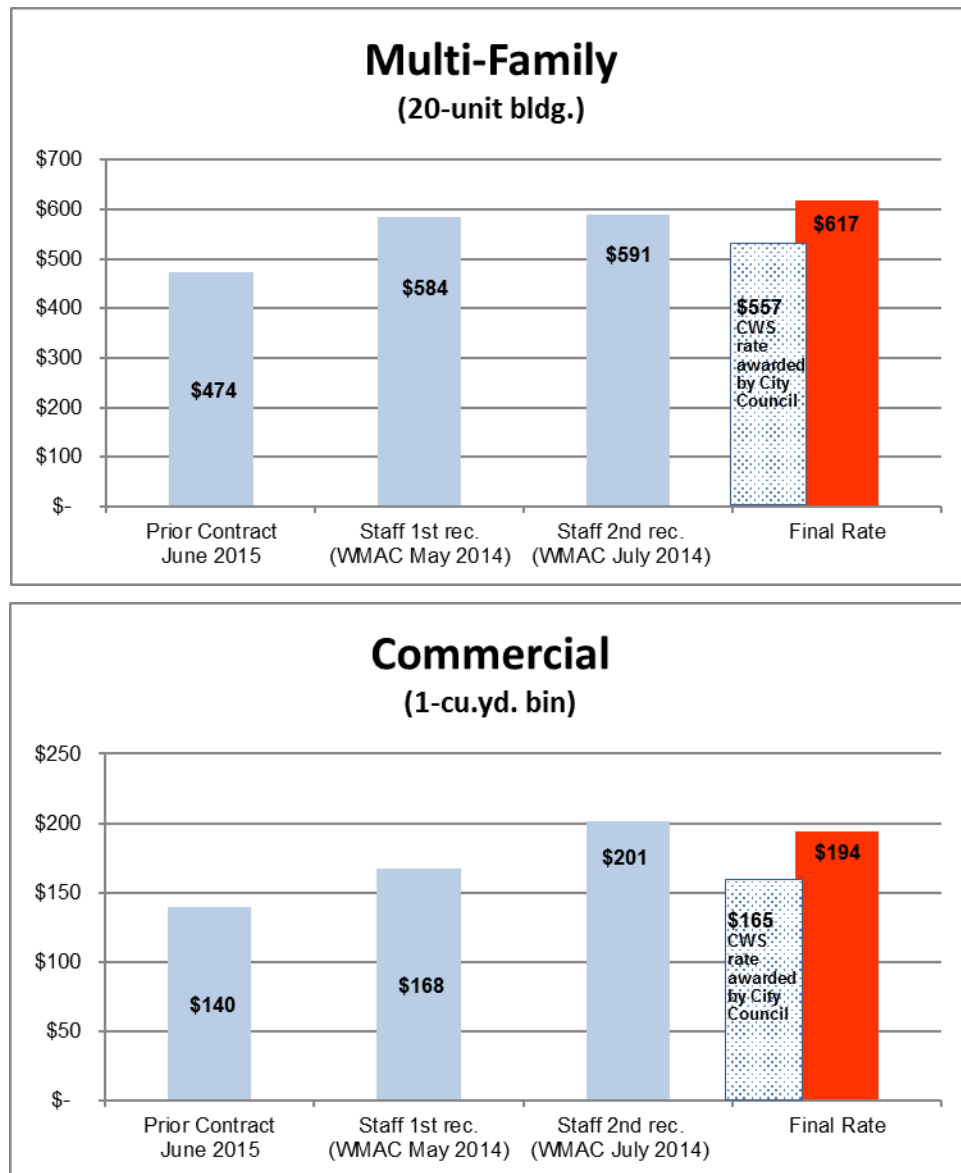
Staff had no time to analyze the final rates that were the result of the MOU between Waste Management and CWS and were not involved in the rate- and cost-sharing negotiations between the two proposers.

The rates for all groups increased over the prior contract that had been in place for nearly 20 years, so that single-family residential rates increased by 24%, multi-family by 30%, and commercial customers by 39%.

The following graphs show the changes in Single Residential, Multi-Family and Commercial rates from the prior contracts to those effective July 1, 2015 for each category. The final rates approved and agreed to were different than those recommended by staff and from what would have been if CWS had been awarded all contracts per City Council's decision in July 2014.



Audit Findings

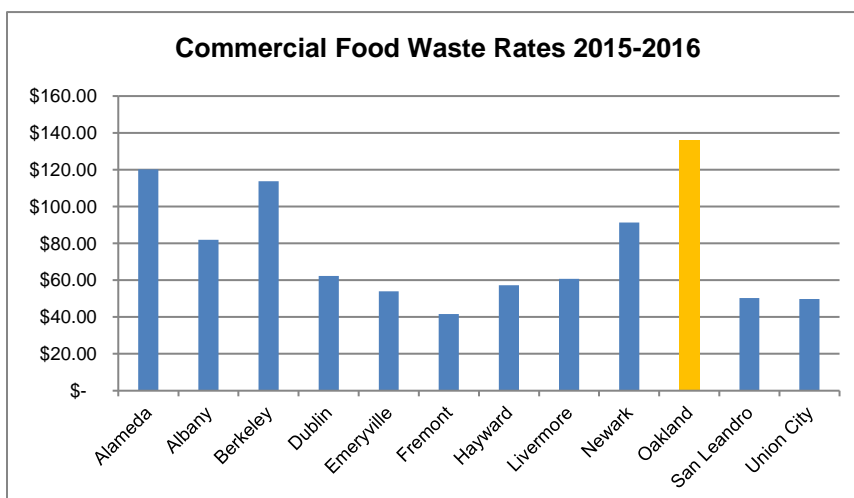
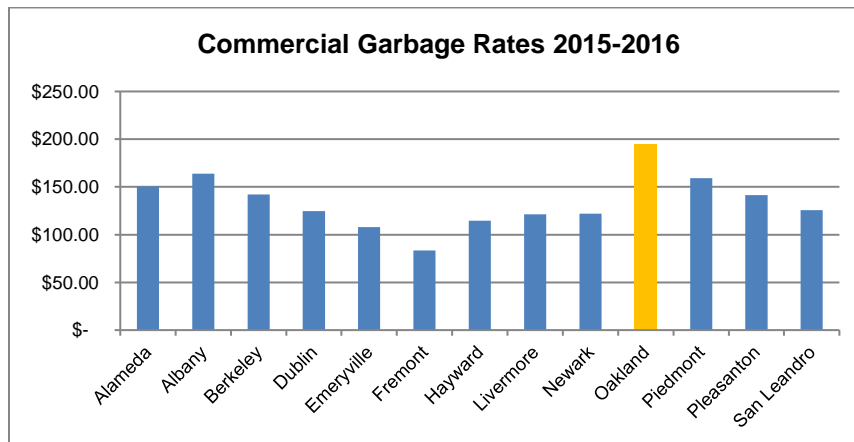
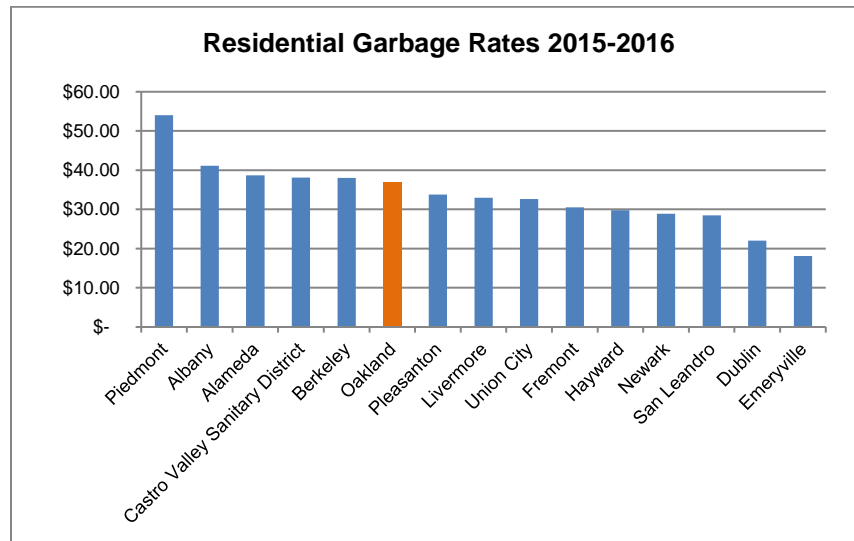


Acknowledging there are many factors impacting rates, the new Oakland single-family residential rate was among the highest compared to neighboring cities when contracts were finalized in 2015. The commercial rate, however, for both waste pick-up and organics is the highest when compared to nearby cities.

After July 1, 2015 when the new contracts began, the City and Waste Management negotiated and agreed to lower business fees for food waste collection after businesses protested. One of the outcomes of this negotiation included the removal of the requirement for the local customer call center.

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Oakland rates compared to neighboring municipalities



Audit Findings

Push Rates

Push services are engaged when the provider retrieves and returns a building's on-site container during collection. The prior contracts with WMAC and CWS (for recycling) had this service embedded in the rate. In the new contracts, this service was made as an ancillary fee for those single-family, multi-family or businesses requesting the service.

2015-2016 Multifamily Bins Push Rates Per Bin/ Per Month for Weekly Service			
Distance to curb	Garbage Pickup WMAC metal bin	Garbage Pickup WMAC plastic cart*	Residential Recycling Pick up CWS metal bins**
0-25 Feet	\$183.19	\$27.84	\$152.20
26-50 Feet	\$371.47		\$308.62
51-75 Feet	\$559.75		\$456.05
76-100 Feet	\$742.94		\$617.24
100+ Feet	\$931.22		\$773.67
*No charge for organics **City is disputing this rate			

Garbage (Metal) Bin



Garbage (Plastic) Cart



Photos: Oakland Recycles

Multi-family customers may select this service from Waste Management or CWS and are assessed a monthly fee for the service. Alternately, multi-family customers can arrange for the bins to be accessible street-side on pickup days.

The push and corresponding itemized rates were overlooked by Public Works and City Council in the RFP planning process, as these were categorized as 'ancillary rates' and not included in the rate review process of the required base rates. The impact these fees would have on ratepayers and the significant change in service was not anticipated.

There was confusion about the push rates among the service providers as well. Waste Management, the primary biller for all waste collection services, did not bill for their push services until 3 months after the start of the contracts. Although CWS submitted their

Audit Findings

push services billings to Waste Management beginning in October 2015, WMAC did not include them in the consolidated invoices for at least another 3 months. By the time the invoices were corrected to include push services for both Waste Management and CWS, these amounts were exorbitant, as they included several months of previously unbilled fees.

Public Outreach

Contracts were finalized in February and May 2015, leaving only a few months for Public Works staff to communicate July rate and service changes to the public. This was to include options for multi-family buildings to provide contract push services separately.

While outreach materials were available, meetings were held at several locations throughout the City and new services and rates were posted on the City of Oakland Recycling Program home page, this short time was not enough to prepare many customers for the upcoming changes. Without optimum lead time for public awareness, rate payers were taken by surprise at the significant increases in the waste collection bills, as the new services and fees took effect in July 2015. These increases related in large part to the push service for multi-family customers which were not, in some instances billed until several months after the new services began.

Franchise Fees

Franchise fees are a significant component of the Zero Waste contracts, to City revenues, and have been included in Oakland's prior garbage and recycling contracts.

Two of the three contracts include franchise fees³ of \$25,034,000 annually for the garbage and compostable materials contract, and \$3,000,000 annually for the recycling contract. These are paid to the City by Waste Management and CWS, respectively, and are adjusted yearly based on a consumer price index.

5: It is uncertain whether Oakland will meet the zero waste diversion goals.

The Zero Waste Strategic Plan was designed to address the 2020 goal of reducing the current landfill disposal tonnage from the 2006 level of 400,000 tons to 40,000 tons per year. This goal applies to all landfill materials, including waste, recycling residue, organics

³ The Franchise fee does not apply to the landfill contract.

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and residuals from residential and commercial customers. The three franchise contracts represent a component of the efforts towards attaining this goal.

Oakland's waste deposit to landfills was 254,000 tons in 2015, the most recent year for which there is complete data. Although this represents approximately 146,000-tonnage reduction from 2006, at this rate, it appears unlikely that Oakland will meet the goal of 40,000 tons per year by the year 2020.⁴

The status of zero waste goals and progress are not communicated to the public even as it appears they will not be met. Public Works has committed to develop a dashboard to track the City's efforts to reach the zero waste goal, which will be published on the City's website. This is not in place as of the date of this report.

⁴ <http://www2.oaklandnet.com/Government/o/PWA/o/FE/s/GAR/OAK024364>

Conclusion and Recommendations

Conclusion

Though great effort was made to plan for the magnitude and impact of the contract renewal process well in advance of the contracts' expiration date, the execution failed at various points as described in our findings. In the end, there was no strong advocate for the RFP process that could plan for unseen events, and rates were not analyzed with a robust communication plan to the public. The RFP process did not meet the goal of a broad participation of vendors; the process wasn't fully communicated to the public and the rates ultimately were higher than those of the surrounding communities. It is not at all certain that Oakland will meet its zero waste goals for landfill diversion.

Our recommendations below represent lessons learned derived from this contracting process and should be considered by City's leadership as they embark on similar future endeavors in the City of Oakland.

Recommendations

1. Promote a competitive process

The RFP process was intended to solicit bids from various vendors to ensure a competitive process. This objective ultimately was not met since the only 2 bidders were the incumbents as of January 2013.

City management must prepare a market assessment for these waste management services to form realistic expectations of the competitive environment. The intent should be to identify the best options for the City as it develops strategies for renewal or submission of the franchise agreements for a formal bidding process.

All efforts should be made early in the planning process to involve vendors, consultants and other stakeholders to understand innovative ways of doing business in servicing Oakland (e.g. funding sources, shared services, partnerships among several companies or organizations, etc.). This process could include open forums, such as workshops and public meetings.

City staff should start this process well in advance of pending contract expiration dates so that timelines can be met for a transition to new providers and public communications are relevant and timely.

Conclusion and Recommendations

2. Advocate for the RFP process

The City Administrator should be an advocate for the process and designate a Project Manager, or Process Coordinator, for primary responsibility for the project, to be accountable for milestones and critical due dates. The City Council must guide through its oversight role and not assume the role of operational management.

All parties, including Councilmembers and City staff, should acknowledge process agreements and protocols. The Code for Communication established by the Protocol for Process Integrity required all prospective respondents to an RFP communicate with the City only through a designated Process Coordinator who should elevate departures from the agreed-to roles and responsibilities. Regular reporting to City Council should be conducted throughout all phases of the project and should include the following:

- Budget to actual both in dollars and hours
- Status of the established timeline and milestones
- Project obstacles that need resolution

3. Plan for unforeseen events

City management should work with the City Attorney, industry experts and other stakeholders to identify negotiating tactics, such as referendums and lawsuits, vendors might take to favor their contracting positions so that these can be anticipated and compensating strategies developed to prevent delays and additional costs.

4. Conduct rate analysis and develop an early community communication plan

Elements of the contracts and agreements, including all components of rates and fees and their impact to ratepayers, should be included in the staff analysis.

City staff should begin a community communication plan early that continues throughout the long process to negotiate fees and services. This should solicit feedback from ratepayers on services and rate impacts and should be used in developing contract negotiations, so that the focus is on residents' needs.

Conclusion and Recommendations

Providing the public with as much information as possible when it is available will help create an awareness of forthcoming changes to services and rates, and may reduce the element of surprise.

City staff should provide an explanation of franchise fees as a part of public education and outreach.

5. Work toward diversion goals

The Zero Waste goal is to divert waste to local landfills, a vision, “...*to guide people in changing their lifestyles and practices to emulate sustainable natural cycles, where all discarded materials are designed to become resources for others to use...*” This goal initiated this strategic plan and is a key component of the franchise agreements with Waste Management and CWS.

The City Administrator should develop regular, periodic reporting of the City’s diversion goals that can be communicated to the public showing how they are measured and what the outcomes mean for Oakland. It should be included on the City’s website and communicated through other means as well, such as through newsletters, City Administrator announcements, and other media.

Statement of Compliance, Audit Scope and Methodology

Statement of Compliance with Government Auditing Standards

We conducted this performance audit in accordance with generally accepted government auditing standards which require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Audit Scope and Methodology

The scope of our audit covered fiscal years 2006 through January 2016; ad hoc analysis was applied to periods up through June 2017.

In conducting this audit, we:

- Reviewed applicable City, County and State policies and guidance documents pertaining to the Zero Waste RFP process
- Reviewed Oakland's Contracting Process and Zero Waste Policies
- Reviewed City Council and Public Works Committee meetings and staff reports
- Reviewed the Request for Proposals for Zero Waste Services
- Reviewed Franchise agreements agreed to in 2014 and signed in 2015
- Interviewed Public Works staff and management, City Council members, potential bidders and consultant staff
- Reviewed the communication process to the public and within City management
- Examined and analyzed the new rate increases
- Examined and reviewed consulting contracts for compliance with policies and procedures, accuracy and completeness, and proper authorization
- Reviewed the 2015-2016 Alameda County Grand Jury Final Report related to City of Oakland's Costly Pursuit of Zero Waste Franchise Contracts.

Glossary of Terms

Composting. The controlled biological decomposition of organic waste that is kept separate from the refuse stream, or that is separated at a centralized facility.

Disposal. The final processing and disposition of mixed materials, garbage and residue received from the collection contractors.

Franchise agreement. An authorization granting an exclusive contract by a government entity to a private enterprise enabling them to carry out specified commercial activities.

Garbage. Non-recyclable packaging and rubbish.

Landfill. A location that accepts solid waste for land disposal.

Recycling. The process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become solid waste, and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace.

Request for proposals (RFP). A document used in sealed-bid procurement procedures through which a purchaser advises the potential suppliers of (1) statement and scope of work, (2) specifications, (3) schedules or timelines, (4) contract type, (5) data requirements, (6) terms and conditions, (7) description of goods and/or services to be procured, (8) general criteria used in evaluation procedure, (9) special contractual requirements, (10) technical goals, (11) instructions for preparation of technical, management, and/or cost proposals. RFPs are publicly advertised and suppliers respond with a detailed proposal, not with only a price quotation. They provide for negotiations after sealed proposals are opened, and the award of contract may not necessarily go to the lowest bidder.

Service Providers

Waste Management (Waste Management or WMAC) – provides garbage, recycling and composting services for homes, residences, and businesses throughout the Bay Area.

California Waste Solutions (CWS) – provides full-service recycling in Oakland and San Jose.

East Bay Municipal Utility District (EBMUD) – provides high quality water and wastewater services for the people of the East Bay.



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November 28, 2017

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Brenda Roberts
Oakland City Auditor
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Oakland CA, 94612

RE: City Administrator's Response to the Audit of the RFP for Zero Waste Program

Dear City Auditor Roberts;

The City Administration and Oakland Public Works Department (OPW) received the audit of the Zero Waste Request For Proposals (RFP) which highlights processes that can be improved during future RFP franchise procurements.

OPW accepts the City Auditor's recommended responses and will consider such recommendations in future contracting. We welcome this report and see it as an opportunity for improvement in future franchise procurements.

The attached matrix that follows lists the audit recommendations and includes our comments to each recommendation.

I want to thank the OPW staff that conducted the Zero Waste RFP for their integrity, commitment, and persistence in managing this massive project over five years and their openness to the audit and findings. I appreciate you and your staff's work on this audit and for your willingness to dig into this complex and technical project seeking a full understanding of the topic.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Sabrina B. Landreth', written over a horizontal line.

Sabrina B. Landreth
City Administrator

cc: Christine Daniel, Assistant City Administrator
Jason Mitchell, Director OPW
Susan Kattchee, Assistant Director OPW
Becky Dowdakin, Manager Environmental Services

Attachment: Audit Tracking Matrix

Performance Audit of the Zero Waste Request for Proposals Management's Response to City Auditor's Report



	City Auditor's Recommendations	Management Response	Responsible Party	Target Date to Complete
1	<p><u>Promote a competitive process-</u></p> <p>City management must prepare a market assessment to form realistic expectations of the competitive environment. The intent should be to identify the best options for the City as it develops strategies for renewal or submission of the franchise agreements for a formal bidding process.</p> <p>All efforts should be made early in the planning process to involve vendors, consultants and other stakeholders to understand innovative ways of doing business in servicing Oakland (e.g. funding sources, shared services, partnerships among several companies or organizations, etc.). This process could include open forums, such as workshops and public meetings.</p> <p>City staff should start this process well in advance of pending contract expiration dates so that timelines can be met for a transition to new providers and public communications are relevant and timely.</p>	<p>City Administration agrees that market assessment is important and conducted such an assessment for the 2013 Zero Waste RFP.</p> <p>City Administration agrees that early involvement of prospective service providers, funding partners, and other stakeholders is an important function of issuing a franchise agreement.</p> <p>The Disposal Agreement expires in 2035 and has two 5-year extensions at the City's sole discretion. The Residential Recycling Agreement expires in 2035. The Mixed Materials and Organics Agreement expires in 2025. The MMO Agreement has two 5-year extensions at the City's sole discretion. The City Administration will take these dates into account when planning for the next procurement process to provide adequate stakeholder input.</p>	City Administrator	2022; 2033

Performance Audit of the Zero Waste Request for Proposals Management's Response to City Auditor's Report



	City Auditor's Recommendations	Management Response	Responsible Party	Target Date to Complete
2	<p><u>Advocate for the RFP process</u> –</p> <p>The City Administrator should designate a Project Manager, or Process Coordinator, for primary responsibility for the process who is accountable for milestones and critical due dates. The City Council must guide through its oversight role and not assume the role of operational management.</p> <p>All parties, including Councilmembers and City staff, should acknowledge process agreements and protocols. The Code for Communication established by the Protocol for Process Integrity requires all prospective respondents to an RFP communicate with the City only through a designated Process Coordinator who should elevate departures from the agreed-to roles and responsibilities.</p> <p>Regular reporting to City Council should include the following:</p> <ul style="list-style-type: none"> • Budget to actual both in dollars and hours • Status of the established timeline and milestones • Project obstacles that need resolution 	<p>City Administration agrees that an important procurement such as zero waste services requires adequate resources to successfully stay on track. Future City Administrators should consider appointing a project manager whose sole responsibility would be to guide zero waste procurement process. In addition, a Process Coordinator who monitors the integrity of the communication and conduct of any solicitation should be appointed.</p> <p>City Administration believes the Protocol for Process Integrity established and used in the 2013 Zero Waste RFP, which included a designated Process Coordinator, was a successful tool and would recommend that it, or something similar, be used in future franchise procurements.</p> <p>City Administration agrees that City Council should be provided project updates through informational reports or other information memos from the City Administrator.</p>	City Administrator	2022; 2033

Performance Audit of the Zero Waste Request for Proposals Management's Response to City Auditor's Report



	City Auditor's Recommendations	Management Response	Responsible Party	Target Date to Complete
3	<p><u>Plan for unforeseen events –</u></p> <p>City management should work with the City Attorney, industry experts and other stakeholders to identify negotiating tactics, such as referendums and lawsuits, vendors might take to favor their contracting positions so that these can be anticipated and compensating strategies developed to prevent delays and additional costs.</p>	<p>City Administration agrees that seeking the best information available regarding solid waste agreements from outside attorneys who are experts in such negotiations, outside technical consultants and professionals, as well as experts in other cities is the preferred approach.</p>	City Administrator	2022; 2033
4	<p><u>Conduct rate analysis and develop an early community communication plan –</u></p> <p>Elements of contracts and agreements, including all components of rates and fees and their impact to ratepayers, should be included in the staff analysis.</p> <p>City staff should begin a community communication plan early that continues throughout the process to negotiate fees and services. This should solicit feedback from ratepayers on services and rate impacts and should be used in developing contract negotiations, so that the focus is on residents' needs and reduces the element of surprise.</p>	<p>City Administration agrees that early communication is critical and will take this recommendation into advisement when conducting future franchise agreement procurements.</p>	City Administrator	2022; 2033

Performance Audit of the Zero Waste Request for Proposals Management's Response to City Auditor's Report



	City Auditor's Recommendations	Management Response	Responsible Party	Target Date to Complete
	City staff should provide an explanation of franchise fees as a part of public education and outreach.	City Administration agrees, and franchise fees are discussed through the bi-annual budget process.		
5	<p><u>Work toward diversion goals -</u></p> <p>The City Administrator should develop regular, periodic reporting of the City's diversion goals that can be communicated to the public showing how they are measured and what the outcomes mean for Oakland.</p> <p>This should be included on the City's website and communicated through other means as well, such as through newsletters, City Administrator announcements, and other media.</p>	City Administration agrees that progress toward the Council adopted goal of zero waste should be posted on the City's website for easy access to the public.	Environmental Services	January 2018