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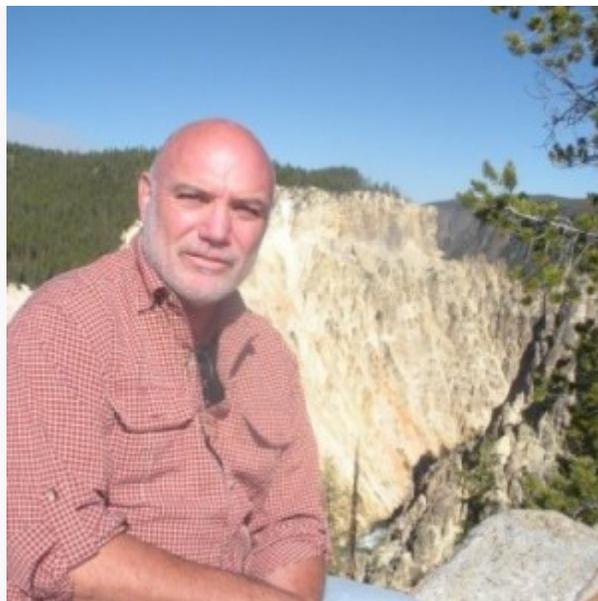
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EXCLUSIVE: Whittier Trash Hauler Consultant Manipulated Proposal Process



Joe Sloan of Sloan and Vasquez, LLC.

By Brian Hews

Hews Media Group-Community News has obtained a letter from the law firm of Cota Cole slamming Whittier's current trash hauler contract award process along with the City's consultant Sloan and Vasquez, citing several legal flaws including over \$7 million in stated franchise fee revenue paid to the city that is a fraudulent number and a violation of Proposition 218.

The flawed contract, in favor of Athens Disposal, would have been approved 3-2 at last week's City Council meeting if not for vocal opposition to Councilwoman Cathy Warner, who finally abstained from voting.

Warner, according to sources, has a son and daughter that work for Athens.

The recusal did not sit well with former Whittier Councilmen Greg Nordbak, who sources told HMG-CN was lobbying for Athens and had three votes locked in until the Warner recusal.

Mayor Dutra and Councilman Henderson represented the remaining yes votes; Councilmen Newcomer and Vinatieri voted no.

The City and City Council had been looking into changing solid waste services in Whittier for over 18 months.

Athens Disposal, in an unsolicited manner, approached the city regarding an exclusive franchise agreement with the City.

The city proceeded to open the process up to other trash haulers but then hired a consultant from Sloan-Vasquez, Joe Sloan, to prepare and evaluate the proposals.

Both Joe Sloan and his partner Enrique Vasquez, are former employees of Athens disposal.

The Whittier City Council approved a Request for Proposal ("RFP") that was part of a "competitive procurement process" with ten very specific, stated and weighted criteria for bidders. The RFP was basically a detailed document resembling a public works bid package.

Sloan-Vasquez was required to follow the criteria in awarding the bid but, at the time of final presentation, Joe Sloan had substantially changed the award process in favor of Athens.

The City currently charges \$23.28 per month for residential collection. When the bids came in to the City, all four bidders, Athens, Burrtec, CR&R, and Republic, came in under the current rate, which would have resulted in a substantial loss of revenue to the city.

City Staff recommended negotiating for upfront fees, which representatives from CR&R told HMG-CN they were ready to give \$7 million, to offset the lowering of the per month rates.

Republic offered \$6 million and Athens offered \$5 million.

“The city asked for fees upfront and that’s what we offered,” said John A. Telesio, Government Affairs Consultant for CR&R.

Athens was the lowest bidder, thus the city would have the largest revenue loss under their bid.

So Sloan went to work and devised a plan for Athens, basically ignoring the RFP weighting criteria to come up with a plan that Telesio called “a joke,” and a plan that Cota Cole’s attorney Elizabeth L. Martyn also slammed and indicated it was in violation of Proposition 218.

Sloan indicated in his presentation that Athens’ contract was worth over \$14 million to the City because the City could charge Whittier residents \$23.28 per month, pay Athens’ bid of \$19.79 per month, and keep the difference.

Sloan stated that, “the value arose from the City being paid \$7.3M in cash over the term of the franchise agreement.”

Martyn’s letter stated, “The consultant cannot add, delete or manipulate criteria to try to mitigate the impact of that franchise fee analysis on any bidder or on the City. However, that is exactly what occurred.”

“That statement [that the City could take the difference in fees] was legally wrong based upon Proposition 218 as well as the competitive cost procurement RFP approved by City Council,” indicated Martyn.

Martyn called the contract a fallacy and said, “the addition of the money was misleading, it added a criteria to the evaluation that was not part of the RFP.”

The letter also argued that the City could not take the difference between the two rates because it violated Proposition 218.

Simply stated, Proposition 218 says rates charged must be the reasonable cost of the services provided and must be used only for such services; a fee cannot be charged in excess of the service provided.

The Proposition has a substantial amount precedent setting cases behind it.

When Sloan added the revenue from the difference in fees, Athens presented the City with the highest benefit by a large margin at \$14.376 million.

Lagging far behind was CR&R at \$8.876 million, Republic at \$7.528 million, and Burrtec at \$4.731 million.

However, Martyn argued Sloan used creative math to arrive at the numbers.

The text of the presentation stated, “For this analysis, the revenue reductions were represented as positive amounts and the revenue decrease[s] were representative as negative amounts.”

“That statement simply isn’t true,” indicated Martyn. “A rate decrease means lower fees for the City. Therefore, the numbers portrayed as positive are, in fact, negative, and those shown as negative are positive.”

If the contracts were revised to correctly reflect the numbers, the overall benefits to the City changed dramatically.

Burrtec checked in at \$6.601 million (not \$4.731); Athens at \$6.943 million (not \$14,376); Republic at \$7.528 million (unchanged); and CR&R came in at the highest benefit of \$8.659 million (not \$8.876 million.)

“Absent the correction,” Martyn stated, “the City Council would be making a decision based on information that is not only outside the evaluation criteria shown, but which is patently incorrect. That is unfair to the residents, the Council and staff, as well as to the other companies submitting proposals. As pointed out in a preceding case, failure to follow the ‘evaluative criteria and process described in the RFP’...turned the process... ‘into a charade.’ “One need not be Raymond Chandler to see that such a scenario could easily be employed to facilitate favoritism, fraud, corruption and extravagance.’

HMG-CN was able to contact Councilman Owen Newcomer who said, “I look forward to clarifications at Tuesday’s meeting on the issues raised in the letter from Cota Cole LLP.”

Attempts to contact the Mayor and other Council members were unsuccessful.