



Addendum #3
ITN #29-23, Single Stream Recycling Processing
April 7, 2023

NOTICE IS HEREBY GIVEN that the following addendum serves to provide clarification and to answer the questions received on Invitation to Negotiate #29-23, Single Stream Recycling Processing.

Question 1: Section S.3 – How far “downstream” does the Contractor have to go to classify someone as a “subcontractor?” For example, if the Contractor uses a third-party trucking company to take the processed materials to the port, would that company be considered a subcontractor? Would a commodity broker be considered a subcontractor? Please clarify.

Answer to Question 1: *While a subcontractor is not specifically defined in the solicitation, the City considers a subcontractor to be a business or person that is hired by the Contractor to perform specific duties as part of a larger project.*

Question 2: Section S.4 - Please amend to permit an assignment as a right to an affiliated company of Contractor. Additionally, the City’s consent to assignment pursuant to this section should not be unreasonably withheld. The Contractor requires reasonable rights to assign its rights under the agreement.

Answer to Question 2: *Reference Addendum 2, Answer to Question 1.*

Question 3: Section S.7 – Because of the capital required and the dedication of capacity to this contract, this needs to be an exclusive agreement for one processing company. Please revise.

Answer to Question 3: *The City is amenable to negotiations. Reference Addendum 2, Answer to Question 1.*

Question 4: Section S.14 – As this is a fixed price contract, please delete the provision that the City can review payroll records as they are not necessary because of the nature of the contract and they are confidential.

Answer to Question 4: *Reference Addendum 2, Answer to Question 1.*

Question 5: Section S.15 – The background check is overly broad-based. Can the City please be more specific with intent under these terms? Who specifically would you consider to fall under the provision of this section?

Answer to Question 5: *Any Contractor personnel that is performing services under the Agreement would be subject to a background check at the City’s request.*

Question 6: Section S.17(c) – This provision is oddly worded. Any default notice should be a mandatory requirement, not, “at its option” or “may.” Please revise to make this a mandatory step, not permissive.

Answer to Question 6: *Reference Addendum 2, Answer to Question 1.*

Question 7: Section S.20 – As the capital and start-up costs for this contract are extensive, termination for convenience is not an equitable remedy. The contract should only be terminated for an uncured default. Please delete this section.

Answer to Question 7: *Reference Addendum 2, Answer to Question 1.*

Question 8: Section S.25 - The Proposer is willing to provide reasonable indemnification to the City, but it should not be required to indemnify the City for its own (i) negligence or willful misconduct, (ii) breach of the contract, or (iii) violations of law. Please delete the section on Page 37 as written and replace with



the following, "The parties recognize that the Contractor is an independent contractor. The Contractor agrees to assume liability for and indemnify, hold harmless, and defend the City, its commissioners, mayor, officers, employees, agents, and attorneys (collectively, the "Indemnified Parties") of, from, and against all liability and expenses, including reasonable attorney's fees, in connection with any and all claims, demands, damages, actions, causes of action, and suits in equity of whatever kind or nature, including claims for personal injury, property damage, equitable relief, or loss of use (collectively, the "Claims"), to the extent arising out of the Franchise Collector's negligence or willful misconduct in the execution, performance, nonperformance, or enforcement of the terms and conditions of this ITN. The Contractor's liability hereunder shall include all reasonable attorney's fees and costs incurred by the City in the enforcement of this indemnification provision. This includes claims made by the employees of the Contractor's against the City and the Contractor hereby waives entitlement, if any, to immunity under Section 440.11, Florida Statutes. The obligations contained in this provision shall survive termination of this Agreement and shall not be limited by the amount of any insurance required to be obtained or maintained under the Contract. Nothing contained in the foregoing indemnification shall be construed to be a waiver of any immunity or limitation of liability the City may be entitled to under the doctrine of sovereign immunity or Section 768.28, Florida Statutes. Nothing contained herein shall obligate the Contractor to assume liability for or indemnify, hold harmless, or defend any Indemnified Party to the extent the Claims are caused by: (i) the negligence or willful misconduct of any Indemnified Party; (ii) the breach of any terms, conditions, covenants, representations, or warranties in this ITN or the resulting contract by the City; or (iii) the violation of any laws, rules, regulations, ordinances, orders, licenses, or permits by any Indemnified Party."

Answer to Question 8: Reference Addendum 2, Answer to Question 1.

Question 9: Section S.28 – The City should guarantee that all recyclable materials will be delivered to the Contractor as the exclusive provider of the same. Please delete and revise

Answer to Question 9: Reference Addendum 2, Answer to Question 1.

Question 10: Section S.38 – Please add epidemic and pandemic to the list of Force Majeure events.

Answer to Question 10: Reference Answer to Question 3 above.

Question 11: Section 3 – This section conflicts with the non-exclusive language in S7, please revise to conform and confirm it is exclusive.

Answer to Question 11: The City intends to enter into a single agreement with one (1) vendor for single stream recycling.

Question 12: In Sections 3 & 4 on Page 16, the ITN states that recycling will be accepted from "commercial" customers. If the commercial recycling is contracted to a private hauler by the commercial establishment as permitted under state law, the City is not permitted to direct those materials to a particular processing facility. Please clarify what "commercial" recycling materials the selected proposer will be expected to accept and from what sources.

Answer to Question 12: Per Section 3 - SCOPE OF WORK and Section 4 - ADDITIONAL SPECIFICATIONS, Program Materials are collected from commercial customers that utilize the City of Clearwater for single stream recycling services. The City does not require nor direct commercial establishments to contract recycling services to a specific entity. See Answer to Question 19 below for additional clarification on material sources.

Question 13: Section 4 – Please change the starting date of this contract to conform with the current schedule. Additionally, since the capital and the dedication of resources necessary to perform this contract are extensive, please revise the initial term to be three (3) years and each renewal term three (3) years with mutual agreement between the parties.



Answer to Question 13: The City intends to commence services under a contract beginning in May 2023. The City is amendable to negotiating the initial and renewal terms in the form of a final contract with the awarded Vendor.

Question 14: Section 6(A) – Please clarify in other section of this ITN the concept here that the City will guarantee the delivery of the program materials.

Answer to Question 14: Reference Addendum 2, Answer to Question 7.

Question 15: Section 7(a) – Please delete the right for the City to request full insurance policies. Those policies can run into thousands of pages and are considered trade secret and proprietary information of the Company.

Answer to Question 15: Reference Addendum 2, Answer to Question 1.

Question 16: Milestone Sections 1,2,3 – please adjust as requested above.

Answer to Question 16: Reference Answer to Question 13 above.

Question 17: Milestone Section 4 – As this is a very dynamic recycling market and each contract and material is different, please delete section (a). Additionally, CPI should be automatically granted, not permissive, the numbers are what the numbers are, there is no interpretation. Will the City consider using the Garbage and Trash index of the CPI as it is more closely aligned with the industry? Additionally, please delete the possibility that pricing may go down with a reduction in the CPI. There has never been a history of costs going negative even if the CPI is negative.

Answer to Question 17: Reference Answer to Question 3 above.

Question 18: Please explain the distinction between contamination and residue and how each is treated by the City. In particular, please quantify the percentage and tons of both. Additionally, how is the Contractor supposed to determine and classify between the two? (This is important because of the disposal fees) How does this get figured into the commodity list and the percentages.

Answer to Question 18: Reference REVISED ITN 29-23_Single Stream Recycling Processing, Detailed Specifications, 6. Delivery Requirements, K. Load Rejection Procedures, page 21 of the solicitation and Addendum 2, Answer to Question 6.

Question 19: “Program Materials” is never clearly defined and the places where that term is used state that Program Materials “includes” certain materials, but nowhere in the ITN does it limit the materials to those enumerated. Please clarify and enumerate the specific Program Materials to be accepted at the processing facility and add to the ITN that should the City wish to add to Program Materials during the term of the agreement, it may only do so with the mutual agreement of the processing facility. The selected vendor needs the opportunity consider the change to the Program Materials list to make sure it is a material that can be processed in the facility.

Answer to Question 19: Per Section 5(A) - Quality of Material Standards, the successful bidder must be able to accept Program Materials; and acknowledge contamination ratios of delivered materials may fluctuate from time to time. See Exhibit A - City of Clearwater Composition Analysis for current single stream materials and composition. The City retains the right to work with any future Vendor to modify this list, should the City seek to include additional streams.

Question 20: Is there a form for the processing fee and the percentage share that the proposers will bid?

Answer to Question 20: Reference REVISED ITN 29-23_Single Stream Recycling Processing, Response Elements, Tab 4 – Cost of Services, page 24 of the solicitation.



Question 21: There is no composition study attached or recognition of the percentages of each commodity in each ton. Since all commodities are comingled when delivered to the facility, it is impossible to determine the composition of each load. Please explain how the AMV will be calculated without knowing the composition of each ton. Is the city able to provide the current commodity composition?

Answer to Question 21: Reference Addendum 2, Answer to Question 6.

Question 22: There is no language to conduct a composition study after the execution of the contract. Would the City consider adding language to include the performance of a composition study with the first three months after the execution of the contract?

Answer to Question 22: Reference Answer to Question 3 above.

Question 23: Since there is no draft contract provided, please clarify that this is a negotiation and that if there is a resulting contract, there will be an opportunity to negotiate the general and specific terms.

Answer to Question 23: Reference Answer to Question 3 above.

Question 24: Please add that the City hereby grants the semi exclusive right and privilege to Contractor to perform all of the Services set forth in the ITN. The City may, in its sole discretion, enforce the exclusivity provisions of the Agreement against third-party violators, taking into account the cost of doing so and other factors. Contractor may independently enforce the exclusivity provisions of the Agreement against third-party violators, including, but not limited to, seeking injunctive relief and/or damages, and the City shall use good-faith efforts to cooperate in such enforcement actions brought by Contractor. The City shall use its best efforts to adopt ordinances, rules or regulations that have the effect of requiring third parties, including, without limitation, customers, to comply with the provisions of the Agreement, including, without limitation, the exclusive service rights granted to Contractor pursuant to the Agreement.

Answer to Question 24: Reference Addendum 2, Answer to Question 1.

Question 25: Notwithstanding anything herein to the contrary: (a) Contractor shall have no obligation to process any material which is or contains, or which Contractor reasonably believes to be or contain, radioactive, volatile, corrosive, highly flammable, explosive, biomedical, infectious, biohazardous, toxic or hazardous material as defined by applicable federal, state or local laws or regulations ("Excluded Waste"); (b) if Contractor finds what reasonably appears to be discarded Excluded Waste, Contractor shall promptly notify the City and the producer of the Excluded Waste, if the producer can be readily identified; and (c) title to and liability for any Excluded Waste shall remain with the producer of the Excluded Waste, even if Contractor inadvertently processes or disposes of such Excluded Waste. Cost for handling the Excluded waste shall be the responsibility of the City.

Answer to Question 25: Reference Addendum 2, Answer to Question 1.

Question 26: Any equipment furnished hereunder by Contractor shall remain the property of Contractor. The word "equipment" as used in this Agreement shall mean all machines, vehicles, and containers used for the storage, processing, and transportation of non-hazardous recyclable materials and the contamination.

Answer to Question 26: Reference Addendum 2, Answer to Question 1.

Question 27: Notwithstanding anything herein to the contrary, Contractor may pass through and the customers shall pay to Contractor any documented increases in disposal fees, increases in Contractor's costs due to changes in local, state or federal rules, ordinances or regulations applicable to Contractor's operations or the services provided hereunder, and any increases in and newly imposed taxes, fees or other governmental charges assessed against or passed through to Contractor (other than income or real property taxes).

Answer to Question 27: Reference Addendum 2, Answer to Question 1.



Question 28: If the City shall be in breach of any provision of this Agreement, Contractor may suspend its performance hereunder until such breach has been cured or terminate this Agreement; provided, however, that no termination of this Agreement by Contractor shall be effective until Contractor has given written notice of such breach to the City and the City has failed to cure such breach within thirty (30) days after its receipt of such notice. Upon any such failure to cure, Contractor may terminate this Agreement by giving the City written notice of such termination, which shall become effective upon receipt of such notice.

Answer to Question 28: Reference Addendum 2, Answer to Question 1.

Please Note: The ten (10) day deadline for submitting questions is now closed and no further questions will be responded to.

End of Questions and Answers

End of Addenda