

City Response to Questions Received from Disposal Services RFP Eligible Proposers

September 28, 2012

#	Citation	Page #	Line #	Proposer Question	City Response
1	RFP Sec. 4.21	4-5	567	What is the City's definition of "subcontractor"?	Contractor shall not engage any contractor not listed in its proposal to the RFP to a significant portion of the work set forth in Article 5 of the Disposal Contract without prior written approval of City.
2	RFP Sec. 4.23.3.4			Republic Services, Inc., serving as indirect parent company to the Keller Canyon Landfill Company, requests a limitation on the litigation historical data to include only (a) lawsuits (b) in California against the proposer (Keller Canyon Landfill Company), its direct parent (Allied Waste Systems, Inc.) and itself (except for criminal, which can be nationwide) (c) relating to the operations of disposal facilities, (d) where more than \$100,000 was in controversy and (e) excluding risk management matters such as vehicular accidents and etc. This request is made in order to limit the information being provided to only that which is pertinent to the matter at hand, otherwise due to its national status Republic may provide you with a long list of matters for review -- most of them completely unrelated to the RFP.	The City response to the five questions regarding Litigation History follows: a. City is willing to limit historical litigation to landfill lawsuits. b. City is willing to limit lawsuits to a minimum of ten landfills in the Western U.S. that are comparable to the landfill proposed. City is not willing to limit Regulatory enforcement actions or criminal prosecution disclosure that is requested in RFP Section 4.23.3.4. c. City agrees to limit litigation history to the operations of disposal facilities where civil actions were \$100,000 or more. d. There is no limit on regulatory enforcement actions. e. City will allow excluding risk management matters such as vehicular accidents; however, this does not limit in anyway CalOSHA enforcement action.

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3	RFP Sec. 4.23.4			Republic Services, Inc. requests an allowance for submitting its corporate audited statements in accordance to Section 4.23.4, Statement of Financial Qualifications, of the RFP. In supplying the corporate audited statements, Republic Services is providing a total financial picture and associated securities through its entire operation.	City is requiring audited financials from the company signing the agreement. If the financials are not audited, then the City would prefer the statements be "Reviewed", Compiled", or internally prepared, in that order. In the event the financial statements are not audited, the City may require audited financials from the company providing the corporate guarantee.
4	RFP Sec. 4.24 & 4.25.1	4-14 & 4-15	907-914 & 929-934	Section 4.24 states "...once the proposals are submitted, the City is under no obligation to accept any exceptions or alternatives while the proposer is obligated to accept an award of the Disposal Services Contract under the terms and conditions as stated in that Disposal Services Contract." However, Section 4.25.1 states "If for any reason during the course of negotiations with the selected proposer, the City determines that a reasonable Contract cannot be negotiated, the City reserves the right to suspend negotiations with the selected proposer, contact the next ranked proposer and begin negotiations for the purpose of signing a Disposal Services Contract with that selected proposer." There seems to be a conflict between these two provisions, as the second clearly indicates that the City and selected proposer will negotiate a final contract. Proposer feels this negotiation process is important since not every contract detail can be addressed during a RFP process of this magnitude, and would like clarification that such process will occur.	Proposers must state proposed exceptions or alternatives to those terms and conditions in their proposals, otherwise those exceptions or alternatives will not be considered. The City intends to negotiate in good faith with top-ranked proposers, and as directed by City Council. Certain items the City does not consider negotiable such as the term or a put or pay provision.
5	RFP Sec. 5 (Contract) Article 4 §4.01	9	390	What is the disposal contractors remedy for collection of past due payments from City's MM&O contractors?	1. Nothing in Contract prevents the CONTRACTOR from establishing a purchase order or other commercially reasonable contract with MMO for payment.

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					<p>2. Dispute resolution procedures will be added to Disposal contract in a future addendum.</p> <p>3. It is the City's intent to have the failure of the MMO contractor to remit payment to the disposal contractor as a default on their contract allowing the City to draw on letter of credit.</p>
6	RFP Sec. 5 (Contract) Article 5 §5.13	15-16		<p>a. How are "reasonable business efforts" determined with respect to resisting changes, alterations and amendments to permits?</p> <p>b. Regarding Section 5.13.2, it appears the City can terminate the agreement where (i) Proposer cannot accept material due to force majeure, (ii) Proposer proposes to accept material at an alternate facility, and (iii) MM&O Collection Contractors consequently pay additional transportation costs to deliver material to Proposer's alternate facility. Is this the City's intent? If so, it would essentially eliminate any force majeure protection to Proposer. If Proposer offers to pay such transportation costs, please confirm that the City would not have the option to terminate?</p>	<p>a. If the Disposal Contractor becomes unable to accept and Dispose of Mixed Materials, Garbage and Mixed Materials Residue generated in CITY at the Disposal Facility due to its failure to resist changes, alterations and amendments to permits under Section 5.02, then at such time City would conduct an investigation to determine the adequacy of Disposal Contractor's efforts to resist changes, alterations and amendments for the purpose of determining whether Disposal Contractor has conducted commercially reasonable efforts.</p> <p>b. City will consider will consider clarifying the contract to allow an alternate facility as long as the Disposal Contractor would cover <u>all of the costs</u> for a reasonable period of time. Force majeure would not be an unlimited period of time. This would not limit the City's right to consider other remedies.</p>

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7	RFP Sec. 5 (Contract) Article 6 §6.01.1.2	20-21		In surveying “posted” disposal tipping fees at landfills within a 50-mile radius, we assume that means the gate rate, not the contract rate; is that correct? Will factors such as type of material, duration of contract, private v. public contract, waste volumes, etc. be considered when determining a price adjustment? Proposer feels this provision only works when an apples to apples comparison is done. These questions would also apply to Section 6.01.1.4. Finally, Proposer believes it has confidentiality provisions in several agreements with private entities which preclude Proposer from providing the City access to such agreements. Please confirm the City would not request Proposer to violate such confidentiality provisions.	<p>a. Yes – “posted Disposal Tipping Fees” means 'gate rate'.</p> <p>b. The RFP Section 5 Article 6.01.1.2 requires the CONTRACTOR to “provide CITY with on-site access to documentation of tipping fees charged to its twenty (20) largest current customers.” The City or its agent will, at the time this calculation is being conducted, consider reasonable steps to protect confidentiality while obtaining the necessary data.</p>
8	RFP Sec. 5 (Contract) Article 7 §7.02	26		Proposer requests that this section be modified to exclude claims related to hazardous material generated or delivered by the City, and claims related to City negligence, willful misconduct or breach of the agreement.	Section 5.11.3 of the Disposal Contract is amended to add “In the event the CITY delivers unacceptable waste to the Disposal Facility, the CITY shall have the same responsibility as the Collection Contractor(s).
9	RFP Sec. 5 (Contract) Article 10 §10.01	31		Would the City consider a limited force majeure period of four (4) Work Days in the event of labor unrest (e.g., strike or walkout, but not including a lockout)?	No. The City feels the language is appropriate as written.
10	RFP Sec. 5 (Contract) Article 24	38-39		Would the City consider a limited force majeure period of four (4) Work Days before assessing liquidated damages in the event of labor unrest (e.g., strike or walkout, but not a lockout).	City may consider this alternative to relief from liquidated damages for some short period of time if proposer commits to meet its obligation to provide an alternate disposal site and cover <u>all additional costs</u> the Collection Contractor(s) or City incurs.