

## City Response to Questions Received from Collection Services RFP Eligible Proposers

October 23, 2012

#	Citation	Page #	Line #	Proposer Question	City Response
1				The page numbers listed at the bottoms of the amended forms included as part of Addendum 2 for service groups 1 and 2, appear incorrect.	The City will issue a complete set of revised fill-in RFP forms reflecting changes made by addenda, and including corrected page numbers.
2	RFP Sec. 3.2.15	3.2.15	710-712	Section 3.2.15, Proposer's Proposal Surety, Line 710-712, mentions City Council will authorize negotiations with three highest ranked proposers?	Correct, the City intends to provide Council with the top three ranked proposers for each contract and request permission to negotiate with the highest ranked proposers. As described in RFP Section 3.3.4.1, the City reserves the right to suspend negotiations with the selected proposer, should the City determine that a reasonable Contract cannot be negotiated with that proposer. The City would then contact the next ranked proposer and begin negotiations for the purpose of signing a MM&O Collection Services Contract with that selected proposer.
3	RR Contract Sec. 7.02.1	23	965-977	Section 7.02.01 Recycling Tonnage Invoice, RRCSC Pg. 23, Recycling invoices are billed in the arrears due to MM&O contractor by 5th calendar day of following month. <b>G. Fitzgerald: What is the Question?</b> I was just confirming the MM&O will have to pay from their advanced bi-monthly billing, two separate monthly invoices, billed in the arrears, by RR Contractor. I was trying to get the timeline down on how this worked.	Correct, MM&O is required to pay the RR invoice for Ancillary Service Charges as described in MM&O Contract Section 7.14.4, and the RR invoice described in MM&O contract Section 7.14.1.

4	MM&O Contract Sec. 1.06 and 1.28	3 and 5	94-104 and 172-176	<p>MMOSC Definition 1.06 Bulky Goods, lists materials generated from home repairs or remodeling that can be handled by two people; however, goes on to exclude Construction Demolition Debris. Definition 1.28 Construction and Demolition Debris is defined as material from construction, remodeling, repair or demolition operations on any house, resi or commercial building, pavement or other structure</p>	<p>Section 1.06 (Bulky Goods) of the MMO Collection Services Contract is amended as follows: “Materials such as, but not limited to, stoves, refrigerators, water heaters, washing machines, clothes dryers, small air conditioning units, other large and small household appliances, including appliances containing Freon, furniture, carpets, tires, wood, household items, tires with or without rims, mattresses, clothing, Large Plant Debris, <u>and corrugated cardboard, materials generated from minor home repairs or remodeling and other similar materials that can be handled by two (2) people.</u> Bulky Goods may also include E-Waste, <u>and U-Waste, and materials generated from minor home repairs and other similar materials</u> to the extent set forth in Exhibit 14, which is attached to and included in this Contract and as may be amended from time to time. Except for Bulky Goods Collected at CITY Facilities, Bulky Goods must be generated at the Service Address wherein the Bulky Goods are Collected. Bulky Goods do not include items herein defined as Unacceptable Waste or Construction and Demolition Debris, <u>except as defined above.”</u></p> <p>Exhibit 14.D.1.a. is amended as follows:  "Up to three (3) cubic yards (equal to approximately twenty [20] 32-gallon bags) of non-recyclable Bulky Goods, which include but are not limited to furniture, <u>home remodeling debris materials generated from minor home repairs</u> (subject to Section E.) and other household items;"</p>
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5	MM&O Contract Sec. 9.02.2	39	1681	Is there a limit to the number of times that overages must be collected from SFD's that do not affix an Extra Service Tag to their overages?	No, MM&O Contract Section 9.02.2 requires contractor to collect all overages at SFDs at time of service. Please note that Oakland Municipal Code 8.28.140 requires that a premises have "a sufficient number of such [solid waste] containers of sufficient capacity to hold all solid waste which is created, produced, or accumulated on such premises between the time of successive collections by the collector."
6	MM&O Contract Sec. 6.13	22	955-957	Section 6.13 allows for the City's inspection of collection vehicles at any time while operating inside or outside the service area. Is the City intending to inspect vehicles during operational hours even though they are not in the City of Oakland? What would be the scope of the inspection and could it postpone inspection of trucks on collection routes?	The City's intent is to retain the ability to inspect Contractor's vehicles, equipment, and facilities for the purposes of enforcing franchise service standards that are described in MM&O Contract Article 6 and elsewhere. While the City may exercise discretion in accommodating the operational needs of the Contractor, the City's right to inspect will not be limited by Contractor's decision to dispatch such resources outside the jurisdictional boundaries of the City or otherwise claim that the City's right to access such resources are inconvenient.
7	MM&O Contract Sec. 14.09	54	2358-2361	Section 14.09 requires that Collection vehicles include space for outdoor poster advertising by the City. What type of advertising is the City contemplating? Would it include commercial advertising? Can Contractor assume that the City will take all responsibility/liability for the content of such advertising?	The advertising described in MM&O Contract Section 14.09 is limited to promotion of the Recyclable Materials and Organic Materials Programs, and the Contractor's name and logo. Commercial advertising is prohibited. The content of such messaging fall under the provisions of MM&O Article 17 Community Outreach Service, addressed in the outreach plans, subject to City approval, and subject to the provisions in Article 26 Indemnification.

8	MM&O Contract Sec. 19.02.1.4	61-62	2695-2702	Section 19.02.1.4 requires data on the end products of processed materials. Will the City require this information if the collected materials are sent to a third-party processor, in which case the Contractor may not know of the end products? Regarding Service Groups 1 and 2, will the City exclude exportation of unprocessed Recyclable Materials (MM&O Contract Section 1.73, RR Contract § 1.55) and other recyclable material to foreign countries? For instance, what happens with the residuals if materials are processed in a foreign country?	MM&O and RR Contractors shall be subject to the provisions of MM&O Contract Section 19.02.1.4 and RR Contract Section 19.02.2.1, respectively, regardless of where Collected material is Processed. Per section 3.3.2.5.2.4 MM&O Proposers must identify Processing Facilities on Form 12A as part of its Operations Plan, which will be subject to the Proposal Evaluation per section 3.3.4.5. Per section 4.3.2.5.2.4 RR Proposers must identify Processing Facilities on Form 12 as part of its Operations Plan, which will be subject to the Proposal Evaluation per section 4.3.4.5. It is the City's intention that economic benefits generated by these Contracts should accrue as benefits to the local community to the greatest extent practicable.
9	MM&O Contract			Please confirm that the MM&O Contractor will have the exclusive right to collect, deliver and process all source separated organic materials generated in the City, including that generated at properties not subscribing to such services (e.g., commercial and multi-family properties)?	Contractor has an exclusive right to provide Organic Materials Collection Services, per MM&O Contract Section 5.01, with the limitations described in Section 5.02, and the exceptions for collection by other persons as described in Section 5.03. The MM&O contractor has no right to source separated Organic Materials that are generated by MFD and Commercial customers who do not subscribe to service, where those materials are handled in a manner described in Sections 5.02 and 5.03.

10	MM&O Contract			Liquidated damages: The existing franchise agreement has language that liquidated damages will not apply during an “implementation period.” Does the City agree such language is appropriate for the early stages of the MM&O and RR agreements? Furthermore, the existing agreement provides that prior to liquidated damages being assessed; the City and Contractor will meet to discuss performance issues; if the incidents giving rise to liquidated damages continue despite the performance revue, then liquidated damages can be assessed? Will the City add such a provision?	<p>The City is willing to consider relief from Liquidated damages for a short period of transition, as provided in proposers transition plan. However, City will not waive requirements to provide daily Collection services as scheduled, and customer services as required by Contract. The City will issue amended language to the MMO &amp; RR contracts to clarify its expectations for customer service during transition period.</p> <p>The City does not agree to add an additional period for discussion of performance issues before assessing liquidated damages. MM&amp;O Contract Section 22.05 describes the procedure for assessment of Liquidated Damage, which, as written, provides the Contractor 30 days to request a meeting with the City Administrator on the matter, before such assessment shall become final.</p>
11	MM&O Contract Sec. 12.02.2	50	2170	What is the estimated cost of a street litter container and a liner?	The City's approximate costs for litter containers and liners are: \$20/unit for galvanized 30-gallon liners; \$1,500/unit plus tax and shipping for Urban Renaissance containers; \$1,000/unit plus tax and shipping for concrete aggregate containers; and \$450/unit for recycling tops to retrofit concrete aggregate containers. Please note that proposers costs may vary significantly from City's costs, and are advised per RFP Section 3.1.1 to make their own examinations regarding equipment and materials.
12				Are companies paying franchise fees exempt from business taxes on the revenue collected under these contracts?	No. The City collects business taxes on gross receipts from businesses doing business in Oakland.

13	RFP Sec. 3.3.3	3-27 through 3-28	1168- 1189	Section 3.3.3 of the RFP itself states that proposers may submit alternatives or exceptions to the services listed in the RFP pursuant to certain requirements. However, the City is not obligated to accept any alternatives or exceptions, but the proposer is obligated to accept an award of the MM&O Collections services contract as stated in the contract attached to the RFP. Is the City saying that regardless of whether Contractor takes exceptions to the proposed draft Contract, it is obligated to sign the contract as presented if it is awarded?	The proposers are required to reveal all exceptions and alternatives in the proposal. City will not negotiate exceptions and alternatives that are not presented in the proposals. The selected proposer is not obligated to sign the draft Contract as presented in the RFP, but is expected to sign the Contract that is negotiated and agreed to by both parties. However, while the City will consider alternatives and exceptions proposed by the proposer, and the proposer may request that those exceptions or alternatives be negotiated, the City is not obligated to accept those alternatives and exceptions as part of the negotiation process.
14	RR Contract Sec. 10.02.5			Section 10.02.5 allows Contractor additional compensation if MFD customers repeatedly have overages. Would the City consider applying this same standard to SFDs?	RR Contract Section 10.02.5 DOES NOT allow Contractor additional compensation if MFD customers repeatedly have overages. Section 10.02.6 describes that the Contractor may arrange with the Customer to provide additional containers or more frequent collection to address overage issues. Contractor is only entitled to additional payment for collection frequency in excess of one time per week, per Contract Section 10.02.7.2, and in accordance with the approved "Excess Frequency" Maximum Recycling Service Rate as provided in Exhibit 1 or as may be adjusted under the terms of this Contract. Section 9.02.2 requires Contractor to collect all recyclable materials set out for collection, as described, by a SFD Service Recipient; Contractor may charge SFD Customer for provision of additional Recyclable Materials Containers, as described in Section 9.02.2.1.

15	Exhibit 8 Table B	110	4088	If a contractor is award both the MM&O and the RR Contract would this table be adjusted to include recyclable tons collected to calculate the total diversion tons or would those tons remain separate?	Tons would remain separate. It is the City's intent that the Diversion Provisions in each Contract serve as Diversion incentives specific to Collection Services described in each Contract.
16				How will the City respond to inquiries over alternate proposals, exceptions and non-negotiable items?	The City will respond to all inquiries according to the Protocol for Process Integrity, typically through RFP addenda. Alternate proposals are accepted as part of the RFP process per Section 3.3.3 and will be considered during the evaluation process. Please note response on Line 13 of Addendum 4 regarding confidentiality of non-negotiable exclusions.

17	MM&O Contract 26.04.1 28.02	76, 78	3146-3158 3259-3268	<p>Section 26.04.1 and Section 28.02 seem to be in conflict. Is it the City's intent that Contractor not be obligated to defend any action challenging the constitutionality or legality of City fees that are not directly tied to the cost of providing collection services? If a lawsuit is filed challenging Collection rates, and the suit does not differentiate between the Maximum Service Rate and, for example, Franchise Fees, is it the City's intent that Contractor assume the defense of such litigation. Further, if the Maximum Service Rate is overturned or in any way reduced as a result of a legal challenge, is it the City's intent that Contractor continue to provide all services under the Contract, even though it is not being paid according to its proposal?</p>	<p>Section 26.04.01 is intended to preserve the ability of the City to require indemnification, including the defense, from the Contractor to the extent it is not prohibited by the limitations set forth in Public Resources Code. Given that a lawsuit could be brought with multiple claims, some of which would be addressed by Public Resources Code 40059.2 and others may not be, Section 26.04 is intended to set forth several contractual obligations of each party as to how to address issues of a joint or mutual defense of the action. Depending on the specifics of a given set of claims, the Contractor may have some obligation to provide a defense.</p> <p>Article 28 is not intended to specifically address issues of defense or indemnification of the City. This Article is intended to clarify that the Contractor is providing critical public services which must be maintained even in the face of adverse court proceedings. It intends to both clarify the allocation of risk as between the parties and set forth basic requirements for the parties to promptly address such an event. Nothing in either of these Articles is intended to prevent emergency actions from being agreed to by the parties to address such circumstances.</p>
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