

City Response to Questions Received from Collection Services RFP Eligible Proposers

October 30, 2012

#	Citation	Page #	Line #	Proposer Question	City Response
1	RR Contract Sec. 25.03.1	56	2279	<p>We initially submitted the following question on 9/19/12 and resubmitted on 10/2/12. Regarding the Residential Recycling Collection Services Contract, Section 25.03.1, page 56, line 2279 and the related section regarding MMO, the City is requiring \$20 million in general liability insurance, \$10 million in automobile liability insurance, and \$10 million in environmental impairment liability compared with \$3 million, \$3 million and \$3 million, respectively, in San Jose for recycling, garbage and organics contracts. We believe that the RFP's insurance requirements are much larger than is customary in other municipal recycling, garbage and organics contracts and we would like to know if the City is willing to revise this amount. We regard its impact, along with other provisions in the RFP, as being an unnecessarily heavy burden for a smaller company such as ours.</p>	<p>The City agrees to revise the insurance provisions in the RR Contract. Section 25.03 is amended as follows:</p> <p>“25.03.1 Commercial General Liability. Twenty<u>Three</u> Million Dollars (\$20,000,000.00) (\$3,000,000.00) combined single limit per occurrence Twenty-Six Million Dollars (\$20,000,000.00) (\$6,000,000.00) annual aggregate; including products and completed operations coverage.”</p> <p>AND</p> <p>“25.03.2 Automobile Liability. Ten<u>Three</u> Million Dollars (\$10,000,000.00) (\$3,000,000.00) combined single limit per accident for bodily injury and property damage.”</p> <p>AND</p> <p>“25.03.4 Hazardous Waste and Environmental Impairment Liability. Ten <u>Three</u> Million Dollars (\$10,000,000.00) (\$3,000,000.00) each occurrence/Ten<u>Three</u> Million Dollars (\$10,000,000.00) (\$3,000,000.00) policy aggregate covering liability arising from the release of waste materials and/or irritants, contaminants or pollutants.”</p>

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2	RR Contract Sec. 17.03	43	1887	Section 17.03 line 1881 of the RR Contract states that all community outreach expenditures require prior written approval from the City. Will the City agree that it will not reasonable withhold and the City will respond timely in writing to any request for community outreach spending and that it will allow the contractor to perform in support of recycling and diversion goals? This can have a material effect on diversion goals.	It is just as important to the City as the Contractor to reach the established goals. The City will provide timely written responses to Contractor's requests for community outreach spending that are prepared pursuant to the approved annual outreach plan.
3	RR Contract 7.02	22	960-964	Section 7.02 Contractor Invoice, RRCSC Pg. 22 - Requirement for MOU on monthly invoicing of RR Collection Services between MM&O, RR and City. <i>G. Fitzgerald: What is the Question?</i> I was wondering what the negotiations between the MM&O Contractor, RR Contractor and City would look like and when those take place? Do all parties present their proposals and negotiate simultaneous to those negotiations that take place between the respective contractors and City?	The Memorandum of Understanding (MOU) between the MM&O and RR will be incorporated as an exhibit into the final MM&O and RR Contracts, therefore it must be completed before execution of the Contracts. The discussion and drafting of the MOU is incumbent on the selected Proposers with whom the City is negotiating the final contracts. The City will facilitate cooperation between the parties to the MOU, as needed, and City's approval of the MOU is required. the City would be a third party beneficiary to the MOU, with a contractual right to enforce.
4	MM&O Contract Sec. 7.04	26	1110	MMOCSC Section 7.04, Is the City willing to consider a quarterly billing of SFD customers vs. a bi-monthly basis?	Proposers may provide a proposal for quarterly billing of SFD as an alternative to the RFP requirement for bi-monthly billing; rate impact must be indicated.
5	MM&O Contract Sec. 7.06	27	1157-1158	Is the City willing to consider billing options for commercial billing vs. the proposed monthly in arrears basis?	Proposers may provide proposals for commercial billing options as alternatives to the RFP requirement for monthly billing in arrears along with the rate impact.

6	MM&O Contract 1.08	3	108-113	With respect to the definition of Change in Law (Section 1.08) how does the City intend to address impacts caused by Changes in Law that occur between the date of response to the RFP and the effective date of the Contract?	MM&O Contract Section 1.08 (Change in Law) is amended as follows: "The adoption, promulgation, or modification of any enforceable federal, state or local rule, law, regulation, ordinance, permit or administrative agency guidelines duly adopted and promulgated officially in writing for uniform application occurring after the <u>due date for RFP proposals</u> effective date of this Contract . Change in Law does not include changes initiated by CONTRACTOR. Change in Law shall not include such changes enacted or adopted prior to the <u>due date for RFP proposals, or publicly circulated regulatory changes pending final adoption</u> effective date of this Contract but which do not take effect until after the date of this Contract."
7	MM&O Contract 6.06.9.1	19	778-788	Section 6.06.9.1 addresses adjustments to the initial "baseline" number of customer carts to be replaced for free in any given year. The section states that in each subsequent Contract year a new baseline shall be increased by taking the base number from the prior contract year "plus" the result of subtracting the number of Carts replaced at no cost in the prior year from the base number from the prior year. If the initial base number is 1,000 carts, for example, and 200 carts were replaced in the current Contract year, is the new baseline 800 or 1,200? Please clarify.	As section 6.06.9.1 states, the "base number" in Contract Year-1 shall be 18,000. In Contract Year-1 should Contractor actually replace 19,000 carts (for example) in Contract Year-1 under the provisions of Section 6.06.9, in Year-2 the "base number" would be 17,000, as follows: $18,000+(18,000-19,000)=17,000$. In a second example Contractor actually replaces 17,000 Carts in Contract Year-1. The Contract Year-2 "base number" would be 19,000, as follows: $18,000+(18,000-17,000)=19,000$.
8	MM&O Contract 7.13.3 7.13.5	29	1232-1234 1238-1246	Sections 7.13.3 and 7.13.5 seem to be in conflict with respect to the right to terminate service to delinquent SFD accounts. Section 7.13.3 states that Contractor has the right to terminate service if the bill remains unpaid thirty days after issuing the delinquent notice, which can be issued any point after the account becomes delinquent. Section 7.13.5 states that a final delinquency notice will be sent to the property owner	Per MM&O Contract Section 7.12.1, "SFD invoices shall be delinquent when they are unpaid on the last day of the first month of the bi-monthly billing cycle." Thus, invoices become delinquent 30 days after issued, at which time the Contractor may issue a delinquent notice. Per MM&O Contract Section 7.13.3, "Contractor . . . has the right to terminate service if the bill remains unpaid thirty

				<p>and service address notifying them that the service will be terminated by Contractor on day sixty if payment is not received. Will the City please clarify this issue? Specifically, has the City anticipated the potential increase in residential rates as a consequence of the current 10% delinquency that equates to more than \$4 million dollars annually? With anticipated higher residential rates and lack of the current lien process, delinquency has the potential of trending above \$8 million dollars annually.</p>	<p>(30) days after issuing the delinquent notice." Thus, service may be terminated on day 60, as stated in MM&O Contract Section 7.13.5, if the bill remains unpaid. The 60 days are the sum of: 30 days from the invoice date to issuance of the delinquent notice, plus 30 days following issuance of the delinquent notice. The City anticipates a more robust process with a shorter time period for delinquencies, compared to the current process, and active participation with the Contractor in the maintenance of the billing database and collection of delinquent bills for collection. The City expects competitive proposals, based on the business opportunities offered in this RFP.</p>
9	MM&O Contract 7.13.9 7.13.10	29	1259-1266	<p>Section 7.13.9 limits the City's financial liability regarding delinquent accounts to the extent of special assessments collected. Is it, therefore, correct to assume that the City intends that the Contractor continue to provide SFD services to those properties being assessed by the City even if the assessments are not collected and paid over to Contractor? Also, Section 7.13.10 states that the Contractor can require that in order to restart service a customer must pay any past-due amounts, but may not require that the assessment be paid off before resuming service. Can the City please explain what it means by this?</p>	<p>In the event that the Contractor terminates service (per the provisions of the MMO Contract Section 7.13.3), AND the City subscribes to service on behalf of the property owner in order to abate a nuisance based on lack of service (per the provisions of the MM&O Contract Section 7.13.2.4) and imposes a special assessment on the property, <u>then</u> the Contractor shall resume service. Once the City receives proceeds from the special assessment, the City will forward to the Contractor payment for services that the City has subscribed to on behalf of the property owner. The statement in Section 7.13.10, which pertains to the Contractor being able to require that in order to restart service a customer must pay any past-due amounts, means that for the Customer to resume service subscription with the Collector (as opposed to the City's continuing to subscribe on behalf of the customer and imposing additional special assessments), the Customer must pay to the</p>

					Contractor the delinquent amount that was owed to the Contractor before Contractor stopped service and the City subscribed to service on the property owner's behalf.
10	MM&O Contract 7.14	30-31	1299-1336	<p>Section 7.14 requires the MM&O Contractor to pay the approved invoices of the Residential Recycling Contractor based on tonnages collected by the Recycling Contractor.</p> <p>a) Does this payment obligation extend to delinquent accounts?</p> <p>b) In other words, does the Recycling Contractor get paid the service fee even if the MM&O Contractor cannot collect it?</p> <p>c) In the City's perspective, what prevents customers from moving to a smaller sized MMO container (in order to have a cost savings) and utilize their recycling container (s) to meet their MMO volume needs?</p> <p>d) Will the City be willing to accept a rate mechanism that allocates rates by MMO & Recycling service levels in order to eliminate the potential for increases in contamination in recycling containers and manipulation of the system?</p>	<p>a) Yes.</p> <p>b) Yes. However, the Recycling Stability Fund described in MM&O Contract Section 7.21.1 is intended to be available to make up any shortfall the MM&O Contractor may incur if the required payments each year to the RR Contractor exceed the amounts collected each year from the RR Contractor component of the per dwelling unit recycling rates.</p> <p>c) The Proposers may provide a solution to this issue in the Maximum Service Rates proposed for this Customer service group. It is the City's intention that the MM&O and RR Contractors use Customer education to minimize contamination in all Source Separated collection services provided under these contracts.</p> <p>d) No.</p>

11	MM&O Contract 17.02 17.09	58, 59	2537-2548 2600-2610	Section 17.02 requires City approval for all marketing, messaging or other mass communications directed to Customers or Service Recipients, regardless of whether such communications relate to the Collection Services. Is it the City's intent to have approval authority over all Contractor messaging and news media statements, regardless of whether such messages or communications have anything to do with the Oakland contract? Also, please clarify the City's intent with respect to Section 17.09 which requires consultation with the City before Contractor can respond to any news media inquiries involving controversial issues.	It is the City's intent that the Contractor provide clear and accurate information to Customers and Service Recipients in Oakland about the Collection Services. The exclusive franchise rights are not provided to the Contractor for commercial purposes other than those described in the Contract, and use of the resources provided by the franchise, e.g. Customer and Service Recipient information, is not intended for use by the Contractor other than for execution of the services described in the Contract. Therefore, the City retains the right to have approval authority over all messaging and communication that is directed by the Contractor to Customers and Service Recipients. The intent of MM&O Contract Section 17.09 is to ensure the integrity of the City's programs and services, including those provided through the MM&O Contract, are properly defended and preserved before the news media. The City does not intend to regulate the Contractor's right to advertise generally, apart from franchised services, as long as there is not implication that the City endorses such promotion.
12	MM&O Contract Sec. 30.06.01	84-85	3534-3542	Section 30.06.1 allows for termination of new programs if the City believes a third-party could perform the program more cost effectively. What criteria does the City intend to apply to this situation? Would the City consider adopting more objective criteria in considering whether Contractor is performing the goals and objectives of a new program?	MM&O Contract Section 30.06 describes Contractor's obligation to document results of new programs, meetings of City and Contractor to discuss and evaluate these programs, and a meet and confer process should City decide to terminate the new programs. The City retains its rights to terminate such programs at its sole discretion.

13	MM&O Contract Sec. 16.02	56	2441-2464	Regarding Section 16.02, please provide clarification and definition of “on hold” and “in queue.” It is our understanding that “on hold” would mean a CSR has already received the call and has placed the customer on hold to pull up the acct, contact dispatch, etc., and that “queue” time would mean the time it takes for the call to reach an actual agent.	The term "in queue" is not used in the MM&O Contract. On-hold waiting time is the time it takes from when the call is first "answered" by the automated phone system to when a Customer Service Representative initiates the live intake protocol. Customers should not be subject to an additional “on-hold” period while the Customer Service Representative pulls up the account, contacts dispatch, etc.
14	MM&O Contract Sec 17.01.3 & 17.01.4	58	2519-2536	Section 17.01.3 indicates a maximum outreach budget; is there a minimum expenditure requirement? If contractor has an internal communications department capable of proving services described in Section 17.01.4, can it be utilized for providing such services instead of a third party? Such third party costs would otherwise be built into Contractor’s customer rates.	The Contract does not establish a minimum outreach budget. Proposers are allowed to propose that community outreach may be performed by an "internal communications department." All professionals assigned to this function, whether contracted or in-house staff must be qualified to perform the work described in the proposal. City believes that community outreach is a fundamental component to the success of a zero waste system.
15	MM&O Contract 12.04	51	2213-2222	Regarding Section 12.04, what size boxes are required for City Sponsored Events and how many carts?	30-cubic yard Boxes are required for City Sponsored Events. The number of Carts required is not prescribed. However, the largest annual event sponsored by the City typically utilizes 60 Carts provided by the current franchisee.
16	MM&O Contract	51	2223-2230	Regarding Section 12.05, how many Adopt A Spot locations would there be? Would service be provided on the same day, or different days? Approximately how many carts per location will be serviced?	There are currently no Adopt-a-Spot locations that are using Carts provided by the current franchisee. MM&O Contract Section 12.05 caps this service at 150 Carts. Collection Services for these carts would be provided weekly, at the address of the Adopt-a-Spot volunteer Service Recipient. It is expected that each location would typically have one or two carts.

17	RFP Sec. 7, Att. 1C			Attachment 1C, Residential and Commercial Tons Allocated, Table 3, allocates tonnages between SFD, MFD and Commercial lines of business. Can you please provide us with the specific document for this information?	Allocation was provided by the current franchisee and was based on cubic yards of weekly service. RFP Section 2.3.3 states, "...it is the sole responsibility of the proposer to conduct their own due diligence..."
18				How does Contractor account for unknown disposal location before responding to MMO & RR RFP's?	MMO Collection Services Form 2 (Maximum Collection Service Rates Proposal) on page 3-37 of the RFP for Collection Services (Service Groups 1 and 2) lists four Disposal Facility locations and instructions for completing service rate proposals based on the four locations.
19	RFP Forms 2F, 2G		A3, A9, A15 ...	The Monthly Unit Generation Factor included in the Total Monthly Rate columns are \$ in the most recent forms. We believe this is a cell format mistake.	The Monthly Unit Generation Factor on Form 2B, 2C, 2D, 2E, 2F, and 2G incorrectly shows the unit of measure as "\$". The correct unit of measure (tons per month) should be shown in decimal form, as on Form 2A. A complete set of revised fill-in forms, formatted for the correct unit of measure, will be included in a future addendum.
20	MMO Contract Sec. 7.13	28	1201	What is the current delinquent service termination process for SFDs? What percent of SFD revenues billed is not collected? What percentage of MFD/Commercial revenues billed is not collected?	The current delinquent service termination process for SFD and MFD Customers is described in Oakland Municipal Code Sections 8.28.170-8.28.270. Each billing quarter, approximately 10% of SFD and MFD accounts are handled through the special assessment process described in the referenced sections of the Municipal Code. Commercial accounts are not subject to this process; current solid waste franchisee collects through standard bad debt collections processes, and terminates service.
21	MMO Contract Sec. 12.06	51	2233	What is the historical annual number of temporary roll-off services requested by City facilities?	City used temporary roll-off services approximately 50 times in the past 12-month period.

22	RFP	3-4		Table 3-2, Is there a limit on the number of 6-20CY temp RO boxes the City can request?	There is not a limit, though proposers may propose such a limit as an alternative. Please see note above regarding City's needs.
23	MMO Contract Sec. 7.08	27	1166	Partial Month Service. If, during a month, a Customer is added to or deleted from CONTRACTOR'S Service Area, CONTRACTOR'S billing shall be pro-rated based on the service rate established in Exhibit 1 divided by four (4), and multiplied by the number of actual weeks in the month that service was provided to the Customer. This does not account for months in which weekly customers would receive 5 or more pickups. In those cases are we to divide the monthly service rate by the appropriate number of regularly scheduled pickups to determine the correct per-pickup rate to use when prorating for partial service in a month?	City does not anticipate that Maximum Service Rates will vary month-to-month based on a particular day of the week occurring either four or five times in a month. The City believes that simply dividing the month by four weeks, as described in MM&O Section 7.08, is a reasonable approximation of services rendered by the Contractor and sufficient for calculating a pro-rated service rate for a partial month of service. Proposer may propose alternative calculation for City consideration.
24	RFP Sec. 3.3.2.5.8.	3-27	1143	<p>“Proposers shall provide a detailed Employee and Labor Relations Plan to include the following:</p> <p>1. “History as an employer” – what exactly is the City seeking? Need clarification</p> <p>2. “Working Condition Commitments” – what exactly is the City seeking? Need clarification i.e. Facility (Cal OSHA/OSHA); Compliance with state/federal regulations; Wage and hour etc.</p> <p>5. “Working Condition Commitments” – what exactly is the City seeking? Need clarification i.e. Facility (Cal OSHA/OSHA); Compliance with state/federal regulations; Wage and hour etc.</p>	<p>1. This is in the Section 3.3.2.5.8 titled Employee and Labor Relations. This is an opportunity for the proposer to describe its company approach to employee and labor relations. Any special policies or strategies for effective employee and labor relations may be included, as well as any information the proposer would like to disclose to the City.</p> <p>2. The City is seeking a description of any working condition commitments the company has made to its employees, management, shareholders, or regulators.</p> <p>5. The City is seeking a description of the working conditions for employees not covered by collectively bargained agreements such as safety, pay, and compliance with regulations. Proposers</p>

					can submit an employee handbook that addresses these issues and shows the employees covered as a response.
25	RFP Sec. 4.3.2.5.6.	4-23	2137	<p>“Proposers shall provide a detailed Employee and Labor Relations Plan to include the following:</p> <p>2. “History as an employer” – what exactly is the City seeking? Need clarification</p> <p>3. “Working Condition Commitments” – what exactly is the City seeking? Need clarification i.e. Facility (Cal OSHA/OSHA); Compliance with state/federal regulations; Wage and hour etc.</p> <p>5. “How company addresses equity and work conditions for positions that are not covered by collectively bargained agreements” – what exactly is the City seeking? Need clarification i.e. Facility (Cal OSHA/OSHA); Compliance with state/federal regulations; Wage and hour etc.</p>	See Above.
26				Will SFD and MFD customers be required to subscribe to recycling service? If they are not required and they choose not to subscribe, will they still be charged the flat rate per dwelling unit for recycling?	SFD and MFD Recyclable Materials Collection Services are not a subscription program, i.e. the Collection Services are provided to all SFDs and MFDs as part of a bundled package of services with bundled Maximum Services Rates. Neither SFD nor MFD service recipients are required to set out recyclables for collection by the Contractor, however MFD properties are subject to county and state recycling mandates.

27			<p>Is it expected that the Contractor assumes all risks when it comes to either [lien option] being... because you state that the City may, based on a nuisance, they may subscribe service? If they don't, are we to suggest a process to then get reimbursed for those properties that are delinquent but don't pose a nuisance, and how we factor that as costs for reimbursement?</p>	<p>MM&O Contract Section 7.13 Delinquent Service Account Termination Process describes the two lien options (proposals are required for both). The default option allows the Contractor to stop service after a billing cycle, if a customer has failed to pay for service. At this point the City may subscribe to service on the customer's behalf to abate the nuisance caused by failure to have garbage service, to protect the public health and safety. It appears from the question that there is uncertainty in the use of the word "may". It is the City's intention to abate nuisances caused by property owners who fail to have garbage service. Under the default system, the risk the Contractor has is in recovering delinquent payments for the billing cycle that precedes the City's abatement action. Under the alternate system, without a special assessment process, the risk the Contractor has is collection of unpaid bills and no cessation of collection services.</p>
28			<p>This a Prop 218 question: 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 the contractor continue to provide all services under the contract even though it's not being paid under it's proposal?</p>	<p>Article 28 of the MM&O Contract addresses legal actions that may impact service rates. As discussed in this Article, the City expects the Contractor to provide collection services under difficult circumstances. As stated in Section 28.02 should a court or other regulatory agency set aside the Maximum Service Rates established, the City may take urgency actions as necessary to facilitate Contractor's continuation of the service, which may include interim suspension of portions of the Contract such as the Maximum Service Rates limitations. Further, section 28.02 provides that under such circumstances the City and Contractor must cooperate and mutually act in good faith, and</p>

					if needed, immediately meet and confer to address the impact of a legal action that results in the invalidation of the Maximum Service Rates. Although the Contractor will be required to continue to provide services, there is nothing in the Contract that prevents the Contractor from taking reasonable measures to recover payment for services from Customers, during the period before new Maximum Service Rates are adopted or other remedial actions are taken.
29				See letter from Recology received by the City via email on October 9, 2012 attached to this Addendum, and added to the Collection Services RFP as Attachment 7.	The City will consider an alternative proposal accompanying a proposal that is fully responsive to the Zero Waste RFP.
30	RFP Sections 3.1.12 & 4.1.9.1 Table 2-1			RFP Table 2-1 and sections 3.1.12 and 4.1.9.1 cite 2011 landfill tonnage of 185,000 tons. The California Department of Resources Recycling and Recovery (CalRecycle) disposal reporting system shows that there were 292,300 tons from Oakland disposed to landfills in 2011. What accounts for the difference between the RFP 185,000 landfill tonnage the CalRecycle 292,300 landfill tonnage?	RFP Table 2-1 and sections 3.1.12 and 4.1.9.1 all clearly state that 2011 landfill tonnage of 185,000 tons is franchise tonnage only, disposed to the current franchised landfill. CalRecycle 292,300 landfill tonnage is for all Oakland-origin tonnage sent to landfills including franchised and non-franchised tonnage, disposed to a variety of landfills.