

City Response to Questions Received from Collection Services RFP Eligible Proposers

October 10, 2012

#	Citation	Page #	Line #	Proposer Question	City Response
1				What % of contamination is allowed in "recycling" collection, both in the open market and franchised collection?	Oakland Municipal Code Section 8.28.030B addresses "Limits on Residual Content." Currently the limits are 10% residual by weight for mixed paper loads, and 5% residuals by weight for all other commingled recyclables. Limits on residuals will apply equally to "open market" haulers and to the Non-Exclusive Commercial Recycling franchisee.
2				From the RFP we understand that 'Joint Ventures' must be disclosed to the City by October 31. If EBMUD provides organics processing services to a hauler would the City need the parties to submit a letter by October 31 stating that a given hauler and EBMUD are joining forces to collect organic material in Oakland for the purpose of creating feedstock for anaerobic digestion in any other relationship outside of a legally defined 'Joint Venture'? What is the City considering to be a 'Joint Venture'?	A joint venture typically involves the formation of a new corporation by existing corporations, or a partnership where both parties are signatories to a contract. Unless EBMUD intends to form a special relationship with one of the proposers, which would result in EBMUD signing on behalf of both parties or as a co-signer on the contract, then we would expect that EBMUD's relationship to the proposer is not a joint venture for the purposes of the RFP.
3				Maximum service rates can be adjusted downward based on the RRI, but the franchise fee cannot. What is the rationale behind this? How did the City arrive at a Franchise fee requirement of the \$25-million? What is the factual basis supporting this number?	Correct, adjustments to Maximum Service Rates are described in MM&O Contract Section 7.16, and adjustment to the franchise fee is described in MM&O Contract Section 7.20.1. The franchise fee requirements are a continuation of the cost structure contained in the existing solid waste franchise agreement.

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4				Under City Services – if it results in the increase of the Contractor’s costs of less than \$250,000 or capital expenditure of less than \$3-million, does the City expect the contractor to perform the increased services without an approved rate adjustment?	Per MM&O Contract Section 30.03.2, CONTRACTOR shall implement changes in service with rates adjusted as agreed by CONTRACTOR and CITY, or as adjusted by CITY as it believes proper absent agreement.
5				Would the City be able to give us the percent of residential customers that have gone to collections on an annual basis on average?	Currently, each billing quarter, approximately 10% of SFD and MFD accounts are handled through the current special assessment process described in Oakland Municipal Code Sections 8.28.170 through 8.28.240.
6	RFP Sec. 3.3.2.4.1 and Sec. 4.3.2.4.1	3-22 and 4-18	954 and 1977	If a proposer has executed a Memorandum of Understanding (MOU) with the labor union that represents the employees of the incumbent collection contractor, agreeing to the terms of the existing Collective Bargaining Agreements, may they submit a copy of the MOU in lieu of copies of labor agreements under which they operate in the RFP-listed counties?	Yes, if a proposer has MOUs or other labor agreements in Alameda County that would cover all the proposer’s employees who are assigned to the contract, then such agreements from other counties are not needed.
7	MM&O Contract Sec. 6.11	21	903	I recommend the word "designated" be added before "legal holidays".	MM&O contract Section 6.11 is amended as follows: " Holiday Service. January 1st, Thanksgiving Day, and December 25th shall be <u>designated</u> legal holidays."
8	MM&O Contract Sec. 1.74			Definitions. Please provide a definition of Subcontractor.	Please refer to Article 53 Subcontracting in the MM&O and RR Contracts for governing language on this subject. The City is not amending the contract to add a definition of subcontractor.

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9	RFP Sec.3.3.2.5.1	3-23	993	<p>a) Are proposers allowed to propose a service day that is different than their current day?</p> <p>b) If not when will proposers receive current service day routing information?</p>	<p>a) Yes.</p> <p>b) Current service account data for SFD and MFD garbage, MFD recycling and commercial garbage are attached to this Addendum, and added to the Collection Services RFP as Attachment 5. A day-of-service map for SFD customers is provided via this Addendum, and added to the Collection Services RFP as Attachment 6.</p>
10	RFP Table 2-2	2-3		<p>Page 2-3, Table 2-2: Please provide copies of your current service provider's monthly reports identifying service address and service level including cart size, quantities, and frequency of pickup.</p>	<p>Service addresses and service levels including container sizes, quantities, and collection frequencies are provided in Attachment 5 of this Addendum.</p>

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11				<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 (property owner) has failed to pay for service. At this point, to protect the public health and safety, the City may subscribe to service on the customer's behalf to abate the nuisance caused by failure of the customer to have garbage service. It is the City's current intention to abate nuisances caused by property owners who fail to have garbage service. But, if the City does not subscribe on the customer's behalf, the contractor will not incur any costs associated with collection, since service will have been terminated. Under the default system, though, the Contractor does assume the risk associated with non-payment in the initial billing cycle before service is terminated. Under the alternate system, without a special assessment process, the Contractor assumes the risk of non-payment on an ongoing basis, and it has no ability to terminate collection services for non-payment for residential customers. Sections 7.12 and 7.13 provide allowable actions for the contractor to address delinquent service accounts.</p>

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12	RFP Sec. 3.3.4.2	3-28	1211, and 1219- 1220	<p>Third, regarding the Request for Proposals for Zero Waste Services, Section 3.3.4.2, Disqualification, page 3-28, line 1211, the City states that a proposer may be disqualified if, according to lines 1219-1220, there exists any unresolved contractual claim or dispute between the City and the proposer. This proposer has an existing dispute with the City and we believe that the City's assertion that it may disqualify a proposer for merely having a dispute with the City exerts an unfair amount of leverage against a prospective proposer such as us. Could you please clarify the City's intent with respect to this provision? For the record, we regard the impact of this provision, along with other provisions in the RFP, as being an unnecessarily heavy burden for our company specifically. So you know, the dollar value of the dispute between this company and the City is considerable and if we are compelled to vacate our claim as a condition of being considered under this RFP without fear of being disqualified then we will be subject to an unbearable financial hardship.</p> <p>G. Fitzgerald: <i>Please provide a full description of the dispute that CWS believes it has with the City so that the City may ascertain whether this dispute would be disqualifying.</i></p> <p>We have a contract with the City to provide service based on the number of units. The city have been paying us fewer units than we are servicing. The city acknowledges this fact. The two parties, however, do not agree on the number of units and the duration those units have been served. The total amount due to CWS for this difference has therefore not yet been determined.</p>	The City does not consider this alleged dispute to be disqualifying.

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13				Are non-negotiable exclusions that are submitted to the City kept confidential?	Non-negotiable exclusions are part of the RFP process. The City requests that proposers clearly mark materials that are trade secrets as such. At the time of decision making, if the financial information provided becomes part of the analysis in selection by the Council, the City cannot commit to holding trade secrets confidential. The City will act according to prevailing law regarding public disclosure. If a proposer withdraws from consideration at any point in the process, the City will allow return of materials marked as trade secrets as the law allows.
14				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 its proposal?	Article 28 of the MMO 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 if needed, immediately meet and confer to address the impact of a legal action that results in the invalidation of the Maximum Service Rates.