

From: TOWN OF WINDSOR

To: ALL PROSPECTIVE APPLICANTS

**ADDENDUM NO. 1: Request for Proposals for Non-Exclusive Temporary
Construction and Demolition Debris Collection Service**

Notice is hereby given that this Addendum No. 1 is provided to all prospective applicants on the Town’s website at www.townofwindsor.com, and that the clarifications, additions and/or deletions contained in this Addendum shall be made part of the Request for Proposals (RFP) for the above-referenced procurement, and shall be subject to all applicable requirements there-under, as if originally shown and/or specified.

Questions received to this date are addressed in the following pages.

All Applicants are required to sign this page of this Addendum No. 1, and shall submit a signed copy of this page with their Application.

Thank you for your participation,

**Town of Windsor
Kristina Owens
Administrative Operations Manager**

ADDENDUM NO. 1 **DATE: September 26, 2017**

COMPANY / AGENCY NAME: _____

COMPANY ADDRESS: _____

REPRESENTATIVE’S NAME: _____

SIGNATURE: _____

DATE: _____

**Town of Windsor Request for Proposals for
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Change in Due Date for Submission of Applications

Notice is hereby given that the due date for submission of Applications in response to the RFP is being extended to October 5, 2017 by 1:00 p.m. PDT. The due date is no longer September 28, 2017 by 1:00 p.m. PDT, as was originally stated in various sections throughout the RFP document.

Questions Submitted in Response to the RFP

The following questions were submitted in response to the original RFP document issued on September 6, 2017. The Town's response is provided below each question, and information is provided regarding any corresponding revisions, additions, or deletions that are hereby made to the text of the original RFP document, Application and Collection Service Agreement (Agreement).

Question 1:

"RFP" page 7 of 12, section 2.4.4 Processing and disposal Facility (ies), Through this RFP process, the Town is not directing franchisees to use the Sonoma County Central Landfill/Transfer Station System for processing. However, franchisees are required to deliver residual material resulting from the processing of material collected through the Agreement to the Sonoma County Central Landfill/Transfer Station System for disposal.

- i. Can the RFP read, "Through this RFP process, the Town is not directing Franchisees to use the Sonoma County Central Landfill/Transfer Station System for processing. However, franchisees and or their Subcontractors are required to deliver residual material resulting from the processing of material collected through the Agreement to the Sonoma County Central Landfill/Transfer Station System for disposal.

Answer 1:

The Town is entering into an agreement with the Franchisee. It is the Franchisee's responsibility to ensure all residual material resulting from the processing of material collected through the Agreement is delivered to the Sonoma County Central Landfill/Transfer Station System.

Question 2:

"RFP" page 11 of 18, section 3.9 Disqualification, more than one Application from an individual, firm, partnership, corporation, or association under the same or different names will not be considered. Reasonable grounds for believing that an Applicant is involved in more than one Application for the same work will be cause for rejection of all Applications in which such Applicants are believed to be involved.

- i. Can a bidder also be a Subcontractor to another bidder (with no affiliation as to ownership) for the following?
 - (a) Temporary Roll off under this agreement
 - (b) Processing of C & D waste under this agreement

Answer 2 (a):

Yes. The Applicant must be able to demonstrate the ability to provide the services outlined in the Agreement.

Answer 2 (b):

Yes. The Applicant can be a Subcontractor to another bidder.

Question 3:

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“RFP” page 17 of 18, section 4.3, Evaluation of Applications, Approach and Technical Solution, applicants approach to achieving high diversions standards (30%); and Demonstrated technical feasibility of processing methods and facilities (30%).

- i. We do not see a section to place this information on or in the application. Can you please clarify where you want this information? Will the Town accept a supplemental page of information regarding the above?

Answer 3:

Yes. The Applicants may provide no more than 4 double-sided pages of supplemental information.

Question 4:

Application” page 1 of 18, section 2, Paragraph D, Litigation History requires the Applicant to provide a list of enforcement actions taken against it during the last five (5) years by any regulatory agency.

- i. “Please define “Enforcement Action”?

Answer 4:

“Enforcement actions” means all actions taken against an Applicant for violating regulatory statutes, laws, regulations, or ordinances. Examples of enforcement actions could include, but are not limited to notice of violation(s), liquidated damages, administrative changes, fines and penalties, termination, etc.

Question 5:

“Application” page 9 of 18, section 3, paragraph G, Vehicles. Make, Model, Capacity/GVW (Tons), ETC.

- i. What does the Town mean by “capacity”?
- ii. Capacity/GVW, we believe is not the correct acronym for information. GVW stands for Gross Vehicle Weight. Can the Town change this to read “GVWR”? GVWR stands for Gross Vehicle Weight Rating, which we believe is what the town wants.

Answer 5 (i):

Provide the Gross Vehicle Weight Rating (“GVWR”) of each proposed vehicle.

Answer 5 (ii):

Yes. The Application has been revised and attached to this addendum to request the GVWR for each proposed vehicle.

Question 6:

“Application” page 3 & 10 of 18, section 3, Technical Approach, Item H, Applicants must provide information for the Recycling, Transfer/Processing, and Disposal facilities they will be using, including any facilities located outside of Sonoma County. Facilities to be used including documentation of state and local permits, processing methods, methods used to determine amounts diverted (by type of material) and residual amount, and Disposal location(s) for residual material. Note that the Town is requiring Franchisees to deliver residual or disposal material to the Sonoma County Landfill/Transfer Station System.

- i. We do not see a section to place this information on or in the application. Can you please clarify where the Town wants this information? Will the Town accept a supplemental page of information regarding the above?

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- ii. In the facility listings chart it has a place for us to fill in “Local Land Use Permit Number”. What if we can’t find this information online or we can’t get it from the other facility’s directly? This should not be part of the information request. The Cal-Recycle SWFP should be enough as Cal Recycle and LEA had to have all this information given to them upon permitting.

Answer 6 (i):

Yes. Refer to answer to question 3 above.

Answer 6 (ii):

Applicant must provide enough information to the Town to demonstrate that a proposed facility is fully permitted and licensed. If there is not enough information for the Town to verify that a facility is fully permitted and licensed, the Application will be rejected.

Question 7:

“Non-Exclusive Agreement” page 6 of 42, Definitions, section 1.05, Bin. A metal container, with a capacity of eight (8) cubic yards of Construction and Demolition Debris, designed or intended to be mechanically dumped into a loader packer type truck that is approved for such purpose by the TOWN.

- i. Can this be changed to reflect the towns ordinance?
- ii. We suggest “Bin. A metal or plastic container, with a capacity of one (1) - eight (8) cubic yards of Construction and Demolition Debris, designed or intended to be mechanically dumped into a loader packer type truck that is approved for such purpose by the TOWN

Answer 7:

Yes. Section 1.05 of the Agreement is hereby revised to read:

“Bin. A metal or plastic container, with a capacity of **one (1) to** eight (8) cubic yards of Construction and Demolition Debris, designed or intended to be mechanically dumped into a loader packer type truck that is approved for such purpose by the TOWN.”

Question 8:

“Non-Exclusive Franchise Agreement” section 3.09.2 states Waste Delivery Agreement (“WDA”). In accordance with Section 2.4 of the WDA, FRANCHISEE shall deliver all Residuals from processed Construction and Demolition Debris Collected by FRANCHISEE to the Central Landfill for the term of the Waste Delivery Agreement, any extension hereof and any other similar TOWN waste delivery commitment.

Referring to the executed WDA, Section 2.4 states “Whenever the City’s Franchised Hauler has its contract, authorization, permit, license or franchise agreement renewed (excluding only a renewal on the basis of the unilateral option of the Franchised Hauler), extended or material modified after the Execution Date, the City shall incorporate language in such contract, authorization, permit, license or franchise agreement, requiring the Franchised Hauler to deliver all Committed City Waste to the Contractor and County facilities for the Term of this Agreement, any extension hereof and any other City waste delivery commitment to the Contractor, excluding only those categories of Waste listed in Section 2.2 and Exhibit B.

Section 2.2 of the WDA refers to waste that is excluded for the Committed City Waste.

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Exhibit “B” states (see attached “Exhibit B”) The following categories of Waste are excluded from the Town’s waste delivery commitment in Section 2.1:

- (a) Generic Recyclable Material;
- (b) Construction and Demolition Wastes, except to the extent the Town currently or in the future exercises Flow Control over such waste or the Town’s Franchised Hauler has agreed to deliver such waste to the County Facilities. In the Town of Windsor, “Construction and Demolition Wastes” means discarded materials removed from construction, remodeling, repair, demolition, or renovation operations on any pavement, house, commercial or industrial building, or other structure, or from landscaping. Such materials include, but are not limited to, dirt, sand, rock, gravel, bricks, plaster, gypsum wallboard, aluminum, glass, asphalt material, plastic pipe, roofing material, carpeting, concrete, wood, masonry, rocks, trees, and remnants of new materials (including paper, plastic, carpet scraps, wood scraps, scrap metal, building materials, packaging and rubble resulting from construction, remodeling, renovation, repair and demolition operations on pavements, houses, commercial and industrial buildings and other structures);
- (c) Self-Haul Waste;
- (d) Source Separated Green Waste, Wood Waste, and Food Waste; and
- (e) Exempt waste, including Biohazardous or Biomedical Waste, Hazardous Waste, Household Hazardous Waste; sludge, including solids, residues or other precipitates resulting from waste treatment; automobiles; automobile parts; boats; boat parts; boat trailers; internal combustion engines; lead-acid batteries; and those wastes under the control of the Nuclear Regulatory Commission.
 - i. Our interpretation of the WDA, is that Construction & Demolition Waste is Excluded from the City’s delivery commitment. Thus, Construction & Demolition debris residuals would be Excluded as well. The WDA does not state anywhere that Republic Services is entitled to the Residuals generated from Construction & Demolition Waste or its processing. Will the Town attorney please provide legal clarification as to our interpretation?
 - ii. Since the Town is requiring the residual waste to be delivered per the WDA as flow control, will the franchise receive the same indemnity as the Town from Republic Services?

Answer 8 (i):

The Town requires delivery of residual material resulting from the processing of material collected through the Agreement is delivered to the Sonoma County Central Landfill/Transfer Station System.

Section 3.09.2 of the Agreement is hereby revised as follows:

~~“Waste Delivery Agreement (“WDA”). In accordance with Section 2.4 of the WDA, FRANCHISEE shall deliver all Residuals from processed Construction and Demolition Debris collected by FRANCHISEE to the Central Landfill for the term of the Agreement. Waste Delivery Agreement, any extension hereof and any other similar TOWN waste delivery commitment.”~~

Answer 8 (ii):

The Town encourages Applicants to engage in a conversation with Republic Services.

Question 9:

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Non-Exclusive Agreement” page 14 of 42, section 3.11.2 states Equipment oil, hydraulic fluids, spilled paint, or any other liquid or debris resulting from the FRANCHISEE’S operations or equipment repair shall be covered immediately with an absorptive material and removed from the street surface to comply with all local, state, and federal agency rules and regulations. The TOWN must be notified of such spill within two (2) hours upon incident.

- i. What is the minimum volume spilled or leaked to constitute a notification to the town? for example, a quarter of a cup leaked from the hydraulic tank of the truck do you want us to report it?

Answer 9:

Section 3.11.2 of the Agreement is hereby revised to read:

“Equipment oil, hydraulic fluids, spilled paint, or any other liquid or debris resulting from the FRANCHISEE’S operations or equipment repair shall be covered immediately with an absorptive material and removed from the street surface to comply with all local, state, and federal agency rules and regulations. The TOWN must be notified of any **liquid spill greater than an eighth (1/8) of a cup** within two (2) hours upon incident. When necessary, FRANCHISEE shall apply a suitable cleaning agent to the street surface to provide adequate cleaning. To facilitate such cleanup, FRANCHISEE’S vehicles shall at all times carry sufficient quantities of petroleum absorbent materials along with a broom and shovel.”

Question 10:

Agreement, Sections 6.01.7 and 11.03.p.

- i. Do the weight limits apply to vehicles (Section 6.01.7) or containers (Section 11.03.p)? What is meant by "net weight" in Section 11.03.p?

“Non-Exclusive Agreement” page 18 of 42, section 6.01.7 states “Collection Vehicle Size limitations”. Collection Vehicles must not exceed a maximum gross vehicle weight rating (GVWR) of 56,000 pounds (includes both truck and load weight).

- i. The term “GVWR” should not be used in this paragraph. Some vehicles have higher GVWR than 56,000 pounds, suggesting that we cannot utilize vehicles that have a GVWR above the 56,000 pounds. The manufactures label should not have a bearing on this requirement. Can the Town change the wording GVWR to GVW? This change will require a haulers collection vehicle not be exceed the 56,000 pounds.

“Non-Exclusive Franchise Agreement” page 24 of 42, section 11.03, Item P in the liquated damages schedule list a damage of \$500.00 per incident for Hauling Container over 53,000 lbs. GVW or 22,000 lbs. This conflicts with section” section 6.01.7 of the Non-Exclusive Agreement, which states 56,000 pounds. And the net 22,000 lbs may not be true for lighter weight trucks.

- i. Can the Town correct this to read 56,000 lbs. and delete the net 22,00 net weight?

Answer 10:

Section 6.01.7 of the Agreement is hereby revised to read:

“Collection Vehicle Size Limitations. Debris Box collection trucks must not exceed a maximum gross weight ~~rating (GVWR)~~ of 56,000 pounds (including both the truck and load weight), no more than 3 axles, and a total load capacity of 40 yards.”

Section 11.03.p of the Agreement is hereby revised to read:

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| | | |
|----|--|-----------------------|
| p. | Hauling Container over 53,000 lbs GVW or 22,000 lbs net weights. Collection vehicles that exceed 56,000 lbs. GVW, 3 axles, or load capacity of greater than 40 yards | \$500.00 per incident |
|----|--|-----------------------|

Question 11:

Non-Exclusive Agreement” page 18 of 42, section 6.01.7 states Equipment and Collection Vehicle Maintenance. FRANCHISEE shall maintain Collection equipment and vehicles in a clean condition and in good repair at all times. All parts and systems of the collection equipment and collection vehicle shall operate properly and be maintained in a condition satisfactory to TOWN. FRANCHISEE shall wash all collection equipment and collection vehicles at least once a week

- i. Washing a Roll Off truck weekly seems excessive. Roll Off trucks do not have the same area as a residential or commercial collection truck and washing weekly would waste water. Would the Town accept washing trucks one (1) time a month?

Answer 11:

Yes. Section 6.03 of the Agreement is hereby revised to read:

“Equipment and Collection Vehicle Maintenance. FRANCHISEE shall maintain collection equipment and vehicles in a clean condition and in good repair at all times. All parts and systems of the collection equipment and collection vehicle shall operate properly and be maintained in a condition satisfactory to TOWN. FRANCHISEE shall wash all collection equipment and collection vehicles at least once a ~~week~~ **month or more frequently as the Town may require. However, in times of drought conditions, upon Franchisee or Town notification, washing of collection equipment and vehicles may be suspended.**”

Question 12:

RFP, Section 2.4.4, fifth paragraph; Agreement Section 3.09.6

- i. Of the two discussions on this, which is controlling?
- ii. In negotiating rates, would the City also allow the rate adjustment to reflect the loss of volume (and revenue) at franchisee's processing facility in addition to transport costs?

Answer 12 (i):

Section 3.09.6 of the RFP is hereby revised to read:

“TOWN direction of collected material. TOWN reserves the right to direct FRANCHISEE to take collected material pursuant to this AGREEMENT to a designated site or sites for the purpose of permitting persons who will reuse or recycle such material obtain the collected material at no cost. ~~FRANCHISEE shall have no obligation to dispose of the collected material or material residue remaining at the directed site or sites after reusers and recyclers have removed reusable or recyclable items.~~”

Answer 12 (ii):

Yes. Section 2.4.4 of the RFP is hereby revised to read:

“...However, please note that the TOWN will retain the right to direct FRANCHISEE to use specific TOWN-designated facilities at any point during the term of this Agreement. If at any point the TOWN does direct FRANCHISEE to use specific facilities, the FRANCHISEE shall have the right to

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negotiate an adjustment to its customer “pull rates” to cover any increase in **tipping fees, transport costs, or loss in revenue from sale of recyclables** that is incurred (if any) as a result of the change in facilities....”

Question 13:

Application, Section 3.

- i. Is it necessary to provide information on the disposal facility, when use of the Sonoma Central Landfill is mandated by the City?

Answer 13:

Yes. The Application has been updated and attached to this addendum.

Question 14:

Agreement, Section 4.03.

- i. Does franchisee have to provide all of these payment methods?

Answer 14:

Section 4.03 of the Agreement is hereby revised to read:

“Methods of Payment. FRANCHISEE shall provide the means for customers to pay bills through **three or more** of the following methods: cash, checks, credit cards, internet payment service or automatic withdrawal from bank account.”

Question 15:

Agreement, Section 4.04.1.1.

- i. Does the City expect to receive franchise fees from facilities where the collection services provided are, by law, independent of and not provided by virtue of the non-exclusive franchise agreement? Examples would be state facilities and school districts.

Answer 15:

The Town requires franchise fees to be paid by the Franchisee, not the customer, to reimburse the Town for costs associated with administration of the Agreement and the impacts of the operations on Town facilities and resources, and in consideration of the franchise granted to Franchisee. Franchise fees are based on the total Gross Revenue collected for services provided in Town under this Agreement. If Franchisee is providing services under a separate contract to a Federal, State, County, or other local facility within the Service Area that is not a part of this Agreement, services provided and Gross Revenues received from separate contracts with Federal, State, County, or other local facility within the Service Area are not considered part this Agreement.

Section 4.04.1.1 of the Agreement is hereby revised to read:

“Monthly Franchise Fee Payments. FRANCHISEE shall pay TOWN a monthly Franchise Fee payment (“Monthly Franchise Fee Payment”) equal to ten percent (10%) of all gross receipts paid by customers and collected under the terms of the AGREEMENT. Payment to TOWN shall be due by 5:00 p.m. PT on the fifteenth (15th) day of the month following the month the revenues are collected. If the 15th day of the month falls on a day that TOWN is closed or a holiday, then the Franchise Fee Payment shall be due on the next business day. Each such payment shall be accompanied by an accounting, which sets forth FRANCHISEE’S gross receipts collected during the preceding month. ~~Gross receipts shall specifically include revenue received by the FRANCHISEE~~”

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~~from any entity, including Federal, State, County, or other local facilities within the Service Area for the provision of Collection Services by the FRANCHISEE.~~ Gross receipts shall specifically exclude any revenue from the sale from Recyclable Materials and from grant funding. Failure to pay the correct amount or fees within the required timeline will result in liquidated damages per Article 11.”

Question 16:

Agreement, Section 4.04.4 and 11.03.v.

- i. Would the 25% penalty be assessed on the first day after the due date (Section 4.04.4) or after the third work day following the due date (Section 11.03.v)?

Answer 16:

Section 4.04.4 of the Agreement is hereby revised to read:

“Penalty for Late Payments. Any payments described in this Section 4.04 or elsewhere in the AGREEMENT that are received by the TOWN ~~the day~~ after the due date ~~of the fifteenth (15th) day of the month~~ will be assessed a late penalty equal to twenty-five percent (25%) of the original amount due. Failure by FRANCHISEE to pay both the original payment amount and the late penalty within thirty (30) days of written notice of the delinquency by the CITY will be considered an event of default, and the CITY may terminate the AGREEMENT immediately.”

Section 11.03.v is hereby revised to read:

| | | |
|----|---|--------------------|
| v. | Failure to pay correct value of Franchise Fee or failure to pay Franchise Fee within three (3) Work Days of by required due date. | 25% of amount due. |
|----|---|--------------------|

Question 17:

Agreement, Section 6.01.2.

- i. How could the franchise comply with clean air standards that are “proposed to be adopted”? Until actually adopted, it would not be known exactly what they are.

Answer 17:

Section 6.01.2 of the Agreement is hereby revised to read:

“Clean Air Vehicles. During the term of this AGREEMENT, to the extent required by law, FRANCHISEE shall provide its collection vehicles ~~to be~~ in full compliance with current local, state and federal clean air requirements ~~as that were adopted,~~ **but not limited to,** ~~or proposed to be adopted,~~ including, ~~but not limited to,~~ the California Air Resources Board Heavy Duty Engine Standards ~~as currently proposed to be contained in the California Code of Regulations, Title 13, Section 2020 et seq.;~~ the Federal EPA’s Highway Diesel Fuel Sulfur regulations; and any other applicable air pollution control laws.

Question 18:

Agreement, Section 8.01.1.

- i. Would franchisee be required to maintain separate financial records only as to cash, billing and provision of services? Is the City requiring complete separate financial statements?

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Answer 18:

Yes. The Franchisee will be required to maintain separate financial records only as to cash, billing and provision of services as specified in Section 8.01.1 of the Agreement.

Question 19:

Agreement, Section 12.01

- i. Would the extent and cost of the compliance review take into account the relative amount of franchisee's business and revenues in the City?

Answer 19:

No.

Question 20:

Agreement, Section 14.03.

- i. If the franchisee is financially responsible and able to pay any deductibles or self-insured retentions, what is the purpose for the City mandating those amounts? Ability to pay is of far more importance than the amount. This could also require the franchisee to purchase separate policies for Windsor.

Answer 20:

The Town requirements for deductibles and self-insured retention are specified in Section 14.03 of the Agreement.

Question 21:

Agreement, Section 15.03.

- i. Does the City expect franchisee to defend and indemnify it from CERCLA liability at Sonoma Central Landfill, where the City is mandating disposal at that landfill and it was not the choice of the franchisee? How would costs and liability be shared among the non-exclusive franchisees and the exclusive franchisee?

Answer 21:

No, if the Franchisee is collecting, processing and delivering all residuals collected in Town under this Agreement in compliance with all applicable state and local laws. The Town does not want to speculate on issues that may not occur.

Question 22:

Agreement, Section 15.05.

- i. Does the City expect franchisee to defend and indemnify it against a challenge that the franchise fee is excessive and violates Propositions 26 and 218, where the City established the amount of the franchise fee?
- ii. How would costs and liability be shared among the non-exclusive franchisees and, potentially, the exclusive franchisee?

Answer 22:

Section 15.05 of the Agreement is hereby deleted in its entirety:

~~“FRANCHISEE shall defend, hold harmless, and indemnify TOWN, its officers, officials, employees, volunteers, agents and assignees (indemnitees) from and against any loss, liability, penalties, forfeiture, claims, damages, demands, actions, proceedings or suits, in law or equity, of every kind and description, arising from the TOWN’s setting of maximum Service Rates for Collection Service~~

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~~under this AGREEMENT and/or in connection with the application of Article XIIC and Article XIID of the California Constitution to the imposition, payment, or collection of Service Rates and fees for services provided by FRANCHISEE under this AGREEMENT, and/or in connection with the imposition or payment of Franchise Fees under this AGREEMENT.”~~

Question 23:

Agreement, Section 16.01.5.

- i. Does the City intend to terminate the franchise in the event that franchisee exercises its legal rights in good faith to challenge a payment demand from the City?

Answer 23:

The Town will exercise its rights to terminate the contract in accordance with a signed Agreement by Franchisee.