

TOWN OF SOUTHWEST RANCHES, FLORIDA
RFP – Solid Waste, Recyclables, and Bulk Waste Collection and Disposal
RFP No. 17-003

ADDENDUM 2

Please note that Proposers are required to acknowledge receipt of Addendum 2 on the Addenda Acknowledgement form. **Failure to acknowledge all addenda may be cause for rejection of the Proposal.**

Provided below are responses to questions received by the Town prior to the deadline for questions, 4:00 p.m. on March 17, 2017. **To provide Proposers with sufficient time to respond, the due date and time for proposal submittal is extended to April 4, 2017 at 4:00 p.m.**

Questions and Answers

- 1. Will the Town accept changing the service days schedule for the Bulk/Vegetation Collection Routes by the proposer? More efficient equipment utilization is possible by changing bulk collection routing days. Using all of the Mondays, Tuesdays and Wednesdays in a month (instead of half of these days in a given month) to collect bulk/vegetation would result in cost savings that could be passed on to the City.*

Answer: The Town would like to keep the existing service days for Bulk Waste so that streets are free of Bulk Waste every other week.

- 2. RFP, Section II, third bullet: Please define how a Contractor would determine if the recycling of white goods and yard trash is “practical.”*

Answer: The expectation is that White Goods and Yard Trash that are not commingled when placed curbside will be recycled. The word “practical” was referring to items that are not considered White Goods or Yard Trash. The Town desires for these other goods to be recycled to the extent possible.

- 3. RFP, Section II, Table 4: Even though this question was addressed in Addendum 1, the Town MUST reconsider its position. There is no logical way that the number of tons will be rolled back to the 2014-2015 weights. Even if the Town removes the inclusion of residential C &D, the best available information is that it will not even come close to the amount of tons the Town is suggesting. Please reconsider using the last full year available as the basis for the RFP. Also, would the Town consider a mechanism by where the annual generation rates are adjusted to actual each year and the pricing is adjusted accordingly?*

Answer: For the first year of the Contract, the residential generation factors specified in the RFP and Price Form will be used. The generation factors will be adjusted at the beginning of the second Contract Year based on the average quantities of Residential Solid Waste and Residential Bulk Waste (not including Bulk Waste that exceeded the 12 cubic yard limit per pickup) collected per Residential Service Unit during the first Contract Year. The adjusted generation factor for Residential Bulk Waste shall not exceed the FY 2016 level of 4.67 tons per Residential Service Unit per year while the generation factor for Residential Solid Waste shall not exceed the RFP average of 1.28 tons per Residential Service Unit per year. The Contractor shall provide monthly documentation demonstrating the accuracy of the tonnage of Residential Solid Waste and Bulk Waste collected in the Town during the first Contract Year. The adjusted generation factors shall remain constant for the remainder of the Contract term. The franchise agreement will be revised to reflect this.

4. *RFP, Section IV, page 18, (d): With respect to a portion of the request, please limit the “civil actions” to government contracts, etc. Including everything else (all customer contracts) would be virtually impossible to provide for a company with a statewide or a nationwide footprint. There exists no possible way to track every item which would be responsive if it is not limited to government contracts.*

Answer: Proposers may limit civil actions to those involving government entities.

5. *RFP, Pricing Form Page 5: There is no justification in Florida Statute 403.7046 for a municipality to price control in any way the provision of commercial recycling. In fact, 403.7046(3)(d) specifically states “...a local government may not require a certified recovered materials dealer to enter into such franchise agreement in order to enter into a contract with any commercial establishment...” This pricing requirement violates this provision of the law. Please remove this requirement.*

Answer: Proposers may eliminate Page 5 of the Price Form. On a nonexclusive basis, the Contractor shall provide collection of Recyclables to Commercial Customers requesting such service at prices determined by Contractor, which shall be comparable to those paid to Contractor by other businesses in the tri-county area.

6. *Draft Agreement, Section 2 (B) – There are many residential service units which have a commercial aspect to them, are these also included?*

Answer: Commercial businesses operating within a Residential Service Unit are to have separate commercial collection service. As stated in Addendum 1, the Town takes code enforcement action if a commercial business, such as a nursery, places waste from its business curbside as part of residential Bulk Waste. The Town will work with the Contractor to identify and address any such commercial business operations.

7. *Draft Agreement, Section 2 (OO) – This Section should be deleted in its entirety and replaced with the following: “White Goods means inoperative and discarded refrigerators, ranges, water heaters, freezers, and other similar domestic appliances. White Goods must be generated by the customer at the Residential Service Unit at which the White Goods are placed for Collection, and all must be certified as free of Freon.” There needs to be explicit language that customer is responsible for having all items certified free of Freon.*

Answer: No change is made to the draft agreement.

8. *Draft Agreement, Section 3(B) – This Section should be deleted in its entirety and replaced with the following: “Services to be Provided. The CONTRACTOR shall provide Residential Collection Service to all Residential Service Units within the Service Area and Commercial Collection Service to all Commercial Customers within the Service Area. The CONTRACTOR shall transport and deliver all Solid Waste, Recyclable Materials, and Bulk Waste collected pursuant to this Contract to the facilities designated herein. CONTRACTOR agrees and understands that the Residential Bulk Waste is not required to be containerized in cans or plastic bags. The CONTRACTOR further agrees and understands that CONTRACTOR is responsible for collecting any Residential Waste that has spilled or is no longer containerized as a result of the actions of the CONTRACTOR. The TOWN acknowledges and agrees that the CONTRACTOR shall have no obligation to collect litter or spillage not caused by the CONTRACTOR’s actions.” Contractor should not be responsible for cleaning up litter caused by others entirely outside of Contractor’s control.*

Answer: The Town believes this provision is clear as stated; therefore, no change is made to the draft agreement.

9. *Draft Agreement, Section 3(C) – Please change the word “shall” to “may” as state law does not permit a municipality to mandate collection of commercial recycling.*

Answer: See response to Question 5.

10. *Draft Agreement, Section 5(K) – This Section should be deleted in its entirety and replaced with the following: “Spillage. The CONTRACTOR shall clean up any Residential Solid Waste spilled from a Container by the CONTRACTOR or its employees or Residential Bulk Waste spilled or scattered by the CONTRACTOR or its employees. Care shall be taken by CONTRACTOR’S employees to prevent damage to Containers by unnecessary rough treatment. The TOWN acknowledges and agrees that the CONTRACTOR shall have no obligation to collect litter or spillage not caused by the CONTRACTOR’s actions.” See the explanation provided above.*

Answer: No change is made to the draft agreement.

11. *Draft Agreement, Section 6(B)(3) – Please clarify that this is per contract term and not any other frequency.*

Answer: Section 6.B(3) of the draft franchise agreement shall be revised to clarify that the one Solid Waste Roll Cart exchange per Residential Customer at no charge applies to the initial Contract term.

12. *Draft Agreement, Section 7(A) – The following language should be added to the end of this Section: “The residents of the TOWN shall not deposit in the CONTRACTOR’s equipment or place for collection by the CONTRACTOR any radioactive, volatile, corrosive, highly flammable, explosive, biomedical, infectious, biohazardous, toxic or hazardous material as defined by applicable federal, state or local laws or regulations (“Excluded Waste”). Notwithstanding any other term contained herein, the CONTRACTOR shall have no obligation to collect any waste which is, or which the CONTRACTOR reasonably believes to be, Excluded Waste. Title to and liability for any Excluded Waste shall remain with the resident/business/generator of such Excluded Waste, even if the CONTRACTOR inadvertently collects and disposes of such Excluded Waste. If the CONTRACTOR finds what reasonably appears to be discarded Excluded Waste, the CONTRACTOR shall notify such resident/business/generator and the TOWN that the CONTRACTOR may not lawfully collect such Excluded Waste.” Contractor needs reasonable language inserted into the final agreement related to liability for “Excluded Waste”.*

Answer: No change is made to the draft agreement. The draft agreement already defines the term Exempt Waste and gives the Contractor the right to refuse to collect such waste.

13. *Draft Agreement, Section 10 – Since the designated facility may change during the term of the contract, a Contractor needs reasonable assurance that they will be made whole for the financial impact of a further drive to the Town chosen disposal site. Please provide a radius and price increase pass through for increase costs associated with this additional increase in costs to the Contractor.*

Answer: The franchise agreement shall be revised to reflect that should the location of the Designated Disposal Facility or Designated MRF change and the new location is not within a 10-mile radius of the facility initially designated in the Contract, then the collection rate may be adjusted to take into account

the additional cost to the Contractor. The Contractor shall submit documentation that its costs have increased and the parties agree to negotiate in good faith. Any rate adjustment is subject to approval by the Town Council.

14. *Draft Agreement, Section 15(A) – This Section should be deleted in its entirety and replaced with the following: “The CONTRACTOR shall assign a qualified supervisor to be in charge of the operations within the Service Area and shall provide the name of that person in writing to the Contract Administrator annually and any other time the person in that position changes. The supervisor shall be available to the TOWN through the use of telecommunications equipment at all times that the CONTRACTOR is providing Residential Collection Service.” It is not possible to ensure that the supervisor will always be available on site within 2 hours.*

Answer: The last sentence of Section 15.A is replaced with the following: “The supervisor shall be available to the TOWN through the use of telecommunications equipment at all times that the CONTRACTOR is providing Residential Collection Service. The supervisor or its representative shall be available onsite within four (4) hours or before the end of the Work Day if requested by the Contract Administrator.”

15. *Draft Agreement, Section 19(F) – The following language should be added to the end of this Section: “The TOWN warrants that the TOWN’s pavement, curbing or other driving surface or any right of way reasonably necessary for the CONTRACTOR to provide the services described herein are sufficient to bear the weight of all of the CONTRACTOR’s equipment and vehicles reasonably required to perform such services. The CONTRACTOR will not be responsible for damage to any such pavement, curbing, driving surface or right of way, and the TOWN agrees to assume all liabilities for any such damage, which results from the weight of the CONTRACTOR’s vehicles providing service hereunder, except to the extent resulting from the negligence or willful misconduct of the CONTRACTOR.” Contractor is willing to be responsible to damage caused by its own negligence or willful misconduct, but it is not willing to be an insurer for the TOWN’s pavement. The TOWN must ensure that its pavement and curbing is sufficient to carry the weight of Contractor’s vehicles.*

Answer: No change is made to the draft agreement.

16. *Draft Agreement, Section 19(H) – This Section should be deleted in its entirety and replaced with the following: “The CONTRACTOR agrees that it is in the best interest of the TOWN that all Residential Collection Service be provided on the scheduled Collection day. Accordingly, missed Collections will normally be collected in accordance with Subsection C above. However, in the event the CONTRACTOR does not address a missed Collection complaint in accordance with Subsection C because it believes such complaint to be without merit, the CONTRACTOR shall immediately notify the Contract Administrator in writing. For the avoidance of doubt, “missed Collections” do not include containers that were not collected as the result of: (i) a customer’s failure to place his/her container at the curb on time, (ii) Excluded Waste, (iii) contaminated Recyclables, (iv) overweight container, or (v) other justified non-Collection matter.”*

Answer: No change is made to the draft agreement.

17. *Draft Agreement, Section 20 – The following new subsection should be added to the end of this section: “N. Notwithstanding anything contained herein to the contrary, the TOWN shall have no right to request, audit, review, or otherwise inspect any of the CONTRACTOR’s confidential, proprietary, or*

privileged information, as determined in the CONTRACTOR's reasonable discretion." Contractor needs the reasonable ability to protect its confidential, proprietary, and privileged information.

Answer: The following shall be added at the end of Section 20: "The CONTRACTOR shall mark any information it considers confidential, proprietary, or privileged as such and the TOWN will treat such information accordingly as provided for in Chapter 119, Florida Statutes. If the CONTRACTOR has questions regarding the application of Chapter 119, Florida Statutes, to the CONTRACTOR's duty to provide public records relating to this Contract, CONTRACTOR shall contact the TOWN's custodian of public records, Russell Muniz, at (954) 434-0008."

18. *Draft Agreement, Section 21(B) – This Section should be deleted in its entirety and replaced with following: "The Contract Administrator may assess liquidated damages pursuant to this Section at any time during the term of this Contract. The Contractor Administrator shall notify the CONTRACTOR in writing of the liquidated damages assessed and the basis for each assessment. In the event the CONTRACTOR wishes to contest such assessment, within five (5) Work Days of receipt of written notice, CONTRACTOR shall request in writing a meeting with the Contract Administrator to resolve the issue. The TOWN shall notify the CONTRACTOR in writing of any action taken with respect to CONTRACTOR'S claims within five (5) Work Days of such meeting. The CONTRACTOR shall have any and all rights available to it, at law or in equity, to challenge any decision may by the TOWN and/or the Contract Administrator regarding the assessment of liquidated damages. If the TOWN assess liquidated damages as provided for herein, such damages shall be the TOWN's sole and exclusive remedy for such breaches."*

Answer: No change is made to the draft agreement.

19. *Draft Agreement, Section 22(A) – This Section should be deleted in its entirety and replaced with the following: "In the event of a hurricane, tornado, major storm, natural disaster, or other such event, the CONTRACTOR may cease, or otherwise modify, any and all services provided for hereunder in order to ensure the safety of the CONTRACTOR's employees and the other members of the community, as well as to protect the CONTRACTOR's property. However, CONTRACTOR shall make commercially reasonable efforts to resume regular Collection service as soon as possible. As soon as practicable after such event, the CONTRACTOR shall advise the Contract Administrator when it is anticipated that normal routes and schedules can be resumed. The Contract Administrator shall make an effort through the local news media to inform the public when regular Collection services may be resumed." Contractor needs the ability to determine when it is safe for services to be performed, it cannot be solely dependent on the decision of the TOWN.*

Answer: The following sentence shall be inserted after the first sentence of Section 22.A: "Such variance from regular routes and schedule to ensure the safety of the CONTRACTOR's employees and members of the community shall not be unreasonably denied by the TOWN." All other parts of this section remain unchanged.

20. *Draft Agreement, Sections 24(A)(4) and E – Both of these Sections should be deleted in their entirety. (4) is a non-standard provision and outside ordinary policies.*

Answer: Section 24.A(4) shall be deleted from the Contract. Section 24.E remains unchanged.

21. *Draft Agreement, Section 24(F) – This Section should be deleted in its entirety and replaced with the following: "Solely to the extent of the CONTRACTOR's indemnification obligations hereunder, all*

required insurance policies shall preclude any insurer's or underwriter's rights of recovery or subrogation against TOWN with the express intention of the parties being that the required insurance coverages protect both parties as the primary coverages for any and all losses covered by the above-described insurance."

Answer: No change is made to the draft agreement.

22. *Draft Agreement, Section 25 – The following new subsection should be added to the end of this Section: "G. Notwithstanding the foregoing or anything to the contrary contained herein, the CONTRACTOR shall have no obligation to indemnify the TOWN or the TOWN's contractors, or their respective public officials, officers, agents, directors, or employees, to the extent any such claims, actions, lawsuits, losses, expenses, injuries, damages, judgments or liabilities arise out of: (i) the negligence or willful misconduct of the TOWN or the TOWN's contractors, or their respective public officials, officers, agents, directors, or employees, (ii) the Town's breach of any of the terms, conditions, representations, or warranties contained in this Agreement, or (iii) the violation of any law, rule, regulation, ordinance, order, permit, or license by the TOWN or the TOWN's contractors, or their respective public officials, officers, agents, directors, or employees." Contractor is willing to provide reasonable indemnification to the TOWN, but it should not be required to indemnify the TOWN for the TOWN's own negligence or willful misconduct, the TOWN's breach of the Agreement, or the TOWN's violation of law.*

Answer: No change is made to the draft agreement.

23. *Draft Agreement, Section 28(A)(7) – This Section should be deleted in its entirety and replaced with the following: "The CONTRACTOR has defaulted, by failing or refusing to perform or observe the terms, conditions or covenants in this Contract or any of the rules and regulations promulgated by the TOWN pursuant thereto and said default is not cured within thirty (30) days of receipt of written notice by the TOWN to do so, or if by reason of the nature of such default, the same cannot be remedied within thirty (30) days following receipt by the CONTRACTOR of written demand from the TOWN to do so, the CONTRACTOR fails to commence the remedy of such default within said thirty (30) days following such written notice or having so commenced shall fail thereafter to continue with diligence the curing thereof (with the CONTRACTOR having the burden of proof to demonstrate (a) that the default cannot be cured within thirty (30) days, and (b) that it is proceeding with diligence to cure said default, and such default will be cured within a reasonable period of time). However, notwithstanding anything contained herein to the contrary, for the failure of the CONTRACTOR to provide Collection for a period of three (3) consecutive Work Days, the TOWN may secure the CONTRACTOR'S billing records on the fourth (4th) Work Day in order to provide interim Contract Collection until such time as the matter is resolved and the CONTRACTOR is again able to perform pursuant to this Contract; provided, however, if the CONTRACTOR is unable for any reason or cause to resume performance at the end of thirty (30) Work Days all liability of the TOWN under this Contract to the CONTRACTOR shall cease and this Contract may be deemed terminated by the TOWN, except to the extent the failure to provide Collection services is the result of the occurrence of an event of force majeure."*

Answer: Section 28.A(7) shall remain unchanged with the exception of the last sentence, which is revised as follows: "However, notwithstanding anything contained herein to the contrary, for the failure of the CONTRACTOR to provide Collection for a period of three (3) consecutive Work Days, the TOWN may secure the CONTRACTOR'S billing records on the fourth (4th) Work Day in order to provide interim Contract Collection until such time as the matter is resolved and the CONTRACTOR is again able to perform pursuant to this Contract; provided, however, if the CONTRACTOR is unable for any reason or cause to resume performance at the end of thirty (30) Work Days all liability of the TOWN

under this Contract to the CONTRACTOR shall cease and this Contract may be deemed terminated by the TOWN, except to the extent the failure to provide Collection services is the result of the occurrence of an event of force majeure.”

24. *Draft Agreement, Section 28 – The following new subsection should be added to the end of this Section: “If during the Term of this Contract the TOWN shall be in breach of any provision of this Agreement, the CONTRACTOR may suspend its performance hereunder until such breach has been cured or terminate this Agreement; provided, however, that no termination of this Agreement shall be effective until the CONTRACTOR has given written notice of such breach to the TOWN and the TOWN has failed to cure such breach within thirty (30) days after its receipt of such notice. Upon any such failure to cure, the CONTRACTOR may terminate this Agreement by giving the TOWN written notice of such termination, which shall become effective upon receipt of such notice.” Contractor needs reasonable rights to terminate the Agreement should the TOWN breach its obligations to Contractor (primarily payment).*

Answer: No change is made to the draft agreement.

25. *Draft Agreement, Section 29 – This Section should be deleted in its entirety. A party to a contract should not have the right to unilaterally change the terms of such contract, either through the passage of new laws, regulations, or ordinances (if such party is a government entity), or by amending the contract itself unilaterally.*

Answer: Section 29 is revised as follows: “The TOWN and the CONTRACTOR understand and agree that the Florida Legislature has the authority to make changes in Solid Waste Management legislation and that changes in law may mandate certain changes to this Contract. Should such changes materially alter the obligations of the CONTRACTOR, then the Collection charges established in the Exhibits to this Contract shall be adjusted accordingly. When such modifications are made to this Contract, the TOWN and the CONTRACTOR shall negotiate in good faith a reasonable and appropriate compensation adjustment for any increase or decrease in the services or other obligations required. If an agreement cannot be reached, this Contract shall terminate upon one hundred and eighty (180) days of a declared impasse by either party.”

26. *Draft Agreement, Section 35 – This Section should be deleted in its entirety and replaced with the following: “In addition to any other remedy provided by law, the parties may mutually agree to use arbitration or mediation to resolve any controversy or claim arising out of or relating to this Contract. Any controversy or claim arising out of or relating to this Contract, or breach thereof, may be settled by arbitration in accordance with the rules of the American Arbitration Association and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. In the event arbitration is agreed to by both parties in writing, such controversy or claim shall be submitted to arbitrators selected from the National Panel of The American Arbitration Association.”*

Answer: No change is made to the draft agreement.

27. *Draft Agreement, Section 36 – This Section should be deleted in its entirety and replaced with the following: “The failure of either party, at any time, to require performance by the other party of any provision hereof shall in no way affect the right of such party thereafter to enforce same, nor shall waiver by such party of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.”*

Answer: No change is made to the draft agreement.

28. *Draft Agreement, Section 40 – This Section should be deleted in its entirety and replaced with the following: “Each party hereto shall conduct its operations under this Contract in compliance with all applicable Federal, State and local laws and regulations.”*

Answer: No change is made to the draft agreement.

29. *Draft Agreement, Section 51 – This Section should be deleted in its entirety. It is entirely unreasonable for the Town to unilaterally decide, and mandate that the Contractor agree in advance, to this provision.*

Answer: This Section was modified in Addendum 1, Question 35.