

Proposer Questions and Answers Set #1

Seattle Recycling Processing RFP

October 28, 2014

The City of Seattle received this first set of RFP questions in response to the September 30, 2014 Draft RFP from interested vendors. The questions are grouped by topic area with the City's response in bold.

1. **RFP Schedule:** *Consider an RFQ process in order to more fully understand the capabilities of potential responders.*

The City will not be issuing an RFQ.

2. **RFP Schedule** – *State law RCW 35.156(2) requires notice of an RFP be posted in the official newspaper of the City, not less than 60 days before the final date of submission of proposals to allow for adequate time for input. Will the City adjust its schedule for the RFP?*

The cited RCW guidelines allow the City to establish its own process and timelines.

Furthermore, the Draft RFP and Draft Contract specification were published 63 days before RFP submission deadline, providing ample time. Nonetheless, the final RFP was revised with a new due date of January 2, 2015, providing over 90 days from initial draft publication and 70 days from final RFP publication.

3. **RFP Schedule:** *The draft RFP schedule only allows nine months from contract signing to service startup which is not enough time to build a facility.*

The final RFP was revised to clarify that a proposal for a new facility can include a defined transition time-line with potential reliance on backup facility agreements until initial start-up.

4. **RFP Evaluation** - *Given the City's projections of 10% volume growth by 2021 how will a responder's future capacity and expansion capabilities be assessed?*

The City will review all responses to the relevant Evaluation Question regarding current and future capacity at proposed facilities.

5. **RFP Evaluation** - *How will the City evaluate MRF relationships and past performances with brokers and end markets?*

The City will review all responses to the relevant Evaluation Question regarding experience with brokers and end markets.

6. RFP Evaluation – *What is the extent of the Pacific NW as it relates to a required reporting of regulatory complaints or violations related to processing?*

The final RFP was revised to request complaints or violations from Washington, Oregon and Idaho.

7. Recyclables - *Confirm that only bagged plastics are collected.*

That is correct. Customers are instructed to bag all plastic bags. Loose bags are considered contamination.

8. Recyclables - *Would bagged textiles be collected separately in a similar manner to used motor oil and cooking oil?*

No, bagged textiles processing, if elected by the City, would be received commingled in the recycling cart as stated in the RFP.

9. Recyclables- *Is there more recent recycling composition data than 2010?*

As stated in the RFP, the City will conduct sampling during 2015 with results available in early 2016.

10. Recyclables - *Is the composition of drop box recycling material similar to the 2010 composition data provided in the RFP?*

The stations receive similar recyclables, with more cardboard than in the City collection programs.

11. Recyclables - *Recyclables should be specified as free of organic material, food, dirt and other contamination.*

Contaminated recyclables are considered contaminants in City recycling sorts and allowed for disposal.

12. Hazardous Wastes - *Allow Contractor to reject loads it reasonably believes to contain hazardous material or other material that cannot be accepted by the facility.*

Final contract language and/or operations plan could address this and other modifications to the receiving protocol that benefit both parties.

13. Contract length - *The shorter term contract (five-years with extensions) should have language for investments to be recouped if the City does not choose to extend the contract. The longer term contract (10 years) should have an extension of an additional 5 years to allow investments recovery.*

The two original contract length options were retained in the final RFP. The City

encourages Alternative Proposals, accompanied by a Base Proposal, that incorporate different contract lengths and financial terms that might benefit the City and the proposer.

14. Turn Times – *The contract has performance fees for turn times, but the facility should not be responsible for delays from contaminated loads or driver decisions while at the facility.*

The City and Contactor(s) can agree on a process to exclude driver-caused delays, as part of confirming operating procedures.

15. Turn Times - *Consider a penalty and reward structure for turn time performance or establish a required average turn time above which there would be a penalty.*

The final RFP retains the expected turn time of 15 minutes and performance fees for trips over 15 minutes. The performance adjustments for delayed turn time under the current contract average less than \$100 per month.

16. Facility impacts - *Will the City require anyone proposing “out of City” processing to complete a traffic impact study as well as an analysis of the carbon footprint associated with greater transportation distances?*

The RFP evaluation questions instruct all proposers to provide traffic flow analysis. The RFP evaluation criteria include a review of greenhouse gas and pollution impacts related to each proposal.

17. Facility impacts - *Does the City intend to contract with a backup processor if a newly selected processor fails to comply with contract obligations?*

No, the City expects contractor(s) to deliver the contracted services and requires the contractor(s) to maintain agreements with backup facilities.

18. Backup Facility - *Contractor should not have to bear the cost of using a backup facility if the primary is unavailable through no fault of the Contractor.*

The City expects the Contractor to maintain operations and provide cost-effective backup services if needed. In 25 years of contract recycling, backup receiving services have almost never been needed.

19. Residuals and contamination - *Does free contamination disposal include both transportation and disposal? Will the City provide rail containers for transport?*

The final RFP and Draft Contract were updated to clarify that the contractor provides the transport of residual to the City railhead or transfer station. For rail disposal, the City provides empty rail containers at the rail yard.

20. Residuals and contamination- *How will the City quantify “City-generated contamination”?*
City generated contamination is estimated based on total City tons received by the facility each month and percent contamination as identified in most recent City recycling composting study.

21. Residuals and contamination - *Can the City look at other ways to include a residual rate as a performance metric while allowing the MRF to exceed 8%? A processor can't guarantee under 8% residual if the inbound stream has more than the 8% contamination.*

The final RFP retains the 8% target for Base Services, but changes the threshold from contract ‘damages’ to performance target with increasing adjustments at 8% and 10%. The City’s recycling has 6% contamination, while other waste streams likely have between 2% -10% contaminants. Based on performance at regional facilities and the likely aggregate contamination received, the City does expect an 8% residual target to be attainable. Alternative Proposals could suggest a different performance metric for facility residual.

22. Residuals and contamination – *Define residuals and clarify how does the free disposal of City-generated contamination relate to the 8% residual level?*

Residuals are the remaining wastes from the sort operations sent to landfill for disposal, including contamination from the City and other sources. City-generated contamination in recyclables is currently 6% of City recyclables.

23. Inflation - *Would the City consider using 80% of CPI rather than the proposed 50%? The 50% CPI adjustments might not be sufficient for rising costs.*

Yes the City will consider Alternative Proposals with other inflation terms, accompanied by a required base proposal. However, the final RFP terms for the base services and prices will be based on payment inflation of 50% of CPI.

Please note that the City will be paying contractor(s) a gross tipping fee under the base services. These payments will represent a much higher revenue base than traditional ‘net’ facility tip fees. The inflation adjustment for a 50% of CPI increase on the higher city ‘gross’ tip fees will likely provide contractor(s) double the inflation boost, in total dollars, of a 80% CPI increase on traditional payments. The City expects this strong inflation reward to be reflected in initial base prices. In addition, operating costs for a recycling facility are often only half of the total annualized costs. Capital investments, which do not inflate, represent the other significant cost component.

24. Inflation – *Would the City consider another method of adjusting payment rather than the annual tip fee adjustment with 50% of CPI?*

Yes, the City will consider Alternative Proposals with other inflation or financial terms, accompanied by a Base Proposal.

25. Inflation – *Will the contractor be able to pass-through costs related to changes of law and regulations?*

No, the City does not intend to have operational costs or savings pass through to the City. The City expects the Contractor(s) to own the costs and benefits of their operations.

26. Inflation - *Clarify the language supporting the CPI inflation adjustment in Section 310.*

The final RFP further clarified the inflation adjustment.

27. Market Revenue - *The monthly commodity sales should be paid to the City based on actual tons sold using commodity sales prices, net of sales and freight fees rather than index prices. Using a composition audit done only a few times a year is risky for the processor and city. The actual sales prices should be used rather than index prices.*

The final RFP retains the market revenue credit based on City tons received, City waste composition, and relevant regional indices. Most facilities sort and broker materials received from many sources; therefore, the actual volume of City commodities brokered cannot be directly measured. The regional indices provide a robust proxy value of commodities sold while maintaining the contractor benefit from bale quality and sale success. A pass through of actual revenue would remove this incentive and any reward for contractor bale quality or brokering.

28. Market revenue - *Market glass is typically sold as mixed glass from single stream MRFs. The commodity sales should be changed to reflect mixed glass and eliminate green, clear and brown glass and a zero or negative value.*

The specified index values represent a regional proxy value for glass and not the actual sale values received by different facilities based on their operations and type of products. However, the glass value with current index prices is only 2% of the total index market revenue with the specified indexes and waste stream composition. The glass index and value has very little impact on the market revenue credit. In addition, the City is open to Alternative Proposals with other index and market revenue credits.

29. Market Revenue - *What is the process for establishing a new index should one of the proposed indices be discontinued?*

The contractor and City will agree on a successor index that best approximates the regional strength and historical performance of a discontinued index.

30. Market Revenue - *Will the City change its sampling protocol to account for water weight and adjust the characterization and payment structure accordingly?*

No. The City's study methodology ensures that sampling is conducted in all seasons. In addition, City recyclables are set out in covered carts and dumpsters.

31. Market Revenue –*Will the City consider annual sampling or provide a process for the Contractor to request more sampling?*

The City composition sampling is robust, complex and expensive. The City does not expect to increase the frequency of full composition studies. Final negotiations could include a discussion to mitigate any real risk from composition shifts, such as intermediate sub-sampling and/or retroactive revenue adjustment between sampling periods. Most materials have been fairly consistent in City composition studies. Newspaper is the exception, with volume dropping significantly over the last decade.

32. Wages and Benefits – *The draft contract states wages will be “updated as needed.” Please clarify how the contract wage updates will work and how rates will be adjusted in connection with these updates?*

The final RFP now includes additional sorter wages and benefits to cover the potential duration of the contract, while wages and benefits for operators and lift truck drivers will be updated during the contract to reflect future prevailing wages. Future processing payments would not be adjusted for changes in labor costs.

33. Wages and Benefits – *Will the City stipulate that all employees at a processing facility outside of Seattle, other than backup facilities, be subject to all of Seattle's minimum wage, leave and hiring requirements?*

No. The RFP provides contract wages for employees supporting the processing of Seattle's recycling. The amount of additional employees at any facility and their compensation is not within the scope of this RFP.

34. Wages and Benefits - *Clarify why the City listed dollar values in the Draft RFP for benefit plans and how are we to understand this in relation to our company plan structure?*

The final RFP clarifies that health and retirement benefits can be provided through company plans or through third parties.

35. Wages and Benefits - *Would compensation with aggregate benefits at or above those listed, that also meet local prevailing wages, be consistent with future contract wage updates?*
Yes, as described in the final RFP and Appendix B, contract wages can be updated in future consistent with changes to prevailing wages.

36. Wages and Benefits - *Eight days are noted as holidays but the processor is required to be open and operational on five of those eight days. How will the processor honor these holiday requirements?*

Employee holidays that occur on operating days are the norm for solid waste collection and processing operations. Staffing plans (such as overtime) are determined by the contractor.

37. Wages and Benefits - *The current contract operations include 40 primary sorters paid at the specified wage scale, with the majority in the 4160 hours of tenure category. New operators could pay less, with new employees, and have a competitive advantage.*

New operators would need to hire displaced workers and retain their step.

38. Permanent Employees: *We need the ability to hire new staff through temporary agencies and convert them to a full-time status after a probationary period.*

All contract employees need to meet the employment, wage and benefit requirements stated in the RFP.

39. Permanent Employees – *Does the permanent employment requirement apply to all sorters, fork line drivers and equipment operators at the facility or is it limited to those providing work under this contract?*

The permanent employment and wage and benefit requirements apply to staff supporting processing City materials, not to additional staff a facility needed to support processing of other customers' materials.

40. Permanent Employees – *Can the City present a formula for calculating the portion of a facility's overall workforce required to be permanent under this contract?*

Yes, the final RFP clarifies that for a facility with additional staff, the number of contract staff will be based on the share of City contract tons to be received at the facility relative to the total inbound recycling to be received at the facility.

41. Hiring Displaced Workers – *Will the City modify hiring requirements for displaced employees to be "considered" for employment but not guaranteed employment?*

No, displaced workers that meet basic qualifications will have hiring preference, not just be “considered” for a position.

42. Hiring Displaced Workers - Clarify ‘initial hiring’ period and if displaced worker hiring applies only to the extent the Contractor decides to hire any new works.

The final RFP clarified that displaced worker hiring requirements relate to the first year of service and to any new hiring needed for the City contract. The contractor(s) cannot pre-hire additional staff to avoid this requirement. The City will review Contractors’ hiring plans to meet the intent of this section.

43. Hiring Displaced Workers - The majority of the primary line sorters under the current contract are paid at the maximum contract wage due to their tenure. Will new contractors be required to pay displaced workers at the wage they are currently making or will they be allowed to cut the wages?

Section 460 in RFP Appendix B requires displaced workers to be kept whole relative to their current wages and benefits.

44. Hiring Displaced Workers - Many of the current line sorters rely on public transportation and it would be difficult for them to get to “out of city” processing facilities. Will the City account for this in any way?

The RFP evaluation criteria rewards favorable workforce programs and sustainable business practices such as employee commute support.

45. Draft Section 40 City Responsibility - Consider language to clarify City’s responsibility to direct all contract recycling to contracted facility.

As described in the draft contract, the City has always been and in the future will continue to be responsible for ensuring all relevant recyclables are delivered to the contracted processing facility.

46. Draft Section 60 Contractor Responsibilities - The contractor is responsible for cost changes in law, regulations and equipment. Can the City consider adding language to protect the contractor from “circumstances beyond their control”?

Contractors always have been and will continue to be responsible for costs or benefits from evolving regulations or technology at their facility.

47. Draft Section 70 RFP Binding - Statements in response to this RFP should be binding. However, in the event of a conflict between the parties of this Agreement, then the terms and conditions of this Agreement shall be controlling.

Final contract language would supersede proposal language if there is a direct conflict. This and other modifications to standard City language that benefit both parties could be considered in the final contract negotiations with the selected vendor(s).

48. Draft Section 90 Ownership – *Ownership requirements with City obligation and approval could present barriers to facility financing.*

The standard language has not been a financing barrier to date. Further clarification of requirement could be addressed in final contract negotiations.

49. Draft Section 410 Employee Report - *Allow for reporting employee identification number in lieu of names and addresses due to confidentiality concerns.*

Section 410 in the final RFP was revised to allow for this.

50. Draft Section 540 Key Persons - *The contractor should be free to terminate any employee.*

The City expects the strengths and expertise of key staff and subcontractors of the proposed operations to be retained in the contract operations. However, that City does not intend to be involved in or impeded normal personnel actions and could modify final contract language if needed.

51. Draft Section 680 Energy Efficiency – *Update efficiency language related to the facility and the state energy plan.*

Section 680 in the final RFP was revised.

52. Draft Section 710 Default - *Allow for consequences beyond the reasonable control of the Contractor.*

The last paragraph of the Section 710 Default already addresses this.

53. Draft Section 710 Default - *Establish a predetermined termination fee from the City to the processor should the City exercise its rights to take possession if the contractor fails to perform.*

There is minimal risk of the City taking possession. Modifications to standard City language, that benefit both parties, will be considered in the final negotiations with the selected vendor(s).

54. Draft Section 710 Default - *Centralize all termination language in Section 710 to address potential inconsistencies between various sections that mention termination, such as Sections 160, 200, 560, 620, 700, 710, 720 (2) (h) and 995.*

Modifications to standard City language, that benefit both parties, will be considered in the final negotiations with the selected vendor(s).

55. Draft Section 730 Indemnification: *Modify indemnification from resulting areas of “work performed” to “provisions of this contract.”*

The City is unlikely to restrict indemnity to only technical violations.

56. Draft Section 750 Damages - *There should be procedures for notice to cure problems that could lead to liquidated damage charges.*

The City normally partners with contractors to avoid damages and can clarify if this is needed, but the City will still reserve the right to apply damages if warranted.

57. Draft Section 800 Confidentiality - *Consolidate the provisions of Sections 800, 810 and 820 so they are consistent and not overlapping. Requirements of “Contractor Questionnaire” should be clarified. The City should commit to notifying the Contractor of requests for public disclosure of Contractor’s records rather than this being a “courtesy.”*

The City’s normal practice is to notify contractors of relevant public disclosure requests. Further modifications to standard City contract language, which benefit both parties, could be considered in final contract negotiations with selected vendor(s).

58. Draft Section 930 Changes in Laws - *The contractor should not be required to bear the risk of future changes in law over which it has not control and the processing fee shall be increased (or decreased revenues) resulting from such a change.*

City contractors have been and will continue to be responsible for costs or benefits of changes in regulations and technology related to their operations.

59. Draft Section 960 Dispute - *Expand the requirements on the City for disputes.*

Modifications to standard City language, that benefit both parties, could be considered in final contract negotiations with the selected vendor(s).

60. Draft Section 980 Law and Venue - *Clarify relevant laws and legal venues.*

Modifications to standard City language, that benefit both parties, could be considered in final contract negotiations with the selected vendor(s).