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Responses to Submitted Comments to Draft Request for Proposals

Transportation and Disposal of Solid Waste

May 13, 2020

1. Comment: New York State developed a solid waste management plan that serves as a template for local solid waste management plans. Included in the State's plan is a solid waste management hierarchy designed to guide the more sustainable management of solid waste. As such, the RFP should require each proposer to address how their approach to hauling and disposal and/or beneficial reuse will adhere to and help advance the State solid waste management hierarchy.

Response: The RFP does not limit a proposer's ability to submit a proposal for a variety of different methods of disposal, including waste-to-energy, beneficial reuse and landfilling. In reviewing proposals, the Authority can consider how the proposal achieves the goals of the State's solid waste management plan in addition to the goals of the Authority and the Town as part of its review of each proposal's service plan.

2. Comment: In 2019, the New York State legislature passed, and the governor subsequently signed into law, the Climate Leadership and Community Protection Act (CLCPA) which has set in motion ambitious targets for the state to reduce its greenhouse gas (GHG) emissions, including from waste management. In fact, Governor Andrew Cuomo's 2020 State of the State booklet noted that the state's waste, when landfilled, accounts for up to 38 million metric tons of carbon dioxide equivalent gas emissions, or as much as 14 percent of New York State's carbon emissions. Given that the expected duration of the RFP and its extension periods extends well into the timeframe of the CLCPA, the proposer should be required to outline how their approach will help advance the goals of the CLCPA and determine the annual lifecycle GHG impact of their approach, including relative to business as usual.

Response: Based on the fact that the CLCPA's Climate Action Council has only recently been formed and has not yet had the opportunity to issue a scoping plan as required by the CLCPA, the Authority cannot use any suggested outline as to how any given proposer's proposal advances the goals of the CLCPA as an element of evaluation in choosing a proposer. However, the final RFP will contain a requirement that this outline be included for informational purposes.

3. Comment: Please confirm this RFP will be issued pursuant to 120(w) of the NY General Municipal Law. Form I references 103(a) and 103(b); please confirm these references are only in regard to grounds for cancellation of the contract.

Response: The RFP is being issued pursuant to General Municipal Law Section 120-w. The Authority is also required to comply with General Municipal Law Sections 103-a and 103-b in this procurement.

4. Comment: There are several defined terms used to describe waste within the RFP. Please confirm exactly which waste definition (Acceptable Materials, Acceptable Waste, Residential Waste, Commercial Waste, etc.) the contractor will be responsible to manage under the transportation and disposal agreement.

Response: The RFP is intended to solicit proposals for the hauling and disposal or beneficial reuse of Residential Waste and Commercial Waste from the Authority's transfer station. Changes to the final RFP have been made to clarify this.

5. Comment: Performance Bond - As currently written, failure of Proposer/Contractor to provide a bond shall constitute an immediate event of default, at which time the authority can draw down the bond immediately without notice to Proposer/Contractor. We suggest an advanced notice be given to Proposer/Contractor before declaration of default and before drawing upon the bond so Proposer/Contractor would have an opportunity to remediate.

Response: In considering this comment, the Authority first notes that the comment assumes that if a performance bond is not given, then there will be a performance bond against which the Authority may proceed. To the contrary, the absence of a performance bond is just that: a situation in which no bond exists for the Authority may proceed against as security for the contractor's performance under the contract. The Authority finds that the submission of a performance bond is material to the contractor's responsibilities under the agreement. If no performance bond is given, the Authority's ability to continue service in the event of a contractor default is severely inhibited. As such, the Authority has not made any changes in the final RFP in response to this comment.

6. Comment: Insurance - RFP/Contract requires general liability insurance maintain a "per location" aggregate limit. May we suggest changing the general liability limit to "per occurrence" limit or insert additional language, e.g. "in the event Proposer/Contractor does not maintain a per location aggregate limit, a higher insurance limit may be required subject to sole discretion of Authority".

Response: The insurance requirement in the RFP already has a per claim and aggregate limitation. No additional per claim limit is needed.

7. Comment: We suggest that the proposal evaluation criteria be changed as follows: FROM

Proposal Evaluation:

- | | |
|---|------------|
| a. Qualifications and Relevant Experience | 10 Points; |
| b. Viability of Proposed Services | 20 Points; |

- c. Ability to Comply with Environmental Regulations 20 Points;
- d. Proposer's Financial Capability 20 Points;
- e. Fee and Fee Structure 30 Points;
- f. MWBE or SDVOB +5 Points.

TO:

- a. Qualifications and Relevant Experience 20 Points;
- b. Viability of Proposed Services 20 Points;
- c. Ability to Comply with Environmental Regulations 20 Points;
- d. Proposer's Financial Capability 20 Points;
- e. Fee and Fee Structure 20 Points;
- f. MWBE or SDVOB +5 Points

Response: The Authority has considered this comment and agrees, though upon further review, has determined that additional changes are needed to place more of an emphasis on each proposer's plan of service. The final RFP has also been changed to add review of each proposal's service plan as part of "Viability of Proposed Services" and to distribute points as follows

- a. Qualifications and Relevant Experience 15 Points;
- b. Service Plan Viability of Proposed Services 25 Points;
- c. Ability to Comply with Environmental Regulations 20 Points;
- d. Proposer's Financial Capability 20 Points;
- e. Fee and Fee Structure 20 Points;
- f. MWBE or SDVOB +5 Points

8. Comment: The draft RFP has no provision to bid a fuel surcharge. As fuel is an integral and substantial portion of any transportation agreement, it should be included as an element of the final Request for Proposals.

Response: While the Authority agrees that fuel costs are a substantial portion of costs associated with transportation, the Authority finds that reasonable fuel cost assumptions should be factored into the overall cost of providing service and that fuel surcharges should only be imposed in extraordinary circumstances. As such, the final RFP has been revised to address this comment and provide an opportunity to include a fuel surcharge in an alternate cost proposal.

9. Comment: The draft RFP requests fixed pricing for (1) the first five years; (2) the second five years; and (3) the third five years. Alternatively, the draft will allow an alternative five year fixed cost bid with an index for the 10 year remainder. Under this scenario, the price for years one through five do not change. The Final RFP should have a provision to allow for alternate bidding that allows for different pricing for years one through five. This will likely lead to lower pricing for the Town as it eliminates uncertainty for proposers which can only be captured by higher pricing.

Response: The Authority does not believe that this change is necessary. While allowing for cost indexing in years two through five will provide more certainty for the contractor, it would provide more uncertainty for the Authority. The interest in certainty from the

point of view of the contractor is already taken into account in the RFP by allowing for cost indexing in each of the five year renewal periods, thus creating a balance in the RFP.

10. Comment: Pertaining to the Draft Service Agreement (“DSA”) contained in the draft RFP, we submit the following comments:

A. Section A - Term – The term should be modified to the extent that the DSA does not provide for automatic renewal unless terminated by either party upon written notice prior to the expiration of the term.

Response: Since this comment does not provide a rationale for the suggested change, no changes have been made to the final RFP pertaining to this comment.

B. Section B (2) Damages – The contractor is solely responsible for damage caused by third parties. This should be extended to damage caused by third parties, especially since one party may be operating the transfer station while another company may be conducting transportation and disposal logistics.

Response: Since there is no Section B(2) in the draft service agreement, this response assumes that the comment is directed at Section IV(B)(2) of the RFP. This section states that the proposer, if selected and in performing the services, is responsible for damage to its own equipment, unless that damage is caused by the Authority. The final RFP will be revised to state that the proposer, if selected and in performing the services, will not be responsible for damages caused by the Transfer Station operator.

C. Section H Liquidated Damages – Liquidated Damages are not required under this Agreement as the Town has other contractual areas of redress against a Contractor for breach of the Service Contract.

Response: Since there is no Section H in the draft service agreement, this response assumes that the comment is directed at Section IV(H) of the RFP. The Authority finds that liquidated damages are an essential tool for addressing service-related breaches by the Contractor that cause financial and regulatory consequences for the Authority, the cost of which are difficult to ascertain and which are not adequately addressed by other rights of contractual redress. It is also worth noting the liquidated damages are included as an element of the Authority’s current contract for the services. As such, the Authority has not made any changes to the final RFP in response to this comment.

D. Section I – Insurance – The DSA has language that does not have any limitation with regards to liability. Additionally, the indemnity section imposes more liability on the Contractor in a greater amount than from its resulting negligence.

Response: Since there is no Section H in the draft service agreement, this response assumes that the comment is directed at Section IV(I) of the RFP. As this comment does not suggest any specific change to the RFP or provide any rationale for any change, no changes have been made to the final RFP in response to this comment.

E. Section 5 (A) General Provisions – Subsection (2) – Requires a contractor to provide special identification of confidential information. This information is not necessary.

Response: Since there is no Section 5(a) in the draft service agreement, this response assumes that the comment is directed at Section V(A) of the RFP. The Authority disagrees with this comment, and finds that identifying confidential information in the proposal serves to facilitate responses to Freedom of Information Law requests.

- F. Section 5 (D) Qualifications (3) – Requires resumes of certain employees of the Contractor. This information is not necessary.

Response: Since there is no Section 5(D) in the draft service agreement, this response assumes that the comment is directed at Section IV(D) of the RFP. The Authority disagrees with this comment and finds this information necessary to the proposal review process, particularly in reviewing proposer qualifications. As such, no change has been made to the final RFP in response to this comment.

- G. Section 5 (D) Qualifications (4) – Requires additional information other than that provided in Form 10-K published with the Sec. Additional information is not necessary.

Response: Since there is no Section 5(D) in the draft service agreement, this response assumes that the comment is directed at Section V(D) of the RFP. The Authority disagrees with this comment, and finds this information important in determining the proposer's financial ability to perform the services. As such, no change has been made to the final RFP in response to this comment.

- H. Section 5 (F) – Proposal Bond and Security Instruments for the Security Instruments for the Service Contract (2)(a) to the extent that the performance bond is not annually renewable in the amount of one year monies to be paid to Contractor pursuant to the terms of the Service Contract. Additionally, Contractor objects to any Corporate Guarantee.

Response: Since there is no Section 5(F) in the draft service agreement, this response assumes that the comment is directed at Section IV(F) of the RFP. This comment does not provide any rationale for a change in this area, other than the provisions are objectionable. As such, no change has been made to the final RFP in response to this comment.

- I. We take exception to Form C as it requires private information about Corporate Officers that is not necessary.

Response: The final RFP has been changed to clarify that the addresses to be given are to be corporate addresses and do not need to be home addresses.

- J. We take exception to 2.04 (b)(i) to the extent that the TOWN is not responsible for remediation of Unacceptable Waste.

Response: This comment does not provide any rationale for a change in this area, other than the provisions are objectionable. As such, no change has been made to the final RFP in response to this comment.

- K. We take exception to 3.08 as we wish to select the designated disposal facility. If we are not able to maintain a consistent disposal location, we will potentially have difficulty maintaining reliable transportation service.

Response: In accordance with its permit for operating the Transfer Station issued by the New York State Department of Environmental Conservation, as well as all manuals and reports issued for the operation of the Transfer Station, the Authority must retain the ability to designate the disposal facility. As such, no change has been made to the final RFP in response to this comment.

- L. We take exception to 7.01 as we request a 30 day cure period. Additionally, we object to any indemnity section that imposes more liability on a Contractor than caused by its actual negligence. We additionally do not want to limit events of default by the Town. We request that this be deleted or that the limitation is mutual.

Response: The subject matter raised by this comment is more appropriately addressed in contract negotiations. The final RFP provides proposers with the ability to comment on the draft service agreement. As such, no change has been made to the final RFP in response to this comment.

- M. We take exception to Section 9.01 and request that the revised term language be modified.

Response: This comment does not provide any rationale for a change in this area, other than the provisions are objectionable, and does not suggest a proposed change. In addition, the final RFP provides proposers with the ability to comment on the draft service agreement. As such, no change has been made to the final RFP in response to this comment.

- N. We take exception to Section 11.03 to the extent that the performance bond is not annually renewable in the amount of one year monies to be paid to Contractor pursuant to the terms of the Service Contract.

Response: The subject matter raised by this comment is more appropriately addressed in contract negotiations. The final RFP provides proposers with the ability to comment on the draft service agreement. As such, no change has been made to the final RFP in response to this comment.

- O. In addition to the terms set forth in the RFP, the following concepts need to be incorporated into the mutually agreeable contract between the TOWN and Contractor:

- a. The TOWN hereby grants the exclusive right and privilege to Contractor to perform all of the services set forth in the RFP.
- b. Notwithstanding anything herein to the contrary: (a) Contractor shall have no obligation to collect any material which is or contains, or which Contractor reasonably believes to be or contain, 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”); (b) if Contractor finds what reasonably

appears to be discarded Excluded Waste, Contractor shall promptly notify the TOWN and the producer of the Excluded Waste, if the producer can be readily identified; and (c) title to and liability for any Excluded Waste shall remain with the TOWN, even if Contractor inadvertently collects or disposes of such Excluded Waste.

- c. The TOWN must comply with any description of and/or procedures with respect to removal of contaminants or preparation of recyclable materials as reasonably provided by Contractor. If the TOWN fails to do so, Contractor may decline to collect such materials without being in breach of the Agreement. Contractor shall not be responsible for and has not made any representation regarding the ultimate recycling of such recyclable materials by any third party facilities.
- d. Except in the case of Contractor's negligence or willful misconduct, Contractor shall not be liable for any damages to pavement, curbing, or other driving surface resulting from the weight of its trucks and equipment.
- e. Notwithstanding anything herein to the contrary, in the event that a container becomes lost, unsightly, unsanitary, broken, or unserviceable because of the acts or omissions of a customer or TOWN (excluding normal wear and tear), the TOWN (as applicable) will be charged for the resulting repairs or replacement and such amounts will be paid to Contractor upon demand.
- f. Any equipment furnished hereunder by Contractor shall remain the property of Contractor; however, the TOWN shall have care, custody and control of the equipment while at the service locations. The TOWN shall not overload (by weight or volume), move or alter the equipment, and shall use the equipment only for its proper and intended purpose. The TOWN must provide unobstructed access to the equipment on the scheduled collection day. The word "equipment" as used in this Agreement shall mean all containers used for the storage of non-hazardous solid waste.
- g. Notwithstanding anything herein to the contrary, Contractor may pass through and the TOWN shall pay to Contractor any documented increases in disposal fees, increases in Contractor's costs due to changes in local, state or federal rules, ordinances or regulations applicable to Contractor's operations or the services provided hereunder, and any increases in and newly imposed taxes, fees or other governmental charges assessed against or passed through to Contractor (other than income or real property taxes).
- h. If the TOWN shall be in breach of any provision of this Agreement, Contractor may suspend its performance hereunder until such breach has been cured or terminate this Agreement; provided, however, that no termination of this Agreement by Contractor shall be effective until 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, Contractor may terminate this Agreement by giving the TOWN written notice of such termination, which shall become effective upon receipt of such notice.

- i. Except for the payment of amounts owed hereunder, neither party hereto shall be liable for its failure to perform or delay in its performance hereunder due to contingencies beyond its reasonable control including, but not limited to, strikes, riots, compliance with laws or governmental orders, inability to access a container, fires, inclement weather and acts of God, and such failure shall not constitute a breach under this Agreement.

Response: In general, the subject matter raised by this comment is more appropriately addressed in contract negotiations. The final RFP provides proposers with the ability to comment on the draft service agreement. However, without limiting the foregoing as to being a response to the entirety of Comment 10(O), the Authority does make the following specific responses:

Subresponse (a): The Authority cannot, at present, limit the number of proposers it may contract with to one. Once proposals are received, the Authority will make the determination as to whether it is in the best interests of the Authority to enter into an agreement granting an exclusive right to haul and dispose Residential and Commercial Waste, or contract with more than one proposer.

Subresponse (b): Provisions regarding Unacceptable Waste are already included in the final RFP and draft service agreement.

Subresponse (c): The final RFP and draft service agreement do not request the disposal of recyclable materials, as such materials are already transported and handled by the Authority's Transfer Station operator. It is unknown if this comment addresses materials that may be beneficially reused. However, since this intent is unknown, the Authority cannot proceed with any changes to the final RFP.

Respectfully Submitted,



Michael J. Kelly
Executive Director
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