



## ADDENDUM #3 INFORMAL BID 2021-110

### Kitsap County Department of Facilities Maintenance for Recycling Collection Services for Kitsap County Facilities

**TO:** All Respondents  
**FROM:** Vicki Martin, Buyer  
**CLOSING DATE:** Thursday May 6, 2021 at 2:00 PM **(CHANGED)**  
**REF NO.:** 2021-110 RFP  
**DATE:** April 28, 2021

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In response to questions received, the following information is provided to assist in responding to the above referenced proposal.

#### **QUESTIONS AND RESPONSES**

1. How would the County like us to present pricing since there was no template provided in the RFP?

*Answer: A template was created based on the information provided in Exhibit A of contract KC-170-16C. This template is included with Addendum No. #3.*

2. Is the 3-year term with an optional two-year renewal a mutual two-year renewal?

*Answer: The example draft contract may differ from the final terms of the contract to be negotiated and executed by the parties following award of the contract.*

3. Scope of Work. Would the County consider including a statement in the Contract or the scope of work incorporated thereto that the Contractor is the exclusive provider of the Services?

*Answer: The example draft contract may differ from the final terms of the contract to be negotiated and executed by the parties following award of the contract.*

4. Scope of Work. WM requests that the Contract contain a provision that allows the Contractor to remove materials or modify the materials subject to the Contract Services due to changes in the recyclables market. Recyclables processors may stop accepting certain materials based on the market or may exponentially increase the costs to the Contractor to deliver such materials for processing. See Items 1 and 7 under Exhibit A in current contract.

*Answer: The example draft contract may differ from the final terms of the contract to be negotiated and executed by the parties following award of the contract. KC-170-16 current language noted below.*

*“Vendor will be responsible for routinely collecting recyclable materials generated by County Facilities as contained herein and shall recycle or facilitate the recycling of collected materials. Except for residue left after appropriate processing, materials are not to be landfilled, but instead are to be collected for the sole purpose of recycling. Contractor makes no representations as to the recyclability of the recyclable materials and may dispose of such*

*recyclables when no reasonable commercial market exists.”*

*“In the event that unforeseen temporary market circumstances prevent or precludes compliance with this Contract, the Contractor may request a temporary reasonable adjustment or other reasonable relief from the requirements of this Section. The County may approve or deny the request, at its sole discretion. If an unforeseen market circumstance persists more than nine (9) months, the Parties agree to engage in good faith negotiations to determine a mutually acceptable course of action; including but not limited to eliminating the material from the list of recyclables, changing Customer preparation requirements, modifying contractor rates, or any other mutually-agreeable solution. The County shall review the Contractor's request within ninety (90) days of receipt. Upon the County's review of the Contractor's request, the County shall approve or deny the request, at its sole discretion.”*

5. Scope of Work. Many recyclers who process recyclables will generate significant quantities of residuals from the processing of the inbound recyclables. Glass recyclers will screen out paper, metal, plastics, dirt, rocks, etc. Same for plastics recyclers. The scope of work should reflect that some residuals from the materials collected under the Contract may be sent to landfills following sorting at the processing facilities. See Item 1 under Exhibit A in current contract.

*Answer: It is understandable that there will be residuals and not everything will be recyclable and therefore treated as garbage.*

6. Scope of Work, Item 10:  
Vendor or shall maintain records of weight or approximate volume of material collected by commodity. This information shall be provided to the Facilities Maintenance Manager or Solid Waste division quarterly. If material weights are estimated by volume and a standard conversion factor, every effort must be made to ensure the estimates are accurate. This includes noting the percent fullness of the containers upon collection and converting the volumes to weight appropriate.”

- Please note that WM does not have technology that reports the fullness or weight of each individual container emptied on collection day or the ability to itemize commodities per container. All recycle materials WM collects are combined and delivered to the WM-owned JMK processing facility in Tacoma. Reporting from JMK on what came in and what went out is available for all collections in Kitsap County but the approximate 20 locations in this RFP are not segregated for separate weight or volume. Would the total Kitsap County reporting be acceptable to the County?

*Answer: At this time Facilities Maintenance does not track the amount of material collected. Total Kitsap County data is fine.*

7. Scope of Work, Item 12. Please clarify what type of instruction, encouragement, and incentives the County is considering WM to assist in?

*Answer: 8.5 x 11 recycling informational flyers would be good to post near the recycling containers. Updated to coincide with the addition or elimination of material being accepted at any given time.*

8. Scope of Work, Item 13. “Vendor shall have the right to refuse pick up of any material which, in the sole opinion of Vendor, does not meet market specifications for quality and consistency, and in the event Vendor does so, written notice of the refusal to pick up shall be provided to the Facilities Maintenance Manager.”

- As part of WMs approach to reducing contamination, keeping drivers safe, and increasing efficiencies we have installed 3<sup>rd</sup> Eye camera technology in our collection trucks. Any unacceptable material not visible by the driver and dumped in the truck would be captured through this technology, triggering a contamination charge with photo of unacceptable material(s). Should the driver visibly identify contaminates upon approaching a container they would not empty the container but instead contact our dispatcher's to connect with the customer (via phone) advising of options to either clean out the contaminates and we collect on next service day or the container can be emptied as garbage at rates set in that jurisdiction (City, County, etc.). We believe this is the best approach to not only refuse to collect what is visible contaminates but to also account for what is not visible and most damaging to the recycle stream. Does the County accept WMs process?
- WM requests that the Contract include a provision allowing including charges for contaminated recyclables containers. The provision regarding contamination shall include a definition of "Excluded Materials." See Items 2 and 11 under Exhibit A in current contract.

*Answer: The County is currently operating under these conditions. There is no problem with the third eye photo being included with the invoice and the notifications advising us to clean the container and/or request a garbage pick-up.*

9. Is the county amendable to contract recycling language alterations after the bid is awarded or would the County prefer suggested alterations made during the proposal phase?

*Answer: The example draft contract may differ from the final terms of the contract to be negotiated and executed by the parties following award of the contract.*

10. Please confirm submittal of a proposal is not de facto agreement to the "Example Draft Contract for Services." Instead we understand negotiation of a final contract with terms and conditions that are amendable to both parties, reflecting a partnership, remains an open opportunity post bid award. Alternatively, we are prepared to offer suggested alternative contract language in our proposal, at the discretion of the County.

*Answer: The example draft contract may differ from the final terms of the contract to be negotiated and executed by the parties following award of the contract.*

11. Appendix C. Please explain the nexus between FEMA, COVID-19, and the proposed Contract. Additionally, please explain if the County's position is that all provisions of Appendix C apply to the Contract. The FEMA contract provisions 3, 4 and 5 appear to only apply to construction contracts.

*Answer: Appendix C was provided to the Procurement office as an add-on to RFP requests during this period of Covid-19. Please note there is the verbiage at the top indicating, "To the extent applicable..."*

#### Example Draft Contract for Services

12. Section 2.1. Would the County consider deleting solicitation documents from the definition of "Contract"? The final contract, with all exhibits, amendments, specifications, and schedules, should be a fully integrated document.

*Answer: The example draft contract may differ from the final terms of the contract to be negotiated and executed by the parties following award of the contract.*

13. Section 3.2. Would the County consider an annual compensation increase for the Goods and Services under the Contract based on CPI to reflect estimated increases in costs to the Contractor of taxes, insurance, shipping, labor, etc.? The current contract sets an annual increase per CPI and shall not be negative but increases have a cap of 8%.

*Answer: The example draft contract may differ from the final terms of the contract to be negotiated and executed by the parties following award of the contract.*

14. Section 3.2. Please include provision on submittal of invoices to the County, including what to include and when due, such as Section 4.3 of the current contract.

*Answer: The example draft contract may differ from the final terms of the contract to be negotiated and executed by the parties following award of the contract.*

15. Section 4.1. Would the County consider deleting its right to terminate the Contract for convenience, without penalty, upon 10 days' notice? WM believes that a termination right should be tied to an event, such as a default by the Contractor or lack of funding for the County. Alternatively, WM requests that the following sentence from the current contract is added to the end of the Section: "***In that event, the County will pay the Contractor for all costs incurred by the Contractor in performing the Contract up to the date of termination, subject to the other provisions of the Contract.***" A right to terminate the Contract for convenience with no penalty and on short notice would materially and adversely impact WM and cause it to incur losses without recourse.

*Answer: The example draft contract may differ from the final terms of the contract to be negotiated and executed by the parties following award of the contract.*

16. Section 5. The Contract contains a number of provisions that are not applicable to the services to be provided by the Contractor, including without limitation Sections 5.1.1, 5.1.2 and 5.3 related to the sale of Goods. To avoid confusion, would the County consider removing the provisions related to the sale of Goods by a Contractor?

*Answer: The example draft contract may differ from the final terms of the contract to be negotiated and executed by the parties following award of the contract.*

17. Section 5.1.4. Would the County consider adding a reasonableness standard to the Contractor's obligations to "do all acts, matters and things that may be **reasonably** necessary for and incidental to the proper and efficient supply of the Goods and Services." Additionally, we suggest using the word "applicable" instead of "relating" in the sentence "[t]he Contractor and its Personnel will comply with all laws and standards **applicable** to the supply of the Goods and Services...." WM believes applicable is more precise in this context.

*Answer: The County is open to contract negotiation. Answer: The example draft contract may differ from the final terms of the contract to be negotiated and executed by the parties following award of the contract.*

18. Section 6.1. Would the County consider revising the negligence section to reflect a comparative negligence standard? A standard for indemnification whereby the Contractor is required to indemnify the County except where the County is solely negligent requires the Contractor to indemnify the County for its own negligent contribution to the harm. WM suggests the last sentence is revised to read: "It is the specific intent of the parties that the Indemnitees shall, in all instances except **to the extent arising from the negligence or willful misconduct of the Indemnitees**, be indemnified by the Contractor from and against any and all Claims." Additionally, would the County consider adding the following sentence in the current contract: "***The extent of Contractor's liability under this Section shall not exceed the amount of Contractor's proportionate share of fault.***"

*Answer: The example draft contract may differ from the final terms of the contract to be negotiated and executed by the parties following award of the contract.*

19. Section 6.3. Would the County consider removing consequential and punitive damages from the definition of "Claim"? Consequential or punitive damages are speculative in nature.

*Answer: The example draft contract may differ from the final terms of the contract to be negotiated and executed by the parties following award of the contract.*

20. Section 7.1. Would the County consider allowing insurance companies with a category rating of 7 for subcontractors?

*Answer: The example draft contract may differ from the final terms of the contract to be negotiated and executed by the parties following award of the contract.*

21. Section 7.3. Would the County strike employer's liability from the CGL coverage? WM provides standalone employer's liability coverage.

*Answer: The example draft contract may differ from the final terms of the contract to be negotiated and executed by the parties following award of the contract.*

22. Section 7.8. Would the County consider the Contractor to make insurance policies available for the county to review, as opposed to providing copies? WM does not provide copies of insurance policies as a general policy.

*Answer: The example draft contract may differ from the final terms of the contract to be negotiated and executed by the parties following award of the contract.*

23. Section 7.10. Would the county add employer's liability insurance to the carve-outs from the requirement to add the County as an additional insured? An additional insured cannot be added to an Employer's Liability insurance policy. Additionally, would the County add ten (10) days' prior notice of termination for non-payment to the prior notice requirements?

*Answer: The example draft contract may differ from the final terms of the contract to be negotiated and executed by the parties following award of the contract.*

24. Section 9.3. Would the County allow assignments to related-party entities (for example, subsidiaries or affiliates within the same corporate structure)?

*Answer: The example draft contract may differ from the final terms of the contract to be negotiated and executed by the parties following award of the contract.*

25. Section 11.1. Would the County consider adding language to clarify a carve-out from the representation for subcontractors the Contractor intends to subcontract with to perform the Services under the Contract? A strict reading of the representation would include potential subcontractors with whom the Contractor has made arrangements for the award of the Contract.

*Answer: The County is open to contract negotiation. Answer: The example draft contract may differ from the final terms of the contract to be negotiated and executed by the parties following award of the contract.*

26. Section 11.5. Would the County consider modifying the general term "use" in this section to clarify that it intends to cover any public solicitation or advertising use of the county's name, trademark or logo and not any use related to the Services under the Contract? As written, the section is very broad.

*Answer: The example draft contract may differ from the final terms of the contract to be negotiated and executed by the parties following award of the contract.*

27. Section 11.4. WM requests that the County consider revising the provision such that the County does not disclose the Contractor's proprietary information as the default and the Contractor's only remedy should not be an injunction. Suggest that the County should notify the Contractor of any request for such proprietary information.

*Answer: The example draft contract may differ from the final terms of the contract to be negotiated and executed by the parties following award of the contract.*

28. Section 12.2. The "Default in One Installment" section specifying that a single default of any nature shall constitute a breach of the Contract as a whole does not seem appropriate for a contract for weekly, ongoing services at numerous locations. Section 12.3 addressing failure to perform any material obligation seems more appropriate to the services. Would the County consider revising or deleting this section?

*Answer: The example draft contract may differ from the final terms of the contract to be negotiated and executed by the parties following award of the contract.*

29. Section 12.9. Please consider deleting the second sentence of this section. The Contractor should not be liable for costs and expenses to hire a new contractor outside of those damages available under the indemnification, especially if the termination for convenience section remains in the Contract.

*Answer: The example draft contract may differ from the final terms of the contract to be negotiated and executed by the parties following award of the contract.*

30. Section 15.1. Would the County consider adding pandemics or epidemics to the force majeure section, as is included in the current contract? Would the County also consider adding labor strikes?

*Answer: The example draft contract may differ from the final terms of the contract to be negotiated and executed by the parties following award of the contract.*

31. Section 15.10. The list of provisions that survive the expiration or termination of the Contract is over-inclusive for the type of services provided in the Contract. For example, Section 5 includes a number of obligations that are not applicable once services are discontinued, and the independent contractor provision (Section 9.5) is the only section that is appropriate to continue in Section 9.

*Answer: The example draft contract may differ from the final terms of the contract to be negotiated and executed by the parties following award of the contract.*

Price Proposal Form

2021-110 RFP

Service Level	Monthly Container Rent	Frequency EOW	Frequency 1x/Week
64-Gallon Cart			
1-Yard Container			
2-Yard Container			
3-Yard Container			
4-Yard Container			
6-Yard Container			
8-Yard Container			

On-Call Rates	Per Haul
Hansville	
Olalla	
Silverdale	