



October 6, 2022

TO: PROSPECTIVE PROPOSERS

SUBJECT: ADDENDUM NO. 2 – City of Laguna Beach Request For Proposals For the Collection, Transportation Processing and Diversion of Recyclable Materials and Other Materials and For the Collection, Transportation and Disposal of Municipal Solid Waste

NOTICE TO PROPOSERS: REVIEW THIS ADDENDUM NO. 2 CAREFULLY AND COMPLETELY AS THE INFORMATION, CLARIFICATIONS AND ANSWERS PROVIDED IN THIS ADDENDUM NO. 2 SHALL SUPERSEDE ANY AND ALL RESPONSE(S) GIVEN DURING THE PRE-PROPOSAL CONFERENCE.

A. The City's responses to written questions from proposers and the response to one outstanding question from pre-submittal conference are included as Attachment 1 to this Addendum No. 2.

B. The following changes are hereby made to the draft Agreement contained in Section 6 of the RFP document.

1. In response to proposer question #12, the last paragraph of Section 8.04.G of the Agreement related to bin sensors is hereby deleted and replaced with the following paragraph:

“Contractor shall replace the first broken or malfunctioning Bin Sensor, including installation, at no additional charge to the Customer during the Term of the Agreement. The second and subsequent replacement Bin Sensor(s), including installation, shall be charged at the rate included in Attachment D of the Agreement. At the direction of City, Contractor shall provide additional models and types of Bin Sensors during the Term as the technology develops and improves. The costs for such additional Bin Sensors shall be determined as described in Section 5.13 and Section 14.07 of the Agreement.”

2. In response to proposer question #33, the third paragraph of Section 11.04 of the Agreement has been revised as follows to delete the requirement for providing social security numbers:

“Contractor shall maintain a complete roster of employees providing service under this Agreement. The roster shall contain the name, job classification and such other information as City may require. City will not require that the roster contain social security numbers. The City may inspect the roster, and make a copy thereof at its expense, at any time during business hours. City shall have the right to observe Containers of MSW, Recyclable Materials, Yard Trimmings, Wood, Food Scraps, Construction and Demolition Debris and all other materials for the purpose of conducting waste audits and Contamination audits as needed during the Term.”

3. The first paragraph of Section 14.02 of the Agreement is hereby deleted and replaced with the following:

*“**14.02 Initial Maximum Rates.** The maximum rates which Contractor may charge for services provided commencing July 1, 2024 shall be those set forth in Attachment D. Rates are established to encourage Commercial and Multi-Family Customers with Centralized Bin Collection service, temporary Bin, temporary Roll Off, permanent Roll Off and Compactor Customers to Divert the largest quantity possible of Recyclable Materials, Food Scraps and Yard Trimmings in order to reduce their monthly Collection bill, by providing an incentive of fifty-percent (50%) for Diversion of Recyclable Materials, Yard Trimmings and Food Scraps compared with the rate for Disposing of such materials as MSW. The 50% rate incentive does not apply to Single-family Dwelling Customers with individual Cart service.”*

- C. The following changes are hereby made to the definitions contained in Attachment A of the Agreement contained in Section 6 of the RFP document.

1. The definition of Processing Facilities is hereby revised to read as follows:

*“**Processing Facilities:** “Processing Facilities” means facilities where the following activities are conducted: sorting, cleaning, treating, Composting, and reconstituting Collected materials and returning these materials to the economic mainstream in the form of raw materials for new, reused or reconstituted products which meet the quality standards of the market place. Processing Facilities include the Clean Materials Recovery Facility, Composting Facilities, **Bioengineered Feedstock Facilities**, Construction and Demolition Debris sorting facilities, and concrete and asphalt grinding facilities. Processing Facilities does not include Anaerobic Digestion, Waste-to-Energy, Biomass, thermal destruction, or any type of Transformation facilities.”*

2. The following definition of Bioengineered Feedstock is hereby added to Attachment A:

“Bioengineered Feedstock” means a mixture of materials utilized in wastewater treatment plants (WWTP’s) or publicly owned treatment works (POTW’s) to produce biogas. Bioengineered Feedstock may include greases from the WWTP grease trap, and Source-separated Food Scraps from Commercial Customers and Multi-family Customers with centralized Collection service.”

D. The following changes are hereby made to the Scope of Work included as Attachment B to the Agreement contained in Section 6 of the RFP.

1. Section 2.4 of the Scope of Work (Attachment B to the Agreement) is hereby revised as follows: (a) The bold highlighted language is added to the second paragraph. (b) A new third paragraph is added as shown in bold highlight below.

“2.4 Single Family Dwelling Food Scrap/Yard Trimmings Collection Program.

The basic level of service for a Single Family Residential Premises is once weekly curbside or alley Collection of one (1) Food Scraps/Yard Trimmings Cart provided by automated Collection on the same day as MSW Collection. Contractor shall Collect all Food Scraps and Yard Trimmings in a separate Collection vehicle that collects only Food Scraps and Yard Trimmings. Contractor shall process the Collected commingled Food Scraps/Yard Trimmings at the Compost Facility approved by City listed in Article 6 of the Agreement and arrange for sale of the Compost that is produced.

*Customers located in Single Family Dwellings that are part of a HOA or Gated Development that has landscaping and that may not, therefore, generate any Yard Trimmings shall still be delivered a green Cart for Food Scraps. **The Food Scraps shall be Collected in the Residential Collection vehicle that collects only Food Scraps and Yard Trimmings.***

Contractor shall Transport and process all Food Scraps and Yard Trimmings Collected from Single Family Dwelling Residences to the City approved Compost Facility(ies) listed in Article 6. The Food Scraps and Yard Trimmings Collected from Single Family Dwelling Residences may not be processed at any other facility(ies).”

E. The following changes are hereby made to Proposal Form 29 contained in Section 5 of the RFP document.

1. Revised Sections 12-17 of Proposal Form 29, related to temporary Bin and Roll-off Box collection service. In response to proposer question #25, Sections 12 a – i, 13 a - i, 14 a – i, 15, a – i, 16 a – i, and 17 a – l of Proposal Form 29, have been revised to clarify the rate categories pertaining to

temporary Bin and Roll-off Box collection service. See Attachment 2 to this Addendum No. 2. Instructions for submittal of the revised Proposal Form 29 are included in the header of this Attachment.

2. Revised Section 22, Item mm of Proposal Form 29, related to Other Services. In response to proposer question #12, a new rate item (Item mm) has been added to Proposal form 29 for replacement Bin Sensors. Proposers shall provide a cost for the second and subsequent replacement Bin Sensors, including the cost for installation. See Attachment 3 to this Addendum No. 2. Instructions for submittal of the revised Proposal Form 29 are included in the header of this Attachment.

F. Attached are the following documents:

1. **Attachment 1.** Responses to Written Questions From Proposers and Response to One Outstanding Question from Pre-Submittal Conference
2. **Attachment 2.** Revised Sections 12-17 of Proposal Form 29, related to temporary Bin and Roll-off Box collection service.
3. **Attachment 3.** Revised Section 22, Item mm of Proposal Form 29, related to Other Services.

This addendum consists of 4 pages plus 3 attachments. **Each proposer shall include a signed copy of this Addendum No. 2 with their proposal. Failure to do so may cause the proposal to be disqualified.**

Regards,

Liz Avila
Senior Public Works Analyst/
Solid Waste Program Coordinator

Receipt of Addendum No. 2 is hereby acknowledged:

Signed: _____

Proposer's Name: _____

Proposer's Company: _____

Date: _____

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Answers to Questions Submitted by Proposers:

1. Alternative Proposals. Will the City permit proposers to, in addition to a conforming proposal that meets all requirements of the Agreement, submit an alternative proposal modifying certain requirements for the City's consideration?

No.

2. RFP Section 3.1.2.2. Please provide information on how the City plans to amend its SB 1383 ordinance and impacts that may have on the Agreement.

Section 7.16.070, subsections C-F, of the City's ordinance, already require all generators to comply with SB 1383. The City may choose to add more detail to the ordinance with regard to SB 1383.

3. RFP Section 3.1.5.2, Agreement Section 10.02, and Attachment B Section 2.5. These provisions detail contamination requirements and monitoring procedures and require manual inspection by drivers. Manual inspection is not required for compliance and, compared to remote monitoring technology in compliance with SB 1383, creates an undue cost burden on the customers. Will the City permit remote contamination monitoring, as permitted by SB 1383 in 14 CCR Section 18982(a)(65) and 14 CCR Section 18984.5?

No.

4. RFP Section 3.1.6 and Agreement Section 8.04.A. Is the City amenable to a different timeline for implementation of new containers?

No.

5. E-Waste and Universal Waste Definitions. These definitions in the agreement are similar to, but not identical, to definitions under applicable law. Will the City permit proposers to provide mutually agreeable language to such definitions during negotiations to cite more specifically to the definitions under applicable law?

No. And as stated in Section 3.1.1 of the RFP, if selected, a Proposer must be prepared to sign the Agreement in Section 6 of the RFP, with the exceptions listed in their Proposal Form 20 "Exceptions to Agreement." Failure to do so will result in disqualification and the City may select the next ranked Proposer.

6. Gross Receipts. The definition of Gross Receipts does not align with California case law regarding the calculation of gross receipts. Will the City permit contractors to propose mutually agreeable language during negotiations to revise this definition?

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No.

7. Plastic Containers, Single Stream Recyclable Materials, and Attachment B. Some of the materials in this definition are not accepted for recycling by the applicable facilities. Will the City permit contractors to propose mutually agreeable language during negotiations to revise this definition and the appropriate table in Attachment B to be consistent with market conditions?

No. Given the expansion of diversion requirements, the City is seeking a proactive Proposer that understands how to develop, maintain, and expand markets. Volatility of markets does not eliminate the ability of a material to be returned to the economics mainstream. The Agreement is structured such that the Contractor gets all the rewards and takes all of the risk in any movement of commodity markets. Given the 8-year term (plus two possible 1-year extensions), the commodity market will experience both gains and losses and shifts in the destination points for shipment of secondary materials. The City is looking for a Contractor who has a track record of adapting to changing global market conditions and selling into both domestic and international markets at the grades established within the marketplace. It is expected that the successful Proposer shall have the expertise and background to maintain leverage in the marketplace due to (a) the quality and quantity of materials sold, and (b) a proven track record and relationships with secondary materials brokers and buyers.

8. Agreement Section 5.13. This section permits the City to modify Contractor's obligations under any provision of this Agreement. However, this conflicts with Section 17.10 and fundamental principles of contract law. Section 17.10 requires that the Agreement may only be modified by a writing signed by the parties. Please revise Section 5.13 to clarify that the City may add additional services or modify existing services without amending the agreement, and remove the language stating that the City may modify Contractor's obligations under any provision of the Agreement.

No. If the City does direct a change, the Contractor will be compensated for the change, if applicable, as stated in Section 5.13 of the Agreement: "If such changes cause an increase or decrease in the cost of performing the services, an appropriate adjustment in the maximum rates set forth in Attachment D will be made as provided in Section 14.06."

9. Agreement Section 5.17 and Attachment B. This section prohibits the issuance of a contamination fee. Resolving and reducing contamination is a substantial and important part of SB 1383 compliance and without a mechanism to discourage continuing contamination. Will the City permit contractors to propose mutually agreeable language to the Agreement during negotiations to provide for the issuance of reasonable contamination fees? Such a mechanism is essential to creating a non-

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contaminated waste stream and to work with customers to resolve contamination issues.

No.

10. Agreement Section 7.01. This section requires Contractor to provide certain capacity guarantees. However, the Contractor does not own or operate all of the facilities utilized under this Agreement, as some facilities are owned and operated by the County. Will the City please revise this section to state that, to the extent any Facility is owned or operated by Contractor, Contractor will provide such capacity guarantee?

No. As stated in the answer to Question #1 in Addendum No. 1: The RFP requires proposers to provide signed agreements between the proposer and any processing facilities, including MRF's, composting facilities, etc. as outlined in Section 7 of the Agreement, RFP Section 3.1.4 and Proposal Forms 15, 16, 17 and 18. If the proposer intends to utilize a composting facility operated by the County of Orange, then an agreement between the proposer and the County of Orange is required to be provided.

11. Agreement Section 8.04.B. This section details Cart ownership and the City's ability to purchase all Carts and/or Bins at the end of the Term. Will the City please clarify that this is the "fully depreciated fair market value" of the Carts and/or all Containers?

No, the language remains as written.

12. Agreement Section 8.04.G. Will the City please clarify that Contractor shall be able to charge a replacement fee for broken or malfunctioning sensors caused by the negligence or willful misconduct of customer?

The City has revised Section 8.04.G of the Agreement to provide for replacement of one Bin Sensor at no charge, including installation. The second and subsequent replacement Bin Sensors, including installation, shall be charged at the rate included in Attachment D of the Agreement. [See Section B1 of this Addendum No. 2.]

See Section E2 and Attachment 3 of this Addendum No. 2 for changes to Proposal Form 29, Section 22, Item MM where Proposers must provide a cost for the second and subsequent replacement Bin Sensors, including the cost for installation.

13. Agreement Section 11.05. This section states that the confidentiality provisions of AB 901 shall not apply to Contractor's reports submitted under this Agreement. This violates Applicable Law. Please confirm that the City will remove this language, as contractors are not able to agree to waive their rights to the confidential and proprietary information, especially where such information is protected by statute.

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No. Other cities have required this provision and it stands as written.

14. Agreement Section 14.03, Section 14.04, and Attachment J. These provisions outline the general methodology for rate adjustments but do not provide a way for contractors to request adjustments to rates arising from extraordinary circumstances. Will the City allow for a rate adjustment due to circumstances outside of the parties' control, such as a change in law? It is unfair that the Contractor solely bear costs associated with a change in law without the ability to adjust rates accordingly.

No.

15. Agreement Section 14.03, Section 14.04, and Attachment J. In addition to the above, will the City permit contractors to propose alternative adjustment methodologies during negotiations, including changing the disposal component adjustment to be a pass through of actual processing costs year over year incurred at third-party facilities and proposing the use of a commodities index for the recycling component? Changing the adjustment methodology to pass-through actual costs from third-party facilities is fair and reasonable, and a commodities index is more closely tied to recycling markets than PPI, which does not accurately reflect the costs of services.

No.

16. Agreement Section 14.07. This section states that, for City directed changes, no adjustment will be made to Contractor's compensation due to loss or reduction in any of the following: (a) Contractor's profits, and/or (b) Contractor's revenues including, but not limited to, Processing Fees at a Contractor-owned and/or Contractor-operated Processing Facility; revenues from sale of Recyclable Materials, Compost, Wood, and/or Processed Construction and Demolition Debris. This is unduly burdensome, particularly when such changes are made at the City's request. Will the City please explain the reason for excluding these considerations, particularly when they result from a change directed by the City? In addition, will the City please allow contractors to propose mutually agreeable alternative language during negotiations to account for such changes resulting from a City directed change?

No.

17. Agreement Section 15.09. Please explain the basis for the Administrative Charges amounts and how the City determined these amounts were a reasonable estimate of damages for the alleged failure. Please provide any documents or information the City relied on in making such determinations.

No. The City is not going to list calculations for each item of Liquidated Damages in Section 15.09. These are Liquidated Damages, not “administrative charges”. Liquidated Damages are included in contracts in instances where it

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would be difficult or impossible to quantify and/or calculate the damage done in the event of the specific action or inaction of the contractor. Liquidated Damage amounts are agreed to “in advance” of any such events by listing them in the Agreement. Because Liquidated Damages assign specific damages for each potential event listed, each party is required to initial this Section to indicate they reviewed and agreed to the amount of each Liquidated Damage.

18. Agreement Section 16.02. Will the City please exempt an assignment by Contractor to an affiliate from the requirements of this provision, such that Contractor shall be able to assign this agreement to an affiliate of Contractor under common control or having the same corporate parent company? Transfer of Contractor's obligations to a subsidiary or sister company will have no effect on the quality or timing of services provided.

No.

19. Agreement Section 16.12. This section details force majeure. As written, this section does not comply with California law regarding excuses from performance for force majeure events. Will the City remove the language regarding impossibility or impracticability, which does not comport with California law? Further, will the City please add epidemics and pandemics as Force Majeure Events?

No.

20. Agreement Section 16.15. This section states that the City may participate in other Diversion programs, including those programs offered by one or more residents, businesses, commercial, industrial or retail operators, or other Persons, within City or other jurisdictions. Will the City please remove this language, as it conflicts with the exclusive scope of this Agreement?

No.

21. Attachment B Section 3.3.1.1. Is there a definition for the gross vehicle weight for the lightweight collection vehicle?

The lightweight collection vehicle must be a 2-axle truck with optional drop-down axle. The lightweight collection vehicle, due to its construction and the low density of the recycling materials it collects, must be at least 5,000 pounds less than a conventional front-end loader collection vehicle.

22. Attachment B Section 1.3.7. This section suggests that Single Family and Commercial Customers can share container service and billing. Will the City please clarify and provide additional details? These arrangements typically cause significant confusion and potential disagreements between customers/neighbors regarding services and billing. This type of service should only be available due to space constraint waivers

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granted to a customer by the City. Generally commercial customers determine who is the account holder and allocation of the bill for shared bins, and it is unusual to offer this service for single family customers.

In general, and per current practice, the residents and businesses of the City rely on shared service due to space constraints and low volumes of generation of certain commodities. This is a service to the customers that the City very much wants to retain. There are currently seventeen (17) shared service accounts according to the account listing provided by WM. The City anticipates these generators will continue to rely on shared service and other small businesses may also need shared service to comply with SB 1383 diversion requirements. The contract language remains as written.

23. Attachment E-1. Will the City please clarify that Contractor is able to charge the customer where repair, maintenance, graffiti removal, or damage is required due to the negligence or willful misconduct of the Customer?

No.

24. Attachment N. This attachment details the contamination monitoring and characterization study protocols. SB 1383 compliance may be met through either waste evaluations or route reviews - both are not required for compliance and dramatically increases costs for rate payers. Will Contractors be able to choose between waste evaluations or route reviews, as allowed by 14 CCR Section 18984.5, to comply with contamination monitoring under the Agreement? Also, will the City consider eliminating the waste characterization audits imposed on the Contractor, when such audits are generally done by facilities? Contractors do not generally have the access necessary to conduct such audits at third-party facilities.

No. The City is requiring that both waste characterizations and route reviews be conducted by the selected contractor for materials generated and collected within the City. Waste characterizations are needed to assess the selected contractor's progress towards its Phase 1 and Phase 2 incentives. Route reviews (i.e. lid flipping) are needed to provide targeted and real-time outreach to customers/generators that are found to have contamination.

25. Proposal Form 29 Roll Off. The City is requesting pricing for Roll Off on a daily price, a weekly price, and a weekend price. RO is priced per haul regardless of if it is scheduled or on call. Can you please clarify the difference between daily and weekly?

Proposal Form 29, Rows 12 e – i, 13 e - i, 14 e – i, 15, e – i, 16 e – i, and 17 e – i are the different pricing options pertaining to Roll Off collection service.

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The different pricing options for Roll Off service identified in Proposal Form 29 reflect the following collection parameters for temporary Roll Off collection service:

Same Day (same day collection service) – When a customer requests same day Roll Off collection service. Fill in the proposed rate to be charged.

Weekly (i.e. Monday collection, with the collection again on the following Monday) – When a customer requests Roll Off collection service for a one week period. Fill in the proposed rate to be charged.

Weekend (i.e. collection on Saturday or Sunday) – When a customer requests Roll Off collection service on a Saturday or Sunday. Fill in the proposed rate to be charged.

If a Proposer’s rates are the same for all three categories of Roll-Off service listed above, then fill in those rates in each category on Proposal Form 29.

The City has revised Proposal Form 29 to be consistent with the above. [See Section E-1 of this Addendum No. 2 and Attachment 2 of this Addendum No. 2.]

26. Attachment W, Annual Adjustments & PI Caps. The annual adjustment is capped at 5% on the upside and 0% on the downside. Are there carryovers +/- going into the following rate adjustment period?

No.

27. RFP contains many requirements for advanced technology such as bin sensors, onboard technology and collision avoidance systems which are new technologies that are still being developed. Can the City provide a priority list for the technologies that are most important?

No. All the technologies included in the RFP are required.

28. In Section 8.03.1, the City requests all vehicles operated by the Contractor that collect materials in the City to have collision avoidance systems installed. Would this also apply to the support trucks and SUVs used by our supervisors, scouts and auditors?

Section 8.03.1 of the Agreement requires the following:

8.03.1 Collision Avoidance System. All vehicles operated by Contractor in the City to Collect MSW, Recyclable Materials, Food Scraps/Yard Trimmings, Construction and Demolition Debris, Bulky Items, and Household Hazardous Waste shall include the best available industry standard collision avoidance system that is capable of detecting adjacent pedestrians, bicyclists, scooters, motorcycles and vehicles.

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Supervisor pick-up trucks, SUVs, and support trucks are not listed in the above excerpt from Section 8.03.I of the Agreement, and are not required to have collision avoidance systems installed.

29. Damage to Property and Driving Surfaces. Contract Section 5.10(a) and (c). The RFP makes the Contractor responsible for damages to any property and driving surfaces, curbing, and other surfaces, other than normal wear and tear, even if this damage is not caused by the Contractor's negligence or willful misconduct. Would the City consider the Contractor's liability for such matters be limited to damage caused by its negligence or willful misconduct?

No.

30. Title/Ownership. Section 5.15. Title to Solid Waste passes to the Contractor once it is placed in Containers and set out at the collection location, not when it is collected by the Contractor into their vehicles, exposing the Contractor to risk in the interim period. Would the City be willing to modify this section so that the title to and liability for any Hazardous Material at no time passes to Contractor?

No.

31. Legal Issues Associated with Indemnification Obligations. It is contractor's position that any contractual indemnification obligations should: (1) be limited to losses arising out of contractor's negligence or willful misconduct; (2) not include an obligation to indemnify the other party to the contract from losses arising out of actions taken by that party, including losses arising out of that party's negligence, (here is only their sole negligence); (3) only cover losses "to the extent" they arise out of specified matters and not merely relate to such matters. Many indemnification provisions do not include such limitations. Would the City consider modifying the language in this section?

No.

32. Exclusivity. Section 4.03 of the Agreement. Certain types of services are excluded from the Contractor's exclusive franchise. Can the City amend this section to clarify that the services excluded are only to be provided free of charge to the customer?

No.

33. Employee Roster. Contract Section 11.04. City requires contractor to provide an HR roster and specifically indicates that it needs to include the Social Security Numbers.

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This is delicate information that our bargaining agreements will not allow. Is the City willing to remove this requirement for employee social security numbers?

Yes, Section 11.04 of the Agreement has been changed to remove this requirement. See Section B2 of this Addendum No. 2.

34. The recycling markets have declined in reliability over the past decade which the RFP does not address. For example, it does not address or otherwise provide for: (1) matters covered by the contractor's recycling initiative, such as pricing; and (2) the ability to charge for costs incurred when materials received cannot be processed at, or are rejected by, the processing facility, such as the contractor's cost to transport rejected materials to a disposal facility. Would the City be willing to incorporate language into the contract that takes changes in the recycling marketplace into consideration?

No. See the City's answer to Question #7 above.

35. Section 9.04.C.2 – The City is requiring several features to be implemented at the customer service call center that may limit the ability to better serve residents and businesses in the City. Can the City please prioritize the features that are most important in this section so we can better accommodate the request?

No. All the customer service provisions included in the RFP and the Agreement are required.

36. Section 9.04.C.2 From our experience, the average hold time to 120 seconds as a monthly average. Is the City willing to negotiate on the hold time at the customer service center?

No.

37. In Proposal Form 26, the City outlines options for servicing some difficult areas of the City. Are the rates for residents all uniform or would the contractor be allowed to charge a premium to the households that require special service?

All residential rates shall be uniform. Contractor shall not charge a premium to the households that require special service.

38. Can the City please provide the residential rate structure currently used in the city?

The City's current rate sheet was distributed in Addendum No. 1 as Attachment 2.

One Remaining Question from Pre-Proposal Conference:

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39. Where does the City want capital costs of trucks and containers, both variable and fixed, to be included in Proposal Form 29?

Capital costs shall be included in the labor component in Proposal Form 29. Attachment J will be used to adjust the rates included in Proposal Form 29, which will become Attachment D to the Agreement.