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Invitation to Bid

Recyclables Processing Services
ITB #2012-13/22
SECOND AMMENDMENT

Purchasing Division
401 S.W. 4th Street, Deerfield Beach, FL 33441
Phone: 954-480-4381
Fax: 954-480-4388

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Recyclables Processing Services
ITB #2012-13/22

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City of
D E E R F I E L D

B E A C H

April 29, 2013

**PUBLIC NOTICE
 FOR
 RECYCLABLES PROCESSING SERVICES
 ITB #2012-13/22**

DUE DATE: WEDNESDAY, MAY 22, 2013 AT 11:00 A.M. EST

The City of Deerfield Beach is seeking bids from qualified vendors, hereinafter referred to as the Bidder, to provide recyclables processing services in accordance with the terms, conditions, and specifications contained in this Invitation to Bid (ITB).

Sealed Bids shall be delivered in a sealed envelope and addressed to the Purchasing Division, 401 S.W. 4th Street, Deerfield Beach, FL 33441 (Central City Campus, Bldg. A., 2nd Floor), until Wednesday, May 22, 2013 at 11:00 a.m. EST, at which time and place the submittals will be publicly opened and the names of the Bidder's will be read. All Bidders or their representatives are invited to attend the bid opening. Bids shall be clearly labeled with the Bidder's legal name, address and telephone number, bid title and number, and due date.

A mandatory pre-bid meeting will be held at 401 S.W. 4th Street, Deerfield Beach, FL 33441 (Central City Campus, Bldg. A, 2nd Floor Conference Room) on Tuesday, May 7, 2013 at 10:00 a.m. EST. The purpose of the pre-bid meeting is to provide the City and Vendors the opportunity to clarify and discuss the ITB requirements, scope of services and/or specifications. Bidders should allow sufficient time to insure arrival prior to the indicated date and time. Bids received from Bidders who have failed to attend the mandatory pre-bid meeting will be deemed non-responsive, will not be opened or accepted, and will be returned to the Bidder unopened.

Bidders are responsible for making certain that their bid is received at the location specified by the due date and time. The City of Deerfield Beach is not responsible for delays caused by any mail, package or courier service, including the U.S. mail, or caused by any other occurrence or condition. No oral, telegraphic, electronic, facsimile, or telephonic bids or modifications will be considered unless specified. Bids received after the due date and time will be returned to the Bidder unopened.

A cone of silence is in effect for this ITB. The cone of silence prohibits certain communications between potential respondents and the City.

An ITB document can be obtained through the City of Deerfield Beach, Purchasing Division on Friday, April 29, 2013. An ITB document may be requested by emailing sfrancis@deerfield-beach.com or picked up at the Purchasing Division, 401 S.W. 4th Street, Deerfield Beach, FL 33441 (Central City Campus, Bldg. A., 2nd Floor). Bids will only be accepted from registered Bidders who have obtained the ITB document from the Purchasing Division.

For additional information, contact David Santucci, Purchasing Manager, (954) 480-4380 or dsantucci@deerfield-beach.com.

Burgess Hanson
 City Manager

SECTION 1 - INTRODUCTION AND INFORMATION

1.1 Purpose

The City of Deerfield Beach (City) invites qualified and experienced vendors to submit bids to provide the City with and Recyclables processing services. The City also reserves the right to reject all bids.

1.2 Definitions

For the purpose of this ITB the definitions contained in this Section shall apply unless otherwise specifically stated. If a word or phrase is not defined in this Section, the definition of such word or phrase as set forth in Chapter 58 of the City's Code of Ordinance entitled "Solid Waste" and pursuant to state law shall control. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Use of the masculine gender shall include the feminine gender. The word "shall" is always mandatory and not merely discretionary.

Average Market Value (AMV) means a market index used to determine the revenue paid by the Contractor to the City for Program Recyclables delivered to the Designated Recycling Facility based on monthly fluctuations in the commodity market as defined herein.

City means the City of Deerfield Beach, Florida.

City Commission or Commission means the governing body of the City of Deerfield Beach, Florida.

Commencement Date means the date services pursuant to the Contract commence, or July 3, 2013 for Solid Waste disposal services and Recyclables Processing services.

Contract means this ITB and any addenda, Contractor's Bid submittal, and final agreement, including all attachments, schedules, and amendments thereto, executed between the City and the Contractor, governing the provision of services as defined herein.

Contract Administrator means the Assistant Director of Environmental Services or person designated by the City Manager to administer and monitor the provisions of this Contract.

Contract Year means twelve (12) consecutive months beginning on July 1, 2013 and every twelve (12) months thereafter for the term of the Contract.

Contractor means that person or entity that has obtained from the City a Contract to provide the services set forth herein.

Designated Processing Facility means the facility designated in the Contract at which the Contractor will process Program Recyclables, which facility may be the same as or different than the Designated Recycling Facility.

Designated Recycling Facility means the facility designated in the Contract at which the Contractor will receive delivery of Program Recyclables, whether such facility is a materials recovery facility, recovered materials processing facility, or a transfer station.

Designated Disposal Facility means the facility designated in the Contract for disposal of the City's Solid Waste.

Designated Receiving Facility means the facility at which Solid Waste is received by the Contractor.

Effective Date means the date this Contract is executed by both the City and Contractor. The Effective Date of any contract resulting from this ITB is anticipated to be July 1, 2013 or upon such date that the contract is executed and signed by both the City and Contractor.

Hazardous Waste means solid waste, or a combination of solid wastes, which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or may pose a substantial present or potential hazard to human health or the environment when improperly transported, disposed of, stored, treated, or otherwise managed. The term does not include human remains that are disposed of by persons licensed under F.S. Ch. 497.

Holiday means a designated holiday on which the Contractor shall not be required to provide service. For the purposes of this Contract, Holiday shall only mean Christmas Day unless additional Holidays are approved by the Contract Administrator.

Program Recyclables means Recyclable Materials collected by or on behalf of the City and over which the City has control, including newspapers (including inserts), corrugated cardboard, mixed paper (including brown paper bags, magazines, phonebooks, junk mail, white and colored paper, shredded paper in a bag, and paperboard), aluminum cans, all plastics marked with SPI codes 1-7, glass bottles and jars, tin and ferrous cans, aseptic containers, and other materials added by mutual agreement of the City and Contractor.

Recovered Materials means metal, paper, glass, plastic, textile, or rubber materials that have known recycling potential, can be feasibly recycled, and have been diverted and source separated or have been removed from the solid waste stream for sale, use, or reuse as raw materials, whether or not the materials require subsequent processing or separation from each other, but does not include materials destined for any use that constitutes disposal. In accordance with F.S. § 403.703(24), recovered materials as described above are not solid waste.

Recyclable Materials or Recyclables means those materials that are capable of being recycled and which would otherwise be processed or disposed of as solid waste.

Rejects means materials, other than Residue, that cannot be recycled and that cannot be processed into Recovered Materials.

Residue means the portion of the Recyclable Material stream accepted by the Contractor that is not converted to Recovered Materials due to breakage and/or transportation or processing inefficiencies.

Single Stream means a recycling process that allows for Recyclable Materials to be collected commingled with no sorting required by residents, businesses or haulers.

Solid Waste means sludge unregulated under the Federal Clean Water Act or Clean Air Act, sludge from a waste treatment works, water supply treatment plant or air pollution control facility or garbage rubbish, refuse, special waste or other discarded material including solid liquid, semisolid, or contained gaseous material resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. Recovered materials, as defined above, are not solid waste. Construction and demolition debris is solid waste. For the purposes of this Contract, Solid Waste does not include sludge, Recyclable Materials, Unacceptable Waste, or bulk trash.

Ton means a unit of weight equal to 2,000 pounds, also referred to as a short ton.

Turnaround Time means the time between the arrival of a vehicle at a facility site to the time the vehicle exits the facility site.

Unacceptable Waste means motor vehicles, trailers, or other bulky items of machinery or equipment, highly flammable substances, hazardous waste, sludge, pathological and biological wastes, liquid wastes, sewage, manure, feces (except from household pets), explosives and ordnance materials, radioactive materials, construction and demolition material, rocks, and soil.

1.3 Product/Service Description

The services to be procured under the contract consist of receiving, transferring and transporting (if applicable), processing, and marketing of Program Recyclables delivered to a Designated Recycling Facility operated and maintained by the Contractor. If the Designated Recycling Facility is not also the Designated Processing Facility, Bidders also must identify where Program Recyclables will be processed.

1.4 City Background Information

The City is the most northeast community in Broward County and it borders Boca Raton and Palm Beach County to the north, the Atlantic Ocean to the east, the Florida Turnpike to the west and the City of Pompano Beach to the south.

The City of Deerfield Beach is located on the world famous gold coast of Southeast Florida. The City is home to more than 75,000 residents. The City of Deerfield Beach provides services and a quality of life that help residents and employers alike enjoy the lifestyle of South Florida and prosper in an ever-growing international economy.

All Program Recyclables are collected by the City's Solid Waste and Recycling Division. In addition to commercial Solid Waste collection, the City provides the following residential services:

- Twice per week automated collection of Solid Waste carts.
- Once per week automated collection of Single Stream Program Recyclables in recycling carts.
- Once per week collection of bulk trash; however bulk trash is not included in this ITB.

Program Recyclables generated in and collected by the City are currently managed through an interlocal agreement with Broward County's Resource Recovery System (RRS).

The City's contract with the RRS is set to expire on July 2, 2013. It is the intention of the City to have a new disposal and recyclables processing contractor(s) in place before the expiration of the current contract.

The quantities of Solid Waste and Recyclables collected between FY2010 and FY2012 are as follows:

Fiscal Year	Solid Waste	Program Recyclables
FY 2010 Tons	51,602.00	5,599.49
FY 2011 Tons	49,883.24	5,279.00
FY 2012 Tons	51,252.00	5,116.00

1.5 Point of Contact

All inquiries, questions, and requests for additional information concerning of this ITB shall be sent in writing via mail, e-mail, or facsimile to:

City of Deerfield Beach, Purchasing Division
 Attn: David Santucci, Purchasing Manager
 401 S.W. 4th St.
 Deerfield Beach, FL 33441
 Fax: (954) 480-4380
 E-mail: dsantucci@deerfield-beach.com

All responses to questions pertaining to the technical specifications or bid requirements shall be issued through an official addendum. Please be advised that the City is contemplating a change to the protest procedure set forth in Section 38-139 of the Code of Ordinances as set forth in Section 2.17 contained herein. If the ordinance changing the protest procedure is adopted by the City Commission an addendum will be issued revising Section 2.17.1

1.6 Mandatory Pre-Bid Meeting

A mandatory pre-bid meeting will be held at 401 SW 4th St., Deerfield Beach, FL 33441 on Tuesday, May 7, 2013 at 10:00 a.m. EST. The purpose of the pre-bid meeting is to provide the City and Vendors the opportunity to clarify and discuss the ITB requirements, scope of services and/or specifications. Proposers should allow sufficient time to insure arrival prior to the indicated date and time.

Due to the importance of the Bidders having a clear understanding of the specifications/scope of work and requirements for this solicitation, attendance at this conference is mandated. Bids received from Bidders who have failed to attend the mandatory pre-bid meeting will be deemed non-responsive, will not be opened or accepted, and will be returned to the Bidder unopened.

1.7 Contract Term

1.7.1 Effective Date

The Effective Date of any contract resulting from this ITB is anticipated to be July 1, 2013 or upon such date that the contract is executed and signed by both the City and Contractor.

1.7.2 Commencement Date

The Commencement Date is the date that service is required to begin pursuant to such contract. The Commencement Date for each service is July 3, 2013.

1.7.3 Initial Term

The initial contract term shall be for five (5) years beginning on the Effective Date. The initial term for each service is July 1, 2013 to June 30, 2018.

1.7.4 Renewal Options

The City reserves the right and shall have the sole discretion to extend the contract for two (2) additional five (5) year renewal terms providing all terms, conditions and specifications remain the same; both parties agree to the extension; and such extension is approved by the City Commission in their sole discretion.

1.7.5 Contract Extension

In the event services are scheduled to end because of the expiration of the contract, the Contractor shall continue the service upon the request of the City Manager or designee. The extension period shall not extend for more than ninety (90) days beyond the expiration date of the existing contract. The Proposer shall be compensated for the service at the rate in effect when this extension clause is invoked by the City.

1.8 Bidder's Qualifications

Bidder shall be in the business of providing the services required in the specifications and scope of services and must possess sufficient financial support, equipment and organization to insure that it can satisfactorily perform the services if awarded a Contract. Bidders must demonstrate that they, or the principals and/or key personnel assigned to the project contract, have

successfully provided services with similar magnitude to those specified in the ITB to at least three cities similar in size and complexity to the City of Deerfield Beach or can demonstrate they have the experience with large scale public sector clients and the managerial and financial ability to successfully perform the services.

To be responsive to this ITB, the Bidder must document and demonstrate in its response that it, or its subcontractors (jointly called Bidder), meets the minimum qualification requirements as set forth in this section and on the Qualification Statement. The City's determination that any bidder has failed to meet the minimum qualifications stated herein will result in the Bid being deemed non-responsive. The City shall have the sole and absolute discretion in determining responsiveness and responsibility.

1.8.1 Minimum Qualifications for Recyclables Processing Contractor

Bidder must provide documentation that it meets the following minimum qualifications to provide Recyclable Materials processing services.

- Bidder must have at least five (5) years experience in providing processing services to communities similar in size and complexity to the City of Deerfield Beach.
- Bidder must have a licensed/permitted facility at which the City's Program Recyclables would be received ("Designated Recycling Facility"), whether the final processing facility or a transfer station, that is located within a ten (10) mile driving distance of the City's Central City Campus (401 S.W. 4th Street, Deerfield Beach, FL 33441) and that is operational at the time of Bid submission. Bidder shall provide documentation of driving distance, via heavy truck routes.
- The Designated Recycling Facility and Designated Processing Facility identified to receive the City's Program Recyclables must be capable and permitted to accept materials as proposed. To demonstrate this ability, Bidder must:
 - Provide licenses and/or permits for the proposed facilities as set forth in Section 3.7 – Required Documents.
 - Provide copy of Florida Department of Environmental Protection (FDEP) Recovered Materials Certification.
 - Document that such facilities have the capacity to accept the City's Program Recyclables for the Term of the Contract. Bidders shall provide information regarding current processing capacity, throughput, and any other relevant additional information.
 - Bidder must provide copies of all Notices of Violation and Consent Orders, including settlement agreements, and dismissals or final actions by the administrative body, issued to such facility in the past five (5) years. Notices of Violation or Consent Orders which, in the City's sole opinion, would negatively affect the Solid Waste or Recycling operations of the City shall be cause for non-responsiveness.

1.9 Cost Recovery Fee

The Contractor understands and agrees that the cost of the bid process is a part of the cost of providing recyclables processing services and thus a responsibility of the Recyclables processing Contractor(s). Such costs, in time and expenses, in the amount of five thousand (\$5,000) were initially expended by the City, and such expenditure was for the benefit of the Recyclable processing Contractor(s).

1.9.1 A cost recovery fee payable to the City of Deerfield Beach shall be submitted with the Bid response in the amount \$5,000.

- 1.9.2** The cost recovery fee shall be in the form of a cashier's check. Any submitted cost recovery fee(s) will be returned to the unsuccessful Bidder(s) as soon as practicable after final action of the City Commission. The cost recovery fee of the successful Bidder(s) shall be retained by the City for the purposes of recouping the costs to prepare the bid as stated above.
- 1.9.3** Failure of the successful Bidder(s) to execute a contract, provide a performance bond, and furnish evidence of appropriate insurance coverage, as provided herein, within fifteen (15) days after written notice of award has been given, shall be just cause for the annulment of the award and the forfeiture of the cost recovery fee to the City, which forfeiture shall be considered, not as a penalty, but as liquidation of damages sustained.

1.10 Performance Bond

The Awarded Contractor shall, within fifteen (15) working days after notification of award, furnish to the City in a form acceptable to the city attorney a Performance Bond or an Unconditional Irrevocable Letter of Credit, payable to the City of Deerfield Beach, Florida, in a face amount equal to fifty percent (50%) of the estimated annual contract amount proposed, as surety for faithful performance under the terms and conditions of the Contract based upon an average of the historical tonnages provided herein, years 2010, 2011, and 2012.

- 1.10.1** The Contractor agrees that if awarded the Contract, it will submit a performance bond, satisfactory to the City, equal to fifty percent (50%) of the estimated annual contract amount.
- 1.10.2** All bid bonds, performance bond, insurance contract and certificates of insurance shall either be executed by or countersigned by a licensed resident agent of the surety or insurance company licensed to do business in the State of Florida; having an "A" or better rating by A.M. Best or Standard and Poors; included on the list of surety companies approved by the Treasurer of the United States; and in a form acceptable to the City.
- 1.10.3** If a Letter of Credit is chosen, it must be in a form acceptable to the City, drawn on a local Broward, Dade or Palm Beach County bank acceptable to the City and issued in favor of the City of Deerfield Beach, Florida. If the Contractor wishes to use a non local bank, they must have prior City approval of the requirements to draw against the Letter of Credit.
- 1.10.4** Acknowledgment and agreement is given to both parties that the amount herein set for the Performance Bond or Irrevocable Letter of Credit is not intended to be nor shall be deemed to be in the nature of liquidated damages nor is it intended to limit the liability of the Contractor to the City in the event of a material breach of this Contract by the Contractor. The failure to provide a new Performance Bond or Letter of Credit in a form acceptable to the City thirty (30) days prior to the expiration of the outstanding document shall be a breach of this Contract and entitle the City to demand payment under the outstanding document. Demand by the City under the Performance Bond or Letter of Credit does not act as a waiver of any other rights or remedies which the City may have.
- 1.10.5** In the event this Contract is breached, canceled or terminated other than by mutual agreement prior to its normal expiration date, the City may apply the Performance Bond or Irrevocable Letter of Credit as required by this Contract to be held against outstanding obligations and as an offset against expenses incurred by the City until a new Vendor is contracted with. By doing so the City does not waive or release any rights to pursue, by any lawful means, any damages or costs not covered by the performance bond or letter of credit. The City will diligently pursue a new Contractor.

SECTION 2 - STANDARD TERMS AND GENERAL CONDITIONS**2.1 Independent Contractor**

The Bidder represents itself to be an independent firm offering such products or services to the general public and shall not represent itself or its employees to be employees of the City of Deerfield Beach. Therefore, the Bidder shall assume all legal and financial responsibility for taxes, FICA, employee fringe benefits, workers compensation, employee insurance, minimum wage requirements, overtime, and other expenses, and agrees to indemnify, save, and hold the City of Deerfield Beach, its officers, agents, and employees, harmless from and against, any and all loss; cost (including attorney fees); and damage of any kind related to such matters.

City reserves the right to reject the bid or part of the bid that is declared, by the City, as conditional.

2.2 Sub-Contractors

If the Bidder proposes to use subcontractors in the course of providing these products and/or services to the City, this information shall be a part of the Bidder's response. Such information shall be subject to review, acceptance and approval of the City, prior to any Contract award. The City reserves the right to approve or disapprove of any proposed subcontractor in its best interest.

2.3 Addenda, Changes and Interpretations

Any inquiry or request for interpretation received ten (10) or more days prior to the due date for the opening of the Bids will be given consideration. Changes or interpretations may only be made by a written document in the form of an addendum. Addenda will be issued via e-mail and sent to the e-mail address provided by each plan holder no later than five (5) days prior to the bid opening date. Each prospective Bidder shall acknowledge receipt of such addenda in the space provided on the bid form. All addenda are a part of the contract documents and each Bidder will be bound by such addenda, whether or not received by Bidder. It is the responsibility of each prospective Bidder to verify that they have received all addenda issued before bids are opened. No verbal interpretations may be relied upon.

2.4 Multiple Bids

More than one (1) bid from an individual, firm, partnership, corporation, or association under the same or different names will not be considered. Such a circumstance will lead to rejection of all responses in which the Bidder is involved except for sub-Bidders. If there is reason to believe that collusion exists between Bidders, those parties' bids will be rejected and deemed for City purposes to be a conviction of a public entity crime.

2.5 Variances

2.5.1 For purposes of bid evaluation, Bidders must indicate any variances, no matter how slight, from the ITB General Conditions, Special Conditions, Technical Specifications or Addenda. No variations or exceptions by a Bidder will be considered or deemed a part of the bid submitted unless such variances or exceptions are listed in the ITB and referenced in the space provided on the bid pages. If variances are not stated, or referenced as required, it will be assumed that the product or service fully complies with the City's terms, conditions, and specifications.

2.5.2 By receiving a bid, the City does not necessarily accept any variances contained in the ITB. All variances submitted are subject to review and approval by the City. If any bid contains material variances that in the City's sole opinion, makes that bid conditional in nature, the

2.6 Omission of Details

The apparent silence of the specifications and any amendment regarding any details or the omission from the specifications of a detailed description concerning any services or material requested, shall be regarded as unintentional and should not serve to alleviate the Contractor of their performance responsibilities.

2.7 Mistakes

Bidders are cautioned to examine all terms, conditions, specifications, drawings, exhibits, addenda, delivery instructions, and special conditions pertaining to the ITB. Failure of the Bidder to examine all pertinent documents shall not entitle him to any relief from the conditions imposed in the contract and may lead to rejection of a bid.

2.8 Bidder's Cost

The City shall not be liable for any costs incurred by Bidders in responding to this ITB.

2.9 Bid Acceptance

Any bid may be withdrawn up until the bid opening date and time (due date). Any bid not so withdrawn shall upon opening constitute as an irrevocable offer to the City to provide the products and/or services set forth in the ITB. Bidder warrants by virtue of submitting his Bid that his Bid and the prices quoted in his Bid will be firm for acceptance by the City for a period of ninety (90) days from the date of ITB opening unless otherwise agreed upon by City and Bidder.

2.10 Rejection of Bids

The City reserves the right to accept or reject any or all bids, part of bids, and to waive minor irregularities or variations to specifications contained in bids, and minor irregularities in the bid process.

2.11 Bidder Qualifications

Bidder shall be in the business of providing the products and/or services required and must possess sufficient financial support, equipment and organization to insure that it can satisfactorily perform the services if awarded a Contract. Bidders shall satisfy each of the following requirements cited below. Failure to do so may result in the bid being deemed non-responsive.

2.11.1 Bidder shall have no record of judgments, pending lawsuits against the City or criminal activities involving moral turpitude and not have any conflicts of interest that have not been waived by the City Commission.

2.11.2 Neither Bidder nor any principal, officer, or stockholder of Bidder(s) shall be in arrears or in default of any debt or contract involving the City, (as a party to a contract, or otherwise); nor have failed to perform faithfully on any previous contract with the City.

2.12 Bidder's Experience Record

The City shall have the right to investigate the financial condition and experience record of each prospective Contractor and determine to its satisfaction the competency of each to undertake the project requested by this bid.

2.13 Licenses and Certifications

The Bidder shall be appropriately licensed to perform the work. Bidder shall possess at the time of bid opening all required licenses and certifications. The Bidder shall be responsible for

all costs associated with obtaining and maintaining all required licenses, certifications, and permits.

2.14 Insurance

The bidder's response shall include evidence of insurability meeting the minimum insurance requirements stated in the Special Terms and Conditions. The successful bidder shall not commence operations pursuant to the terms of this ITB and the resulting Contract, until a certificate of insurance naming the City of Deerfield Beach as additionally insured has been received and approved. The Bidder shall assume full responsibility and expense to obtain all necessary insurance.

2.15 Indemnification

The Contractor shall at all times indemnify, hold harmless and, at City Attorney's option, defend or pay for an attorney selected by City Attorney to defend the City of Deerfield Beach, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by intentional or negligent act of, or omission of the Contractor, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Contract including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against the City by reason of any such claim, cause of action or demand, the Contractor shall, upon written notice from the City, resist and defend such lawsuit or proceeding by counsel satisfactory to the City or, at City's option, pay for an attorney selected by the City Attorney to defend City. The provisions and obligations of this section shall survive the expiration or earlier termination of this Contract. To the extent considered necessary by the Contract Administrator and the City Attorney, any sums due Contractor under this Contract may be retained by City until all of City's claims for indemnification pursuant to this Contract have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by City.

2.16 Legal Requirements

Applicable provisions of all federal, state, and county laws, and local ordinances, rules and regulations, shall govern development, submittal and evaluation of all bids received in response hereto and shall govern any and all claims and disputes which may arise between person(s) attaching a bid response hereto and the City by and through its officers, employees and authorized representatives, or any other person, natural or otherwise. Lack of knowledge by any Bidder shall not constitute a cognizable defense against the legal effect thereof.

2.17 Protest Procedures

In accordance with Section 38-139 of the City of Deerfield Beach Code of Ordinances, if a Bidder intends to protest a solicitation or proposed award the following shall apply:

2.17.1 Any respondent (also known as Bidder) to a competitive solicitation who is aggrieved in connection with the pending award of a ~~contract~~ competitive solicitation or any element of the process leading to the award of ~~or contract~~ competitive solicitation may protest to the Purchasing Manager. A protest must be filed within five (5) business days after ~~bid opening~~ of the first date that the respondent to the competitive solicitation knew or should have known of the facts giving rise to the protest, but no later than five business days of notification of the intent to award or any right to protest is forfeited. The protest must be in

writing, must identify the name and address of the protester, and must include a factual summary of, and the basis for, the protest. Filing shall be considered complete when the protest is received by the Purchasing Manager.

2.17.2 Upon receipt of a protest of the pending award of a ~~contract~~ competitive solicitation, the Purchasing Manager shall review the charge to determine whether the protest was timely filed. If upon review the Purchasing Manager determines that the protest was not timely filed, the Purchasing Manager shall dismiss the protest. If it is determined that the protest was timely filed, the Purchasing Manager shall notify all Bidders of the protest and inform them of the scheduled hearing before the City Commission and of their right to intervene. Any Bidder may formally intervene in the proceeding by filing a request to intervene with the Purchasing Manager.

2.17.3 The Purchasing Manager shall require a deposit from a protester to compensate the City for the expenses of administering the protest. If the protest is decided in the protester's favor, the entire deposit shall be returned to the protester. If the protest is not decided in the protester's favor, the deposit shall be forfeited to the City. The deposit shall be in the form of cash, a cashier's check, or a payment bond and shall be in the amount of 1% of the amount of the pending award, with a minimum deposit of \$250 and a maximum deposit of \$1,000.

2.17.4 The protester and intervener(s) may file written documentation relating to the protest with the Purchasing Manager. It shall be the obligation of such protester or intervener(s) to deliver said documentation at least one week prior to City Commission action on the protest.

2.17.5 The City Commission may hear from the protester and intervener(s) in its discretion or may dispose of the protest without permitting presentations on the protest. If, on its face, the protest does not state sufficient cause to warrant remedial action, the City Commission may deny the protest without further participation by the protester or intervener(s). The Commission, in its sole discretion, may deny the protest, grant the protest and fashion relief or remedial action as it deems appropriate, or reject all bids and begin the ITB process again.

2.18 Cone of Silence

In accordance with Section 38-140 of the City of Deerfield Beach Code of Ordinances, during the course of a competitive solicitation, a Cone of Silence shall apply as follows:

2.18.1 A Cone of Silence shall be in effect during a Competitive Solicitation beginning upon the advertisement for invitations to bid, requests for bids, requests for qualifications, or other competitive solicitation. The Cone of Silence shall terminate at the time the City Commission makes final award of a bid or gives final approval of a contract or contract amendment, rejects all bids or responses to the Competitive Solicitation, or takes other action which ends the Competitive Solicitation. The Cone of Silence shall continue through the negotiation phase for requests for bids and requests for qualifications and shall not end until the Commission gives final approval of the contract.

2.18.2 Any person or entity that seeks a contract, contract amendment, award, recommendation, or approval related to a Competitive Solicitation or that is subject to being evaluated or having its response evaluated in connection with a Competitive Solicitation, including a person or entity's representative shall not have any communication with any City Commissioner, the City Manager and their respective support staff or any person or group of persons appointed or designated by the City Commission or the City Manager to evaluate, select, or make a recommendation to the City Commission or the City Manager regarding a Competitive Solicitation.

2.18.3 The Cone of Silence shall not apply to written or oral communications with legal counsel for the City or the Purchasing Manager for the City.

2.18.4 Any action in violation of this section shall be cause for disqualification of the bid. The determination of a violation shall be made by the City Commission.

2.19 Ethics Code

Bidders are required to acquaint themselves with the provisions in the City of Deerfield Beach's Ethics Code, Chapter 2, Article IX Code of Ordinances. The City Commission will strictly apply the Ethics Code. Section 2-505 "Disclosure and Behavior Requirements of Applicants and Person/Entity seeking a City contract or currently doing business with the City" is of immediate interest. Bidder shall complete the Disclosure Form (attached). Failure to do so may result in the Bidder's bid being deemed non-responsive.

2.20 Public Records / Confidential Information

Florida law provides that municipal records shall at all times be open for personal inspection by any person, unless otherwise exempt. Information and materials received by the City in connection with a Bidder's response shall be deemed to be public records subject to public inspection. However, certain exemptions to the public records law are statutorily provided for in Section 119.07, F.S. Section 119.07, F.S. provides an exemption from public records law for sealed bids, bids, or replies received by an agency pursuant to a competitive solicitation until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, bids, or final replies, whichever is earlier.

If the Bidder believes any of the information contained in his or her response is exempt from the Public Records Law, then the Bidder must in his or her response specifically identify the material which is deemed to be exempt and cite the legal authority for the exemption, otherwise, the City will treat all materials received as public records.

2.21 Public Entity Crimes Information Statement

A person or affiliate who has been placed on the convicted Contractor list following a conviction for public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to public entity, may not be awarded or perform work as a Bidder, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, for category two for a period of thirty-six (36) months from the date of being placed on the convicted Contractor list.

2.22 Anti-Collusion

The Bidder certifies that it has not divulged, discussed or compared its bid with other Bidders, except subcontractors if

they form part of the response and has not colluded with any other Bidders or parties to a bid whatsoever. No premiums, rebates or gratuities are permitted either with, prior to, or after any delivery of material or service. Any violation of this provision will result in the immediate cancellation of the contract and removal from the Bidder's list.

Each Bidder shall complete the Non-Collusive Affidavit Form (attached) and shall submit the form with the bid. The City considers the failure of the Bidder to submit this document to be a major irregularity and shall be cause for rejection of the Bid.

2.23 Conflict of Interest

2.23.1 The Bidder covenants that they presently have no interest and shall not acquire any interest, directly or indirectly, which would conflict in any manner or degree with the performance of the Contract hereunder. The Bidder further covenants that no person having any such known interest shall be employed or conveyed an interest, directly or indirectly, in the contract.

2.23.2 No contract will be awarded to a Bidder who has City elected officials, officers or employees affiliated with it, unless the Bidder has fully complied with current Florida State Statutes and City Ordinances relating to this issue. Bidders must disclose any such affiliation. Failure to disclose any such affiliation will result in disqualification of the Bidder and removal of the Bidder from the City's Bidder's List and prohibition from engaging in any business with the City.

2.24 No Contingent Fee

Bidder warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Bidder to solicit or secure the Contract and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Bidder, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making the Contract. For the breach or violation of this provision, the City shall have the right to terminate the Contract without liability at its discretion.

2.25 Special Conditions

Any and all Special Conditions contained in this ITB that may be in variance or conflict with the General Conditions shall have precedence over the General Conditions. If no changes or deletions to General Conditions are made in the Special Conditions, then the General Conditions shall prevail in their entirety.

2.26 Entire Agreement

This Invitation to Bid, all attachments and exhibits, addenda, the bidder's submittal, and the resulting Contract attached states the entire contract between the parties hereto with respect to the subject matter hereof, all prior and contemporaneous understandings, representations and agreements are merged herein or superseded hereby. No alterations, modifications, release or waiver of this contract or any provisions hereof shall be effective unless in writing executed by the parties.

2.27 Local Business Preference Program

In accordance with Section 38-128(8) of the City of Deerfield Beach Code of Ordinances, during the course of a competitive solicitation, a Local Business Preference shall apply as follows:

2.27.1 The City hereby establishes a local business preference program to facilitate local businesses participating in the bidding process. Except where prohibited by federal, state or City law, or funding source restriction mandates

to the contrary, in the purchase of goods or general services governed by the Procurement Code, preference shall be awarded to local businesses in the following manner.

- a. When a responsive, responsible nonlocal business submits the lowest price bid, and the bid submitted by one or more responsive, responsible local businesses is within five percent of the bid submitted by the nonlocal business, then such local businesses shall have the opportunity to submit, within five working days of receipt of formal written notice by the Purchasing Division, a best and final bid equal to or lower than the amount of the low bid previously submitted by the nonlocal business. Thereafter, contract award shall be made to the responsive, responsible business submitting the lowest and best and final bid. In the case of a tie in the best and final bid between a local business and a nonlocal business, contract award shall be made to the local business.
- b. For all other competitive solicitations the objective factors used to evaluate the responses from proposers are assigned point totals. Where evaluation of criteria, including and beyond price, is the determining factor for award, the total score of each individual evaluation committee member's total points of the local vendor will adjust upward by five percent (5%).

2.27.2 An eligible bidder or proposer must satisfy the criteria set forth below. The City has sole discretion in determining whether a business meets the following criteria to qualify for a local business preference.

- a. A bidder or proposer shall complete, fully execute, and provide all required information contained in the Local Business Affidavit contained in the Invitation to Bid or the Request for Proposal. The determination as to whether a bidder or proposer is a local business shall be made by City staff based upon documentation submitted by the bidder or proposer at the time of bid or proposal submission as verified by staff.
- b. In order to qualify for local bidder preference for any Invitation to Bid or Request for Proposal a bidder or proposer seeking local business preference shall have no history of non-performance, delinquent fees, liens, or Code violations.

2.27.3 This section shall not apply to professional services procured pursuant to the State of Florida Consultants Competitive Negotiations Act; nor to "cooperative" procurements that the City participates in with other governmental agencies.

2.28 ~~Small Disadvantaged Business Entity (SDBE)~~

~~In accordance with Section 38-146 of the City of Deerfield Beach Code of Ordinances, during the course of a~~

~~competitive solicitation, a Small Disadvantaged Business Entity preference shall apply as follows:~~

~~**2.28.1** The City Commission does hereby establish a goal of 15 percent participation by SDBEs for all competitively bid contracts in excess of \$50,000.00. Such participation shall be a goal of the City of Deerfield Beach City Commission and shall be subject to the terms and the conditions set forth herein. The SDBE Participation Affidavit, to be filed with all competitive bids, is attached.~~

~~**2.28.2** Unless specifically exempted by resolution of the City Commission, or otherwise set forth herein, each contract which is competitively bid or the subject of a request for proposal shall include a requirement that the contractor commit to the expenditure of at least 15 percent of the contract award with one or more SDBEs where the City estimates that the eventual cost will exceed \$50,000.00. This requirement may be completely or partially waived by the City Commission or City Manager if it is determined that a different percentage commitment should apply based upon the availability and capacity of SDBEs in the applicable industry, service or commodity or where the City Commission or City Manager determines that the goods or services sought will not require the use of subcontractors. A business enterprise owned by a woman who is a member of a minority group may be counted on a particular contract as an MBE or WBE but not both. This commitment may be met by contractor status as MBE or WBE, or by a joint venture with one or more MBEs or WBEs as prime contractor to the extent of the MBE or WBE participation in such joint venture, or by subcontracting a portion of the work to one or more MBEs or WBEs by the purchase of materials or services for the work from one or more MBEs or WBEs, or by the indirect participation of MBEs or WBEs in other aspects of the contractor's business but no dollar amount of such indirect MBE or WBE participation shall be credited more than once against a contractor's MBE or WBE commitment with respect to all contracts of such contractor, or by any combination of the foregoing. Unless exempted or waived as set forth above, a contractor's bid is non-responsive if it does not identify the SDBE utilization and contain a commitment to at least the SDBE percentage commitment stated in the contract specifications unless SDBE unavailability documentation, a copy of which is attached hereto, is accurately completed and submitted with the bid. The City Manager may change the form of the affidavits required.~~

~~**2.28.3** In all contracts governed by this subdivision SDBE participation (or as required in bid specifications or requests for proposal) or an effort to secure said participation shall be deemed a part of the award evaluation process. The City Commission may, by motion, require the provisions of this subdivision to apply to requests for proposals or other contract awards.~~

2.29 Assignment

Contractor shall not transfer or assign or subcontract the performance required by this ITB without the prior written

consent of the City. Any award issued pursuant to this ITB, and the monies, which may become due hereunder, are not assignable except with the prior written approval of the City Manager or selected designee.

2.30 Waiver

It is agreed that no waiver or modification of this contract or of any covenant, condition or limitation contained in it shall be valid unless it is in writing and duly executed by the party to be charged with it, and that no evidence of any waiver or modification shall be offered or received in evidence in any proceeding, arbitration, or litigation between the parties arising out of or affecting this contract, or the right or obligations of any party under it, unless such waiver or modification is in writing, duly executed as above. The parties agree that provisions of this paragraph may not be waived except by a duly executed writing.

2.31 Survivorship Rights

This contract shall be binding on both parties to the benefit of the respective parties and their executors, administrators, heirs, personal representative, successors and assignees.

2.32 Severability

If any term or provision of this contract is found to be illegal and unenforceable, such term(s) shall be deemed stricken and the remainder of the contract shall remain in full force and effect.

2.33 Force Majeure

If the City or the Contractor is prevented from or delayed in performing its duties pursuant to any contract resulting from this ITB due to Force Majeure, then the affected party shall be excused from performance thereunder during the period of such Force Majeure. The party claiming Force Majeure shall promptly notify the other party in writing when it learns of the existence of a Force Majeure condition and when the Force Majeure condition has terminated. The term "Force Majeure" shall mean any event or condition having a material and adverse effect on the rights, duties and obligations of a party hereunder that is beyond the reasonable control, and not the result of willful or negligent action or omission or a lack of reasonable diligence, of the party relying thereon as justification for not performing. Such events or conditions may include, but shall not be limited to, an act of God, epidemic, hurricane, earthquake, fire, explosion, storm, flood or similar occurrence, an act of war, effects of nuclear radiation, blockade, insurrection, riot, labor unrest (other than with respect to employees of the party claiming relief), civil disturbance, restraint of government or people or similar occurrences, or damage caused by Hazardous Waste, explosives or radioactive waste entering a facility unless knowingly accepted by Contractor. In any event, Force Majeure shall not include the following: (a) the failure of any subcontractor or any supplier to furnish labor, services, materials or equipment, unless caused by an event of Force Majeure; (b) the suspension, termination, interruption, denial or failure of renewal of any permit, license, consent, authorization or approval relating to the operation of a facility which is the result of any action or inaction or failure of the compliance by Contractor or any affiliate; (c) any change in law (other than to the extent that Contractor's physical ability to process waste or recyclables is eliminated due to a change in law); (d) loss or unavailability of personnel desired by Contractor to operate or maintain a facility; (e) wear and tear or obsolescence of any parts or equipment utilized in or at a facility; or (f) except as a result of an independent event of Force Majeure, the loss of or inability to obtain or retain any utility services, including water, sewerage, fuel oil, gasoline and electric power necessary for the operation of the facility.

2.34 Default and Termination

2.34.1 Termination for Cause

In the event the Contractor shall default in any of the terms, obligations, restrictions or conditions in the contract documents, the City shall give the Contractor written notice by registered, certified mail of the default and that such default shall be corrected or actions taken to correct such default shall be commenced within three (3) calendar days thereof. In the event the Contractor has failed to correct the conditions(s) of the default or the default is not remedied to the satisfaction and approval of the City, the City shall have all legal remedies available to it, including, but not limited to, termination of the Contract in which case the Contractor shall be liable for any and all damages permitted by law arising from the default and breach of the contract.

2.34.2 Termination for Convenience

Upon ninety (90) calendar days written notice to the Contractor, the City may without cause and without prejudice to any other right or remedy, terminate the contract for the City's convenience whenever the City determines that such termination is in the best interest of the City. Where the contract is terminated for the convenience of the City the notice of termination to the Contractor must state that the contract is being terminated for the convenience of the City under the termination clause and the extent of termination. The Contractor shall discontinue all work on the appointed last day of service. The City shall compensate the Contractor for all work properly performed prior to the termination.

2.34.3 Availability of Funds

The obligation of the City for payment to a Contractor is limited to the availability of funds appropriated in a current fiscal period, and continuation of the contract into a subsequent fiscal period is subject to appropriation of funds, unless otherwise authorized by law.

2.35 Contract Administration

Overall performance under the resultant contract shall be supervised by the Assistant Director of Environmental Services or designee. If at any time during the contract period, performance is deemed to be unsatisfactory, the City shall issue a formal letter to the Contractor. Upon notification by the City, Contractor shall take such steps necessary to perform as per contract requirements.

2.36 Advertising

In submitting a bid, the Bidder agrees not to use the results there from as a part of any commercial advertising without the prior written consent of the City.

2.37 Venue

The parties waive the privilege of venue and agree that all litigation between them in the state courts shall take place in Broward County, Florida and that all litigation between them in the federal courts shall take place in the US District Court for the Southern District of Florida.

2.38 Other Governmental Agencies

If the Bidder is awarded a Contract as a result of this ITB, Bidder will, if Bidder has sufficient capacity or quantities available, provide to other government agencies, so requesting, the products or services awarded in accordance with the terms and conditions of the ITB and resulting Contract. Prices shall be F.O.B. Destination to the requesting Agency.

2.39 Service Test Period

If the Bidder has not previously performed the services to the City, the City reserves the right to require a test period to determine if the Proposer can perform in accordance with the requirements of the Contract, and to the City's satisfaction. Such test period may be from sixty (60) to one-hundred twenty (120) days, and will be conducted under all specifications, terms and conditions contained in the Contract

2.40 Transfer of Responsibility

Upon expiration, termination, or cancellation of the contract, the contractor shall assist City of Deerfield Beach to insure an orderly transfer of responsibility and/or continuity of those services required under the terms of the contract to an organization designated by City of Deerfield Beach, if requested in writing. The contractor shall provide and/or perform any or all of the following responsibilities:

2.40.1 The contractor shall deliver, FOB destination, prepaid, all records, documentation, reports, data, recommendations, master, or printing elements, etc., which were required to be produced under the terms of the contract to City of Deerfield Beach and/or to City of Deerfield Beach's designee within seven (7) calendar days after receipt of the written request. Any and all records which are on electronic media must be delivered in a format which is compatible with the system(s) currently in use by City of Deerfield Beach.

2.40.2 The contractor shall agree to continue providing any part or all of the services in accordance with the terms and conditions of the contract for a period not to exceed ninety (90) calendar days after the expiration, termination or cancellation date of the contract for a price not to exceed those prices set forth in the contract.

2.41 Quantities

No guarantee or warranty is given or implied by the City as to the amount that may or may not be purchased from any resulting contract. The City reserves the right to increase or decrease quantities or add or delete any item from the contract if it is determined to be in the best interest of the City at its sole discretion.

2.42 Risk of Loss

The risk of loss, injury or destruction, regardless of the cause of the casualty, shall be on the Successful Bidder until the delivery of the completed project and facilities to the City, and inspection and final acceptance of the entire project by the City. Title to all goods, chattel and facilities shall pass to City upon delivery and acceptance of the goods by City as evidenced in writing.

SECTION 3 - SPECIAL TERMS AND CONDITIONS OF BID

3.1 ITB Schedule

The City will use the following tentative schedule in the competitive solicitation process. The City reserves the right to change and/or delay scheduled events.

<u>Event</u>	<u>Date</u>
ITB Available	04/29/13
Mandatory Pre-Bid Meeting	05/07/13 at 10:00 a.m. EST
Last Date for Questions	05/15/13
Issue Addenda (if required)	05/17/13
Bid Opening (DUE DATE)	05/22/13 at 11:00 a.m. EST
Commission Meeting	TBD
Contract Commencement	07/1/13

3.2 Submission and Receipt of Bids

3.2.1 One (1) clearly marked original, three (3) copies, and one (1) electronic copy, on a CD or flash drive, of the bid shall be submitted on or before the due date and time, Wednesday, May 22, 2013 at 11:00 a.m. EST, in one single, sealed envelope or package. Faxed, e-mailed or verbal bids will not be accepted under any circumstances. The City shall not be responsible for the premature opening of a Bid not properly marked and identified as required herein. The envelope shall be clearly marked on the exterior with the following information:

- 1) Recycling Processing Services
ITB #2012-13/22
- 2) Due Date: Wednesday, May 22, 2013 at 11:00 a.m. EST
- 3) Company/Bidder's Name, Point of Contact, Address, and Phone Number
- 4) City of Deerfield Beach
Purchasing Division
401 S.W. 4th St.
Deerfield Beach, FL 33441

3.2.2 Any erasures or corrections on the bid must be made in ink and initialed by the Bidder in ink. All information submitted by the Bidder shall be printed, typewritten or filled in with pen or ink. Bidders shall use the bid forms provided by the City. Failure to use the forms may cause the bid to be rejected and deemed non-responsive.

3.2.3 Bids must contain a manual signature of the authorized representative of the Bidder. The address, e-mail and telephone number for communications regarding the Bid must be shown.

3.2.3.1 Bids by corporations must be executed in the corporate name by the President or other corporate officer accompanied by evidence of authority to sign. The corporate address and state of incorporation must be shown below the signature.

3.2.3.2 Bids by partnerships must be executed in the partnership name and signed by a partner, whose title must appear under the signature and the official address of the partnership must be shown below the signature.

3.2.3.3 All bids received from Bidders in response to the Invitation to Bid will become the property of the City of Deerfield Beach and will not be returned to the Bidders. In the event of Contract award, all documentation produced as part of the Contract shall become the exclusive property of the City.

3.2.3.4 Bids will be publicly opened in the Purchasing Division, 2nd Floor, 401 S.W. 4th Street, Deerfield Beach, FL 33441, on the due date and time specified. The Bidder's name will be read aloud. Bidders and the public are invited to attend. Bids will be tabulated and made available for review by Bidders and the public at such time as the City provides a notice of an intended decision or until 30 days after the bid opening, whichever is earlier.

3.3 Contract Award

3.3.1 The City shall determine which Bidders are responsible and responsive, quoting the highest revenue for Recyclables as indicated on the Bid Schedule. It is the intent of the City to award the Contract to the ~~highest-responsive~~ and responsible Bidder **quoting the highest revenue** for Recyclables Processing services.

3.3.2. The City reserves the right to accept or reject any or all bids, or terminate the competitive solicitation process at any time and secure the required services by any other lawful means. The City also reserves the right to request additional information and waive minor irregularities or variations to the specifications and in the competitive solicitation process.

3.3.3 A recommendation of award to the highest responsive and responsible Bidder for Recyclables Processing services will be made to the City Commission. The City Commission has the ultimate authority to approve and/or reject any and all bids. Upon approval by the City Commission, the City Manager is authorized to execute a Contract on behalf of the City.

3.3.4 The City shall issue a Purchase Order and/or contract to the Contractor(s) upon final execution and receipt of all required documents.

3.4 Quantities

No guarantee or warranty is given or implied by the City as to the tonnage of materials that may or may not be delivered to the Contractor's designated facilities from any resulting contract. The City reserves the right to increase or decrease quantities or add or delete any item from the contract if it is determined to be in the best interest of the City at its sole discretion.

3.5 Revenues

Revenue shall include all costs associated with the project including labor, equipment, supplies, management, travel, etc. Fees shall not include any revenue sharing offsets to discount the Bid price.

3.5.1 Program Recyclables Revenue

3.5.1.1 The Contractor shall pay the City monthly for each Ton of inbound Program Recyclables delivered to the Designated Recycling Facility, as determined by the Designated Recycling Facility's scales. The payment per Ton shall be calculated as follows and as in the Bid Schedule for Recyclables Processing:

- 3.5.1.1.1** Each month, the Contractor shall calculate the Average Market Value (AMV) of the Program Recyclables, defined as the sum of the Southeast USA regional average commodity prices (U.S. Dollars per Ton) first posted in the month for which payment is being made in RecyclingMarkets.net multiplied by the composition percentages as defined in the Bid Schedule for Recyclables Processing. If at any time during the term of this Agreement RecyclingMarkets.net no longer posts or otherwise fails to provide the applicable market indices, then the parties shall mutually select an appropriate replacement source for the required information from among the sources recycling industry professionals utilize to obtain reliable Recovered Material pricing information.
- 3.5.1.1.2** The Contractor shall then deduct a Contractor's Fee of fifty dollars (\$50) from the AMV for the month for which payment is due to the City. The Contractor shall pay the City a percentage, as provided in the Bid Schedule for Recyclables Processing, of the remaining amount (AMV less Contractor's Fee) for each Ton of inbound Program Recyclables delivered to the Designated Recycling Facility during that month.
- 3.5.1.1.3** The Contractor's Fee of fifty dollars (\$50) shall be adjusted as detailed in Section 3.6.2 of this ITB.
- 3.5.1.1.4** If the AMV is less than the Contractor's Fee of fifty dollars (\$50.00), the Contractor shall make no payment to the City and the City shall make no payment to the Contractor. At no time shall the City make payment to the Contractor for accepting, processing, or marketing Program Recyclables, regardless of the AMV.
- 3.5.1.2** The City or Contractor may request a composition study of Program Recyclables delivered to the Designated Recycling Facility. The party requesting such study shall pay for the study unless otherwise agreed upon. Any such study shall be conducted by the City. The study methodology shall include the sampling and manual, hand-sorting of incoming Program Recyclables, prior to any mechanical processing. At a minimum, Program Recyclables shall be sorted into the material categories listed in the Bid Schedule for Recyclables Processing, including any additional materials that may be added during Contract Term. The Contractor may have a representative onsite throughout the recyclables composition study. Study results are subject to final approval by the City, which shall not be unreasonably withheld. If approved by the City, adjustments to the composition percentages provided in Bid Schedule for Recyclables Processing shall be made and shall become effective for the following month and the remainder of the Contract, or until further adjusted in a future composition study.
- 3.5.1.3** The Contractor acknowledges and accepts that the formula outlined in Section 3.5.2.1 shall be used for calculating revenue throughout the term of the Contract. It is intended to reflect the current value of Program Recyclables, but might not be an exact calculation of that value. If the commodity revenue received by the Contractor differs from the market index or the Contractor's Fee does not accurately reflect the Contractor's cost for accepting, processing, and marketing

Program Recyclables, the Contractor shall have taken such items into consideration when bidding the percentage of the AMV less the Contractor's Fee that it will pay to the City. Any and all costs associated with accepting, processing, marketing, and transporting Program Recyclables shall be the responsibility of the Contractor.

3.6 Cost Adjustments

3.6.1 The Contractor's payment, defined in Section 3.5.1, shall remain the same through the first Contract Year. At the beginning of the second Contract Year and each subsequent Contract Year during the term of the Contract, the Contractor's Fee shall be adjusted based on seventy-five percent (75%) of the percentage change in the Consumer Price Index (CPI) between the month of March in the previous year and the month of March in the current year, rounded to the nearest tenth. The CPI will be the Consumer Price Index for the South Urban Region, All Items – All Urban Wage Earners and Clerical Workers, (series ID #CWURO300SA0) published by the United States Department of Labor, Department of Labor Statistics (<http://www.bls.gov/data/>). The total adjustment to the Contractor's Fee in any given year shall not exceed two percent (2%) of the previous year's Contractor's Fee. If the CPI is discontinued or substantially altered, the City may select another relevant price index published by the United States Government or by a reputable publisher of financial and economic indices.

3.6.2 The Contractor may petition the City for an additional rate adjustment resulting from a change in law materially impacting the Contractor's operations. The Contractor's request shall contain substantial proof and justification to support the need for the rate adjustment. The City may request from the Contractor such further information as may be reasonably necessary in making its determination. Within sixty (60) calendar days of receipt of the request and all other additional information required by the City, the Contract Administrator shall make a determination regarding the fairness of the request, and shall make a recommendation to the City Commission. The City Commission shall consider the request. If the City Commission approves the request, adjusted rates shall become effective upon the City Commission's approval. The decision of the City Commission shall be final and binding.

3.7 Required Documents

The following documents shall be submitted in the order listed below as a condition of this ITB at the time of submittal with the Bidder's response:

- 1) Bid Package
 - a. Bid Certification
 - b. Bid Schedule for Recycling Processing
 - c. Qualification Statement
 - d. Schedule A – Disclosure Form
 - e. ~~SDBE Affidavit~~
 - f. Indemnification Clause
 - g. Non-Collusive Affidavit
 - h. Drug Free Workplace Form
 - i. Local Business Affidavit (if applicable)
 - j. References
 - k. Variances to the ITB (if applicable)
- 2) Local Business Tax Receipt (Principle Place of Business)

- 3) Copy of a Certificate of Insurance **or evidence of insurability (per Section 2.14)**
- 4) Required Licenses, Permits and Certifications **(per Section 1.8.1)**
 - a) Recyclables Processing **receiving and processing facilities**
 - (i) Facility Permits/Licenses
 - (ii) Notices of Violation
 - (iii) Consent Orders, **including settlement agreements, and dismissals or final actions by the administrative body**
 - (iv) FDEP Recovered Materials Dealer Certificate
- 5) Cost Recovery Fee **(per Section 1.9)**

3.8 Insurance Requirements

3.8.1 Coverage

Successful Bidder shall, at a minimum, provide, pay for, and maintain in force at all times during the term of this Contract the following insurance.

3.8.1.1 Commercial Liability Insurance

A Commercial Liability Insurance Policy shall be provided which shall contain minimum limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limit for bodily injury liability and property damage liability and shall contain minimum limits of Two Million Dollars (\$2,000,000.00) per aggregate. Coverage must be afforded on a form no more restrictive than the latest edition of the Commercial Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and must include:

- Premises and/or operations
- Independent contractors
- Products and/or completed operations for contracts
- Broad form contractual coverage applicable to this specific Contract, including any hold harmless and/or indemnification Contract
- Personal injury coverage with employee and contractual exclusions removed, with minimum limits of coverage equal to those required for bodily injury liability and property damage liability.

3.8.1.2 Business Automobile Liability

Business Automobile Liability shall be provided with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence, combined single limit for bodily injury liability and property damage liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

- Owned Vehicles, if applicable.
- Hired and Non-Owned Vehicles, if applicable.
- Employers' Non-Ownership, if applicable.

3.8.1.3 Workers Compensation Insurance

Workers' Compensation insurance to apply for all employees in compliance with

Chapter 440, Florida Statutes, as may be amended from time to time, the "Workers' Compensation Law" of the State of Florida, and all applicable federal laws. In addition, the policy(ies) must include:

- Employers' Liability with a limit of One Million Dollars (\$1,000,000.00) each accident.

3.8.1.4 Pollution Liability Insurance (not applicable for Contractor providing Recyclables Processing services).

Recognizing that the required work has the potential to involve the storage, processing or transporting of hazardous materials, the Contractor shall purchase and maintain, throughout the life of the contract, Pollution Liability Insurance which will respond to the bodily injury, property damage, and environmental damage caused by a pollution incident. The minimum limits of liability shall be \$1,000,000 per Occurrence / \$2,000,000 Aggregate

If coverage is provided on a claims made basis, an extended claims reporting period of four (4) years will be required. City shall also be named additionally insured.

3.8.2 General

If any operations are to be undertaken on or about navigable waters, coverage must be included for the U.S. Longshoremen & Harbor Workers Act and Jones Act.

3.8.2.1 Such policy or policies shall be without any deductible amount unless otherwise noted in this Contract and shall be issued by approved companies authorized to do business in the State of Florida, and having agents upon whom service of process may be made in Broward County, Florida. Contractor shall pay all deductible amounts, if any. Contractor shall specifically protect City and the Deerfield Beach City Commission by naming City and the Deerfield Beach City Commission as additional insured under the Commercial Liability Policy as well as on any Excess Liability Policy coverage.

3.8.2.2 Contractor shall furnish to City's Contract Administrator Certificate of Insurance or endorsements evidencing the insurance coverage specified herein within fifteen (15) calendar days after notification of award of the Contract. The required Certificates of Insurance shall name the types of policies provided, refer specifically to this Contract, and state that such insurance is as required by this Contract. Contractor's failure to provide to City the Certificates of Insurance or endorsements evidencing the insurance coverage within fifteen (15) calendar days shall provide the basis for the termination of the Contract.

3.8.2.3 Coverage is not to cease and is to remain in force (subject to cancellation notice) until all performance required of Contractor is complete. All policies must be endorsed to provide City with at least thirty (30) days' notice of expiration, cancellation and/or restriction. If any of the insurance coverages will expire prior to the completion of the work, copies of renewal policies shall be furnished at least thirty (30) days prior to the date of their expiration.

3.8.2.4 City reserves the right to review and revise any insurance requirements at the time of renewal or amendment of this Contract, including, but not limited to, deductibles, limits, coverage, and endorsements based on insurance market conditions affecting the availability or affordability of coverage, or changes in the scope of work or specifications that affect the applicability of coverage. If Contractor uses a subcontractor, Contractor shall ensure that subcontractor names City as an additional insured.

SECTION 4 – SCOPE OF SERVICES FOR RECYCLABLES PROCESSING

4.1 General Requirements

The successful Bidder (Contractor) shall receive, transfer and transport (if applicable), process and market Program Recyclables delivered by the City to the Designated Recycling Facility. The Designated Recycling Facility may be a transfer station or materials recovery facility. If the Designated Recycling Facility is not also the processing facility, Bidders must identify where Program Recyclables will be processed.

4.2 Designated Facilities

4.2.1 Contractor shall utilize the Designated Recycling Facility and Designated Processing Facility as specified on its Bidder Schedule Form for Recyclables Processing. The City will only consider Bids in which the proposed Designated Recycling Facility is located within a ten (10) mile driving distance of the City's Central City Campus (401 S.W. 4th Street, Deerfield Beach, FL 33441) and that is operational at the time of Bid submission.

4.2.2 The Designated Recycling Facility and Designated Processing Facility may be changed only with prior written approval by the Contract Administrator if the facility meets all of the requirements set forth in this ITB.

4.2.3 The Contractor shall be fully responsible for all aspects of the management, operations, and maintenance of the Designated Recycling Facility and Designated Processing Facility and accept all liabilities for such facilities.

4.2.4 The Contractor shall ensure that the Designated Recycling Facility and Designated Processing Facility are operated at all times in full compliance with all applicable local, State and Federal laws, regulations, permits and similar requirements.

4.2.5 The City shall have the right, during the Contractor's hours of operation, to inspect both the operating and maintenance practices of the Designated Recycling Facility and Designated Processing Facility. Operating practices shall include, but not be limited to, the receipt, separation, processing, loading, storage, and transport of Recyclable Materials and Recovered Materials. The Contractor shall reasonably accommodate the City's inspection rights described herein, provided it does not create a safety hazard.

4.3 Materials Acceptance

4.3.1 Beginning on the Commencement Date, the City shall direct the City's collection vehicles to deliver all Program Recyclables to the Designated Recycling Facility during the scheduled receiving hours specified herein. Program Recyclables will be delivered Single Stream. The City makes no assurances or guarantees regarding the quantity of Program Recyclables that will be delivered to the Designated Recycling Facility.

4.3.2 Beginning on the Commencement Date, the Contractor shall accept deliveries of Program Recyclables at the Designated Recycling Facility between the hours of

6:00 a.m. and 6:00 p.m. Monday through Friday ~~and 6:00 a.m. and 4:00 p.m. on Saturday~~ or other hours, approved in writing, by the Contract Administrator. The Designated Recycling Facility may be closed on Holidays as defined herein. No reduction in scheduled receiving hours shall be made without the prior written approval of the Contract Administrator.

- 4.3.3** Program Recyclables are as defined in Section 1.2. The City reserves the right to designate or remove other Recyclable Materials as Program Recyclables if the contracting parties agree it is technically feasible.
- 4.3.4** The Designated Recycling Facility shall be operated to facilitate delivery vehicle access during operations. On a daily basis, the average Turnaround Time for all vehicles entering and leaving the facility should not exceed twenty (20) minutes. Delays caused by equipment failure or safety issues not due to negligence of the Contractor or other fault of the delivery vehicle shall not be included in the Turnaround Time computation. The Contractor will provide the City with access to its records to verify vehicle turnaround time within twenty-four (24) hours' notice.
- 4.3.5** The Designated Recycling Facility shall be equipped with adequately-sized legal-for-trade truck scales and computerized record keeping systems for weighing and recording all incoming Program Recyclables delivery vehicles. Such scales shall be permitted and in compliance with Section 531.60, Florida Statutes. Contractor shall calibrate and certify scales no less frequently than annually.
- 4.3.6** The Contractor shall weigh all trucks transporting Program Recyclables that enter the Designated Recycling Facility, record such weights separate from all other materials, and generate reports of incoming Program Recyclables as required herein or requested by the City. The Contractor may use vehicle tare weights. If the Contractor chooses to do so, all vehicle tare weights must be recalibrated at least every sixty (60) calendar days.
- 4.3.7** The Contractor shall not reject any load of City Program Recyclables. If the Contractor determines a load of City Program Recyclables contains an excessive amount of Rejects, the Contractor shall inform the Contract Administrator and note the incident by taking a photograph of the Rejects and the truck, including the truck number, that delivered the material, the date and time, and estimated quantity and type of Rejects of such load.
- 4.3.8** If Hazardous Waste is found within a load of Program Recyclables delivered by the City or its agents to the Designated Receiving Facility, the Contractor shall immediately notify the Contract Administrator and the driver of the vehicle. The Contractor shall then note the incident by taking a photograph of the Hazardous Waste and the truck, including the truck number, that delivered the waste. The Contractor is responsible for properly isolating, containerizing, and disposing of such Hazardous Waste in accordance with all applicable laws. The cost of managing and disposing of such Hazardous Waste shall be borne by the City, provided that the Contractor has adequately documented that such waste was delivered by or on behalf of the City, which shall include confirmation by the vehicle driver.

4.4 Transport, Processing, Marketing, and Disposal

- 4.4.1** Upon tipping of Program Recyclables at the Designated Recycling Facility, the Contractor shall bear all costs associated with processing or transporting Program Recyclables and marketing and transporting Recovered Materials. The Contractor is responsible for all costs of transporting and disposing of non-recyclable materials, including Rejects and Residue, resulting from the processing of Program Recyclables.
- 4.4.2** Unless the Contractor has prior permission from the City, the Contractor shall not dispose of and/or landfill any Program Recyclables or Recovered Materials resulting from the processing of Program Recyclables. The Contractor shall not knowingly, or without reasonable assumption, sell Program Recyclables or Recovered Materials resulting from processing of Program Recyclables to another agent that landfills or disposes of material other than through recycling. This does not apply to Rejects and Residue.

4.5 Record Keeping

- 4.5.1** The Contractor shall create, maintain, and make available records as defined herein; as required by all applicable local, State, and Federal laws, rules and regulations; or as are reasonably necessary to document and track the performance of work pursuant to this Contract.
- 4.5.2** The Contractor shall maintain records of the amounts of Program Recyclables received at the Designated Recycling Facility. Such records shall be kept separate and apart from all other records maintained by the Contractor.
- 4.5.3** The Contractor shall maintain such records in accordance with generally accepted management principles and practices. The City shall have access to such books, records, documents, and other evidence for inspection, review, and copying during normal business hours. The Contractor will provide proper facilities for such access and inspection. The Florida Public Records Act, Chapter 119 of the Florida Statutes, may have application to records or documents pertaining to this Contract, and Contractor acknowledges that such laws have possible application and agrees to comply with all such laws.
- 4.5.4** The Contractor will maintain and allow access to books, records, data, documents, and reports relating to this Contract for three (3) years following the conclusion or termination of this Contract.

4.6 Reporting

- 4.6.1** Prior to the fifteenth (15th) calendar day of each month during the term of this Contract, the Contractor shall submit a report electronically to the Contract Administrator, in a format approved by the Contract Administrator. The report shall provide the total tonnage of Program Recyclables received at the Designated Recycling Facility during the previous month, as well as a breakdown by delivery date and time, hauler name, vehicle number, and quantity.

4.6.2 Within thirty (30) days of the end of each Contract Year, the Contractor shall provide the Contract Administrator with a report summarizing the total Tons of Program Recyclables delivered to the Designated Recycling Facility during the Contract Year and the net tonnage diverted from disposal. Additionally, the Contractor shall submit a copy of the annual report submitted to FDEP summarizing Recyclable Materials deliveries by type, quantity, and source.

4.7 Public Education and Information

4.7.1 The Contractor shall, at no cost to the City, provide an educational presentation and educational materials for distribution at least two (2) events per Contract Year as requested by the City.

4.7.2 The Contractor shall, at no cost to the City, provide tours of the Designated Recycling Facility upon at least seven (7) calendar days' notice by the City. The Contractor shall provide personnel (trilingual: English, Spanish and Creole upon request) to lead the tour and all necessary personal safety equipment. Designated areas for tour-group participants to safely observe the operations of the facility will be jointly agreed to by both the City and the Contractor prior to conducting any tours.

4.8 Invoicing and Payment

4.8.1 No later than the fifteenth (15th) day of each month, the Contractor shall submit a monthly report, in a form acceptable to the City, detailing the total revenue due to the City for the Program Recyclables delivered to the Designated Recycling Facility during the previous month.

4.8.2 The Contractor shall remit payment of said revenue, as detailed in the monthly report, within thirty (30) calendar days from the end of the month for which the payment is due.

4.9 Liquidated Damages

The parties understand that determining damages for the breach of certain provisions of the contract may be difficult. Therefore, the City may assess liquidated damages against the Contractor for failing to provide recyclables processing services in compliance with requirements of this ITB. It is hereby agreed that the City may invoice the Contractor and expect payment to be added to any monies due, or which may become due to the City, liquidated damages, and not as a penalty, in the following amounts:

- | | |
|---|-----------------------------|
| 1. Failure to accept Recyclable Materials during scheduled receiving hours (Section 4.3.2) | \$500 per unaccepted load |
| 2. Failure to provide a daily average delivery vehicle turnaround time that does exceed 20 minutes (Section 4.3.4) | \$300 per day |
| 3. Disposing of Recyclable Materials or Recovered Materials without prior approval of the Executive Director <u>Contract Administrator, who shall consider Average Market Value and other factors if applicable</u> (Section 4.4.2) | \$1,000 per occurrence |
| 4. Failure to submit timely records and reports (Section 4.6) | \$200 per calendar day late |
| 5. Failure to make timely payment to the City (Section 4.8) | \$200 per calendar day late |

ATTACHMENT "A"

DRAFT CONTRACT

THIS CONTRACT is entered into by and between the CITY OF DEERFIELD BEACH (CITY), a municipal corporation and _____ (CONTRACTOR), as follows

WITNESSETH:

WHEREAS, pursuant to ITB #2012-13/22 (the ITB) the CITY accepted competitive Bids for and Recycling Processing Services (the Services); and

WHEREAS, the Services are delineated in the ITB; and

WHEREAS, this Contract, the ITB and related addenda, and the CONTRACTOR's Response constitute the entire Contract and describe the Services to be provided; and

WHEREAS, after evaluation of price and other evaluation criteria specified in the ITB, the evaluation committee and the City Commission of the City of Deerfield Beach, Florida, the CITY has determined that the most responsive and responsible Bid was submitted by CONTRACTOR and that CONTRACTOR has the necessary resources, experience and ability to perform the contract at a competitive price; and

WHEREAS, the CITY has awarded the contract to CONTRACTOR for the Services on _____, 20____, Resolution No 20____/____;

NOW THEREFORE, be it agreed by and between the parties as follows:

ARTICLE 1

INTRODUCTION AND SCOPE OF SERVICES

- 1.1 The above referenced Whereas clauses are true and correct and made a part hereof.
- 1.2 This Contract, the ITB, together with the response to the ITB of CONTRACTOR shall constitute the entire Contract, except to the extent specifically modified on Attachment "A" Additional Terms and Conditions. The parties agree that the scope of services is a description of CONTRACTOR's obligations and responsibilities and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks which are such an inseparable part of the work described that exclusion would render performance by CONTRACTOR impractical, illogical, or unconscionable.
- 1.3 Except as specifically modified herein, CONTRACTOR shall be bound by the terms and conditions and prices as set forth in the ITB and the CONTRACTOR'S Response to the ITB. When the terms and conditions of this Contract may be read as consistent with the ITB, then and in that respect, the terms of both the ITB and this Contract shall be read as being consistent and shall be binding on both parties. Where terms and conditions of this Contract contradict anything as set forth in the ITB or the response to the ITB, then the terms and conditions of this Contract shall be binding and in full force and effect to the extent of any inconsistency.

- 1.4 CONTRACTOR acknowledges and agrees that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Contract.

ARTICLE 2

TERM AND TIME OF PERFORMANCE

- 2.1 The initial term of the Contract shall be five (5) years, beginning July 1, 2013 and ending June 30, 2018. The City reserves the right in its sole discretion, and upon mutual consent of both parties, to renew the contract for two (2) additional five (5) year renewal terms.
- 2.2 **Renewal Options**
The City reserves the right to extend the contract for two (2) additional five (5) year renewal terms providing all terms, conditions and specifications remain the same; both parties agree to the extension; and such extension is approved by the City Commission in their sole discretion.
- 2.3 Time shall be deemed to be of the essence in performing the duties, obligations and responsibilities required by this Contract.

ARTICLE 3

COMPENSATION

- 3.1 The CONTRACTOR shall compensate the CITY for all Program Recyclables delivered to and processed by the CONTRACTOR, in the manner specified in the ITB, the amounts set forth in the CONTRACTOR's Response for work actually performed and completed pursuant to the Contract, which amount shall be accepted by the CITY as full compensation for all such work. At no time shall the CITY compensate the CONTRACTOR for the processing of the CITY's recyclable materials.
- 3.2 The CONTRACTOR and the CITY shall abide by the Local Government Prompt Payment Act, FL SS. 218.70-218.80.

ARTICLE 4

TERMINATION OR SUSPENSION

- 4.1 This Contract may be terminated for convenience by the CITY. Termination for convenience by the CITY shall be effective on the termination date stated in written notice provided by CITY, which termination date shall be not less than ninety (90) days after the date of such written notice. This Contract may also be terminated by the City Manager upon such notice as the City Manager deems appropriate under the circumstances in the event the City Manager determines that termination is necessary to protect the public health or safety. The parties agree that if CITY erroneously, improperly or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective ninety (90) days after such notice of termination for cause is provided.
- 4.2 This Contract may be terminated for cause for reasons including, but not limited to, CONTRACTOR's repeated (whether negligent or intentional) submission for payment of false or

incorrect bills or invoices; failure to suitably perform the work; or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Contract.

- 4.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Contract except that notice of termination by the City Manager, which the City Manager deems necessary to protect the public health, safety, or welfare may be verbal notice that shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Contract.
- 4.4 In the event this Contract is terminated for convenience, CONTRACTOR and/or CITY shall be paid for any services properly performed under the Contract through the termination date specified in the written notice of termination. CONTRACTOR acknowledges and agrees that it has received good, valuable and sufficient consideration from CITY, the receipt and adequacy of which are, hereby acknowledged by CONTRACTOR, for CITY's right to terminate this Contract for convenience.
- 4.5 In the event this Contract is terminated for any reason, any amounts due CONTRACTOR shall be withheld by CITY until all documents are provided to CITY pursuant to Section 6.1 of Article 6.
- 4.6 In the event this Contract is terminated for any reason, any amounts due CITY shall not be withheld by CONTRACTOR for any reason.
- 4.7 Should at any time during the term of this contract, including any option terms, the CONTRACTOR is in violation of any of the terms and conditions of this contract, the City shall have the right to suspend the CONTRACTOR until the violation is resolved to the satisfaction of the City. If the violation is not promptly resolved or is of such serious nature that the City determines that suspension is not adequate, the City reserves the right to terminate for cause.
 - 4.7.1 In the event a CONTRACTOR is terminated, the City may assign the contract to another CONTRACTOR, or seek a new CONTRACTOR, until the contract is re-let, or until the end of the contract term then in effect, at its sole option and shall reserve all legal remedies for damages and other relief.

ARTICLE 5

EEO AND ADA COMPLIANCE

- 5.1 CONTRACTOR shall not unlawfully discriminate on the basis of race, color, national origin, sex, religion, age, political affiliation or disability in the performance of this Contract, the solicitation for or purchase of goods or services relating to this Contract, or in subcontracting work in the performance of this Contract. CONTRACTOR shall include the foregoing or similar language in its contracts with any subcontractors or subconsultants, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26, as amended. Failure to comply with the foregoing requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as CITY deems appropriate.
- 5.2 CONTRACTOR shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Contract. CONTRACTOR shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by CITY, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, CONTRACTOR shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

ARTICLE 6

MISCELLANEOUS

6.1 RIGHTS IN DOCUMENTS AND WORK

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Contract are and shall remain the property of CITY; and, if a copyright is claimed, CONTRACTOR grants to CITY a non-exclusive license to use the copyrighted item(s) indefinitely, to prepare derivative works, and to make and distribute copies to the public. In the event of termination of this Contract, any reports, photographs, surveys, and other data and documents prepared by CONTRACTOR, whether finished or unfinished, shall become the property of CITY and shall be delivered by CONTRACTOR to the Contract Administrator within seven (7) days of termination of this Contract by either party. Any compensation due to CONTRACTOR shall be withheld until all documents are received as provided herein.

6.2 AUDIT RIGHT AND RETENTION OF RECORDS

CITY shall have the right to audit the books, records, and accounts of CONTRACTOR and its subcontractors that are related to this Project. CONTRACTOR and its subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project. All books, records, and accounts of CONTRACTOR and its subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, CONTRACTOR or its subcontractor, as applicable, shall make same available at no cost to CITY in written form.

CONTRACTOR and its subcontractors shall preserve and make available, at reasonable times for examination and audit by CITY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Contract for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Contract. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by CITY to be applicable to CONTRACTOR's and its subcontractors' records, CONTRACTOR and its subcontractors shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CONTRACTOR or its subcontractors. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for CITY's disallowance and recovery of any payment upon such entry.

CONTRACTOR shall, by written contract, require its subcontractors to agree to the requirements and obligations of this Section 6.2.

6.3 COMPLAINTS AND DISPUTES

All complaints concerning misconduct on the part of the Contractor or disputes between City staff and the CONTRACTOR are referred to the City Manager or his designee, who shall conduct investigations and inquiries, including discussions with the CONTRACTOR and involved staff. The determinations of the City Manager or designee shall be binding upon the parties, and failure of the CONTRACTOR to follow any such determination could be considered a material breach and subject the CONTRACTOR to termination for cause. The CONTRACTOR agrees that any complaints received by the City concerning misconduct on the part of the CONTRACTOR, such as excessive charges, poor business practices, etc., will be referred to the Office of the City Manager for appropriate action. The CONTRACTOR agrees to make any complaints concerning the City of Deerfield Beach available to the Office of the City Manager for action as required.

6.4 THIRD PARTY BENEFICIARIES

Neither CONTRACTOR nor CITY intends to directly or substantially benefit a third party by this Contract. Therefore, the parties agree that there are no third party beneficiaries to this Contract and that no third party shall be entitled to assert a right or claim against either of them based upon this Contract.

6.5 NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

FOR CITY:

Burgess Hanson, City Manager
City of Deerfield Beach
401 S.W. 4th Street
Deerfield Beach, FL 33441

FOR CONTRACTOR:

6.6 MATERIALITY AND WAIVER OF BREACH

CITY and CONTRACTOR agree that each requirement, duty, and obligation set forth herein was bargained for at arms-length and is agreed to by the parties in exchange for quid pro quo, that each is substantial and important to the formation of this Contract and that each is, therefore, a material term hereof.

CITY's failure to enforce any provision of this Contract shall not be deemed a waiver of such provision or modification of this Contract. A waiver of any breach of a provision of this Contract shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Contract.

6.7 SEVERANCE

In the event a portion of this Contract is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless CITY or CONTRACTOR elects to terminate this Contract. An election to terminate this Contract based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

6.8 JOINT PREPARATION

Each party and its counsel have participated fully in the review and revision of this Contract and acknowledge that the preparation of this Contract has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. The language in this Contract shall be interpreted as to its fair meaning and not strictly for or against any party.

6.9 WAIVER OF JURY TRIAL

By entering into this contract, CONTRACTOR and CITY hereby expressly waive any rights either party may have to a trial by jury of any civil litigation related to this contract.

6.10 AMENDMENTS

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Contract and executed by the Board and CONTRACTOR or others delegated authority to or otherwise authorized to execute same on their behalf.

6.11 PRIOR CONTRACTS

This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, Contracts, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, Contract, or understanding concerning the subject matter of this Contract that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or Contract, whether oral or written.

6.12 REPRESENTATION OF AUTHORITY

Each individual executing this Contract on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Contract, duly authorized by all necessary and appropriate action to execute this Contract on behalf of such party and does so with full legal authority.

6.13 MULTIPLE ORIGINALS

Multiple copies of this Contract may be executed by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

IN WITNESS WHEREOF the parties have caused these presents to be executed.

Witnesses:

CITY OF DEERFIELD BEACH

By: _____
BURGESS HANSON, CITY MANAGER

Date: _____

ATTEST:

ADA GRAHAM-JOHNSON, MMC, CITY CLERK

APPROVED AS TO FORM:

ANDREW S. MAURODIS, CITY ATTORNEY

CONTRACTOR MUST EXECUTE THIS CONTRACT AS INDICATED BELOW. USE CORPORATION OR NONCORPORATION FORMAT, AS APPLICABLE.

[If incorporated sign below.]

CONTRACTOR

ATTEST:

(Secretary)

(Corporate Seal)

(Name of Corporation)

By _____
(Signature)

(Type Name/Title Signed Above)

____ day of _____, 20__.

[If not incorporated sign below.]

CONTRACTOR

WITNESSES:

(Name)

By _____
(Signature)

(Type Name Signed Above)

____ day of _____, 20__.

CITY REQUIRES THREE (3) FULLY-EXECUTED CONTRACTS, FOR DISTRIBUTION



City of
DEERFIELD

BEACH

Section 5
Bid Package

Recyclables Processing Services
ITB #2012-13/22
SECOND AMMENDMENT

Submitted By:

Company Name: _____

Street Address: _____

City/State/Zip: _____

Point of Contact: _____

Phone No.: _____ Fax: _____ E-Mail: _____

**Bid Certification
(Page 1 of 3)**

I have received, read and agree to the all terms and conditions as set forth in ITB #2012-13/22, Recyclables Processing Services. I hereby recognize and agree that upon execution by an authorized officer of the City of Deerfield Beach, this Bid Package, together with the ITB, the resulting Contract, and all other documents prepared by or on behalf of the City of Deerfield Beach for this solicitation, shall become a binding agreement between the parties for the services to be provided in accordance with the terms and conditions set forth herein. I further certify that all information and documentation contained within this Bid to be true and correct.

Printed Name / Signature

Addendum Acknowledgment (if applicable):

Bidder acknowledges that the following addenda have been received and are included in his/her Bid Package:

<u>Addendum No.</u>	<u>Date Issued</u>
_____	_____
_____	_____
_____	_____
_____	_____

Statement of No Bid (if applicable):

The above named company does not intend to submit a bid for the following reason: insufficient time to respond, do not offer product or service, unable to meet specifications, schedule will not permit or any other reason as stated:

Communications regarding this bid shall be addressed to:

Company Name: _____

Social Security No./ Federal Tax ID: _____

Proposer's Name (Print): _____ Title: _____

Address: _____

City _____ State _____ Zip Code _____

Telephone: (_____) _____ Fax: (_____) _____

E-mail: _____

**Bid Certification
Page (2 of 3)**

Certification of Bidder, If an Individual

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2013 by _____ who is personally known to me or who has produced _____ (type of identification), as identification.

NOTARY'S SEAL: _____
NOTARY PUBLIC, STATE OF FLORIDA
(Signature of Notary Taking Acknowledgment)

(Name of Acknowledger Typed, Printed or Stamped)
My Commission Expires: _____

Certification of Bidder, If a Partnership

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2013 by _____, partner on behalf _____ (name of partnership), a partnership. He/she is personally known to me or who has produced _____ (type of identification), as identification.

NOTARY'S SEAL: _____
NOTARY PUBLIC, STATE OF FLORIDA
(Signature of Notary Taking Acknowledgment)

(Name of Acknowledger Typed, Printed or Stamped)
My Commission Expires: _____

**Bid Certification
Page (3 of 3)**

Certification of Bidder, If a Corporation

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2013 by

_____, as _____ (title)

of _____ (Name of corporation). He/she is personally known to me or who has produced _____ (type of identification), as identification.

NOTARY'S SEAL: _____

NOTARY PUBLIC, STATE OF FLORIDA
(Signature of Notary Taking Acknowledgment)

(Name of Acknowledger Typed, Printed or Stamped)

My Commission Expires: _____

Bid Schedule for Recyclables Processing

Bidder understands that the extended amount for each item is a result of multiplying the estimated quantity by the unit prices. Any multiplication errors shall be resolved in favor of the unit prices. Should there be any discrepancy between the written and numerical amount, the written prevails.

Bidder shall enter the percentage of the Average Market Value (AMV) less a Contractor's fee of \$50.00 that it will pay the City for each Ton of inbound Program Recyclables delivered by the City or its agents to the Designated Recycling Facility, as determined by the Designated Recycling Facility scales.

The payment per Ton shall be calculated as follows:

Each month, the Contractor shall calculate the AMV of the City's Program Recyclables, defined as the sum of the Southeast USA regional average commodity prices (U.S. Dollars per Ton) first posted in the month for which payment is being made in RecyclingMarkets.net multiplied by the composition percentages of the City's Program Recyclables, as defined in the table below, which calculates the AMV for March 2013.

Calculation of the March 2013 Average Market Value

Material	Index Description	Index Value (Mar '13)	Market Value (\$/Ton)	Material %	Average Market Value (\$/Ton)
Newspaper	PS 8 baled, F.O.B. seller's dock	77.5	\$77.50	17.0%	\$13.18
Corrugated Containers	PS 11 baled, F.O.B. seller's dock	112.5	\$112.50	10.0%	\$11.25
Mixed paper	PS 1 baled, F.O.B. seller's dock	70	\$70.00	24.5%	\$17.15
Steel cans	\$/Ton, sorted, baled and delivered	115.0	\$115.00	3.7%	\$4.26
Aluminum cans	Cents/lb., sorted, baled and delivered	79.5	\$1,590.00	2.4%	\$38.16
Plastics #3-#7	Commingled (#3-7, cents/lb; baled and picked up)	0.3	\$6.00	5.3%	\$0.32
PET	Cents/lb., baled and picked up	20.8	\$416.00	5.7%	\$23.71
Natural HDPE	Cents/lb., baled and picked up	32.5	\$650.00	2.2%	\$14.30
Colored HDPE	Cents/lb., baled and picked up	25.8	\$516.00	3.2%	\$16.51
Glass (3 Mix)	\$/Ton, delivered	0.0	\$0.00	22.5%	\$0.00
Aseptic Containers	None at this time	0.0	\$0.00	0.5%	\$0.00
Contamination	N/A	N/A	\$0.00	3.0%	\$0.00
				100.0%	\$138.84

Note: The index values for March 2013 are used for estimation purposes only, and are subject to fluctuation as determined by Secondary Fibers and Material Pricing found on RecyclingMarkets.net. Prices to be used are the first published Regional Average prices for the Southeast USA in the month for which payment is being made. No market index currently exists for aseptic containers on RecyclingMarkets.net; therefore, the value is set at \$0. When a market index for aseptic containers or polycoated cartons becomes available on RecyclingMarkets.net, it will be utilized.

A fifty dollar (\$50.00) Contractor's Fee shall be deducted from the AMV. This fee shall be adjusted as specified in Section 3.6.2 of this ITB.

The Contractor shall pay the City a percentage, as bid below, of the remaining amount (AMV less Contractor's fee) for each Ton of inbound Program Recyclables delivered during that month.

Bid Schedule for Recyclables Processing (continued)

Bidder shall enter in the yellow cells, below, the percentage amount that it will pay the City for inbound Program Recyclables.

The AMV is intended to be used as a market index and does not necessarily reflect the commodity revenue received by the Contractor; therefore, the Bidder should determine the Bid Percentage accordingly. Any and all costs associated with processing, marketing, and transporting Program Recyclables, including costs for rejects and residue disposal, are the responsibility of the Contractor.

Program Recyclables Revenue Bid*

\$138.84	-	\$50.00	X	%	=	\$
March 2013 AMV		Contractors fee	Bid Percentage			Corresponding revenue per ton based on AMV and Bid Percentage

* \$/ton based on March 2013 AMV for estimation purposes only, and is subject to monthly market fluctuation, as specified herein.

Written out Bid Percentage: _____

Company Name: _____

Proposer's Name: _____

Title: _____

Signature: _____

Date: _____

Qualification Statement

The undersigned certifies under oath the truth and correctness of all statements and of all answers to questions made hereinafter:

Submitted to: City of Deerfield Beach
Address: Purchasing Division
401 S.W. 4th Street
Deerfield Beach, Florida 33441

Circle One:

- Corporation
- Partnership
- Individual
- Other

Submitted By: _____

Name: _____

Address: _____

City, St., Zip _____

Note: Additional sheets may be attached if necessary.

1. State the true, exact, correct and complete name of the partnership, corporation, trade or fictitious name under which you do business and the address of the place of business.

The correct name of the Bidder is: _____

The address of the principal place of business: _____

2. If Bidder is a corporation, answer the following:

a. Date of Incorporation: _____

b. State of Incorporation: _____

c. President's name: _____

d. Vice President's name: _____

e. Secretary's name: _____

f. Treasurer's name: _____

g. Name and address of Resident Agent: _____

3. If Bidder is a partnership, answer the following:

- a. Date of organization: _____
- b. Name, address and ownership units of all partners: _____

- c. State whether general or limited partnership: _____

4. If Bidder is other than an individual, corporation or partnership, describe the organization and give the name and address of principals:

5. If Bidder is operating under a fictitious name, submit evidence of compliance with the Florida Fictitious Name Statute.

6. How many years has your organization been in business under its present business name? _____

a. Under what other former names has your organization operated?

b. How many years has your company been in business providing the products or services relevant to this ITB?

c. How many government agencies has your company provided these products to and which ones?

7. Have you ever failed to complete any work awarded to you or defaulted on a contract? If so, state when, where, and why?

8. Will you be using any subcontractors? yes or no _____

a. If so, state the name, address, phone number, and tasks to be performed for each?

9. For purposes of determining any possible conflicts of interest, all bidders must disclose if any City of Deerfield Beach employee is also an owner, or employee of their business. Indicate either "yes" or "no". If yes, give person(s), name(s), and position(s) and you must file a statement with the Supervisor of Elections, pursuant to Florida Statutes 112.313 with your business.

Yes ___ No ___ Name (s) and Position (s) _____

10. List the pertinent experience **and qualifications** of the Bidder, **principals, and/or key personnel** of your organization as it relates to Section 1.8.2 of this ITB. (Continue on additional sheets, if necessary).

11. State the name of the individual who will have personal supervision of the services provided by Bidder.

12. Briefly describe your firm's financial status, provide proof of adequate lines of credit or other financial assets to access funds for payment, and provide evidence of your company's financial stability.

13. Briefly explain how your company will correspond with the City of Deerfield Beach.

15. Recyclables Processing Facilities

- 15a. **Designated Processing Facility:** Bidder shall identify the processing facility at which it would process the City's Program Recyclables for the term of the Contract. Such facility must be operational at the time of bid submittal. The City reserves the right to conduct a site visit prior to contract award.

Facility Name: _____

Facility Address: _____

Such facility must be properly permitted/licensed. Documentation provided: Yes No

Such facility is an FDEP Certified Recovered Materials Dealer.

Documentation provided: Yes No

Such facility must have the capacity to accept City's Program Recyclables for the Term of the Contract:

Current capacity (Tons/day, month, or year): _____

Current throughput (Tons/day, month, or year): _____

Such facility shall have no outstanding compliance issues, including but not limited to, unresolved Notices of Violation and Consent Orders. Documentation of all Notices of Violation and Consent Orders received, by this facility, in the past five (5) years, is provided. Yes No

- 15b. **Designated Recycling Facility:** Bidder shall identify the facility at which the City's Program Recyclables would be received, whether the final processing facility or a transfer station. Such facility must be located within a ten (10) mile driving distance of the City's Central City Campus (401 S.W. 4th Street, Deerfield Beach, FL 33441). Such facility must be operational at the time of bid submittal. The City reserves the right to conduct a site visit prior to contract award.

Facility Name: _____

Facility Address: _____

Such facility must be properly permitted/licensed. Documentation provided: Yes No

Such facility must have the capacity to accept City's Program Recyclables for the Term of the Contract:

Current capacity (Tons/day, month, or year): _____

Current throughput (Tons/day, month, or year): _____

Such facility shall have no outstanding compliance issues, including but not limited to, unresolved Notices of Violation and Consent Orders. Documentation of all Notices of Violation and Consent Orders received, by this facility, in the past five (5) years, is provided. Yes No

- 15c. **Alternate Processing Facility:** Bidder shall identify the processing facility it will utilize if the Designated Processing Facility is not operational.

Facility Name: _____

Facility Address: _____

Such facility must have the capacity to accept City's Program Recyclables until the Designated Facility is again fully operational:

Current capacity (Tons/day, month, or year): _____

Current throughput (Tons/day, month, or year): _____

The Bidder acknowledges and understands that the information contained in response to this qualifications statement shall be relied upon by the City in awarding the Contract and such information is warranted by the Bidder to be true. The discovery of any omission or misstatement that materially affects the Bidder's qualifications to perform under the Contract shall cause the City to reject the bid, and if after the award to cancel and terminate the award and/or Contract.

Bidder's Signature

Date

Schedule "A"

City of Deerfield Beach Disclosure Form
Applicant Seeking a City Contract

Name of Person Filing this Form: _____

Principal for whom the signatory is acting: _____

Name of Company Filing this Form: _____

Matter before the City Commission for which this is being filed: **Recycling Processing Services, ITB #2012-13/22**

Relationship of signatory to principal: _____

Pursuant to Section 2-505 Chapter 2, Article IX, Known as the City of Deerfield Beach Ethics Code, City of Deerfield Beach Ethics Code, any applicant for a land use change or development permit requiring approval of the City Commission or any person/entity seeking a City agreement through an Invitation to Bid, request for qualifications or sealed bids process must provide the following information:

(If not applicable, please indicate below. Do not leave blank)

(a) Include a listing of all campaign contributions to a city commissioner in the past four (4) years, as well as contributions of all officers, directors, shareholders of a corporation (if the applicant is a corporation) or partners (if the applicant is a partnership), or members whether generally or limited (if it's a limited liability company):

(b) Disclose all those items that a regulated officer is required to disclose concerning any conflict, whether actionable or non actionable:

(c) Disclose any action that is a violation of this Ethics Code by a regulated officer with the applicant and/or applicant's agents, and what was done to rectify the violation:

Witnesses:

Bidder:

Witness

Print Name

Witness

Signature

SDBE Participation Affidavit

_____ (Bidder) has submitted a bid for ~~Recyclables Processing Services, ITB #2012-13/22~~ to the City of Deerfield Beach, Florida. The following ~~Small Disadvantaged Business Entities (SDBE's)~~, as defined in Ordinance #1993/068, shall provide goods or services:

List ~~SDBE name, address, phone number, the nature of the product or service to be supplied, and the percentage of the total bid for which that accounts.~~ Use additional pages if needed.

1. _____
2. _____
3. _____
4. _____
5. _____

Bidder's Name

Signature

Date

STATE OF FLORIDA)

) SS.

COUNTY OF BROWARD)

Sworn to and subscribed before me this _____ day of _____, 2013

NOTARY'S SEAL: _____

NOTARY PUBLIC, STATE OF FLORIDA

(Signature of Notary Taking Acknowledgment)

My Commission Expires: _____

Personally Known to me/

Not personally known to me

DID _____ / DID NOT _____ Take an oath

SDBE Unavailability Affidavit

_____ (Bidder) has submitted a bid for **Recyclables Processing Services, ITB #2012-13/22** to the City of Deerfield Beach, Florida, and has made a good faith effort to secure the participation of Small Disadvantaged Business Entities (SDBE's) as that term is defined in the City of Deerfield Beach Ordinance No. 1993/068.

List name, address, and phone number of SDBE's contacted, and product or services the SDBE supplies.

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____

Based upon good faith efforts, SDBE participants were unavailable or their employment for this project impracticable.

Bidder's Name	Signature	Date
---------------	-----------	------

STATE OF FLORIDA)
 _____) SS.
 COUNTY OF BROWARD)

Sworn to and subscribed before me this _____ day of _____, 2013

NOTARY'S SEAL: _____
 _____ NOTARY PUBLIC, STATE OF FLORIDA
 _____ (Signature of Notary Taking Acknowledgment)

My Commission Expires: _____

_____ Personally Known to me/
 _____ Not personally known to me

_____ DID _____ / DID NOT _____ Take an oath

Indemnification Clause

The parties agree that one percent (1%) of the total compensation paid by Contractor for the work of the contract shall constitute specific consideration to Contractor for the indemnification to be provided under the Contract.

The Contractor shall at all times indemnify, hold harmless and, at City Attorney's option, defend or pay for an attorney selected by City Attorney to defend the City of Deerfield Beach, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by intentional or negligent act of, or omission of the Contractor, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Contract including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against the City by reason of any such claim, cause of action or demand, the Contractor shall, upon written notice from the City, resist and defend such lawsuit or proceeding by counsel satisfactory to the City or, at City's option, pay for an attorney selected by the City Attorney to defend City. The provisions and obligations of this section shall survive the expiration or earlier termination of this Contract. To the extent considered necessary by the Contract Administrator and the City Attorney, any sums due Contractor under this Contract may be retained by City until all of City's claims for indemnification pursuant to this Contract have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by City. Nothing provided herein shall effect or alter the City's sovereign immunity. This provision shall be liberally construed in favor of the City.

Bidder's Name

Signature

Date

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2013 by _____ who is personally known to me or who has produced _____ (type of identification), as identification.

NOTARY'S SEAL: _____
NOTARY PUBLIC, STATE OF FLORIDA
(Signature of Notary Taking Acknowledgment)

(Name of Acknowledger Typed, Printed or Stamped)

My Commission Expires: _____

Non-Collusive Affidavit

_____ (Bidder's Name) being first duly sworn, deposes and says that:

1. He/she is the _____ (Owner, Partner, Officer, Representative or Agent) of _____ the Bidder that has submitted the attached proposal;
2. He/she is fully informed respecting the preparation and contents of the attached proposal and of all pertinent circumstances respecting such proposal;
3. Such proposal is genuine and is not a collusive or sham proposal;
4. Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other Bidder, firm, or person to submit a collusive or sham proposal in connection with the work for which the attached proposal has been submitted; or to refrain from bidding in connection with such work; or have in any manner, directly or indirectly, sought by agreement or collusion, or communication, or conference with and Bidder, firm or person to fix the price or prices in the attached proposal or of any other Bidder, or to fix an overhead, profit, or cost elements of the proposal price or the proposal price of any other Bidder, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against (Recipient), or any person interested in the proposed work;
5. The price or prices quoted in the attached Bid Schedule are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Bidder or any other of its agents, representatives, owners, employees or parties in interest, including this affiant.

Bidder's Name

Signature

Date

STATE OF FLORIDA

COUNTY OF BROWARD

The foregoing instrument was acknowledged before me this _____ day of _____, 2013 by _____ who is personally known to me or who has produced _____ (type of identification), as identification.

NOTARY'S SEAL: _____

NOTARY PUBLIC, STATE OF FLORIDA
(Signature of Notary Taking Acknowledgment)

(Name of Acknowledger Typed, Printed or Stamped)

My Commission Expires: _____

Drug-Free Workplace Form

The undersigned vendor in accordance with *Florida Statutes*, Chapter 287, Section 287.087 hereby certifies that _____ does:

(Name of Business)

1. Publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violations of such prohibition.
2. Inform employees about the dangers of drug abuse in the workplace, the business's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations.
3. Give each employee engaged in providing the commodities or contractual services that are under bid a copy of the statement specified in subsection (1).
4. In the statement specified in subsection (1), notify the employees that, as a condition of working on the commodities or contractual services that are under bid, the employee will abide by the terms of the statement and will notify the employer of any conviction of, or plea of guilty or nolo contendere to, any violation of *Florida Statutes*, Chapter 893 or of any controlled substance law of the United States or any state, for a violation occurring in the workplace no later than five (5) days after such conviction.
5. Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program if such is available in the employee's community, by any employee who is so convicted.
6. Make a good faith effort to continue to maintain a drug-free workplace through implementation of this section.

As the person authorized to sign the statement, I certify that this firm complies fully with the above requirements.

Bidder's Name

Signature

Date

Local Business Affidavit

STATE OF FLORIDA)
)
COUNTY OF _____)

I, the undersigned, being first duly sworn, do hereby state under oath and under penalty of perjury that the following facts are true:

- 1. I am over the age of 18 and am a resident of the State of Florida.
- 2. I am the _____ (title) of _____ and I certify that I have the authority to make the representations set forth within this Affidavit.
- 3. I hereby certify that in accordance with requirements of Sections 38-116 and 38-128 of the Deerfield Beach Code of Ordinances that:
 - (a) _____ (Name of Business) has its principal place of business at _____ (Street Address), Deerfield Beach, Florida _____ (Zip Code).
 - (b) Attached is a copy of a Business Tax Receipt from the City of Deerfield Beach for the above business and that such business has had a Business Tax Receipt from the City of Deerfield Beach for a period of at least one year prior to the date of the bid solicitation.
 - (c) Except as set forth below, the above referenced business has not had a history of non-performance, delinquent fees, liens or code violations: (If none please state none below)

Executed this _____ day of _____, 20____.

By _____
(Signature)

By _____
(Name and Title)

The foregoing was acknowledged before me this _____ day of _____, 20____,
by _____ who is personally known to me or who has
produced _____ as identification and who did take an oath.

WITNESS my hand and official seal, this _____ day of _____, 20____.

(NOTARY SEAL)

(Signature of person taking acknowledgment)

(Name of officer taking acknowledgment)

typed, printed or stamped

(Title or rank)

My commission expires:

(Serial number, if any)

References

Bidder must provide at least three (3) references of customers to which it has provided services similar to those sought by the City. References shall include name, title, telephone number, e-mail address, mailing address, and a description of the services provided. The service description should include the dates services were provided, the types of materials handled, annual tonnage disposed, and annual cost of services. If available, such references should be representatives of Florida jurisdictions to which the Bidder is currently providing, or has provided services within the last five (5) years.

Reference #1 for Recyclables Processing

Government Name _____ Population _____
 Contact Name _____ Contact Title _____
 Contact Phone _____ Contact Email _____
 Dates of Service _____ Materials Handled _____
 Annual Tonnage Managed from Reference _____ Annual Cost _____
 Description of Services _____

Reference #2 for Recyclables Processing

Government Name _____ Population _____
 Contact Name _____ Contact Title _____
 Contact Phone _____ Contact Email _____
 Dates of Service _____ Materials Handled _____
 Annual Tonnage Managed from Reference _____ Annual Cost _____
 Description of Services _____

Reference #3 for Recyclables Processing

Government Name _____ Population _____
 Contact Name _____ Contact Title _____
 Contact Phone _____ Contact Email _____
 Dates of Service _____ Materials Handled _____
 Annual Tonnage Managed from Reference _____ Annual Cost _____
 Description of Services _____

(Continue on additional sheets, if necessary)

Variations to the ITB

State any variations to specifications, terms and conditions in the space provided below. No variations or exceptions by the Bidder will be deemed to be part of the proposal submitted unless such variation or exception is listed in the space provided below. If no statement is contained in the below space, it is hereby implied that your proposal complies with the full scope of this ITB.

Variations: _____

Company Name: _____

Bidder's Name (Print): _____

Signature: _____

Date: _____



City of
D E E R F I E L D
B E A C H

ADDENDUM #1

ITB # 2012-13/22
SOLID WASTE DISPOSAL AND RECYCLABLES PROCESSING SERVICES

May 7, 2013

Our records indicate your firm is a plan holder of the above referenced ITB.

1. You are hereby notified that the City Commission at the May 1, 2013 Special Commission Meeting approved by motion the termination of the solid waste disposal portion of ITB #2012-13/22 and issue an addendum to the ITB eliminating the solid waste disposal portion and keeping the recycling portion of the ITB.
2. The purpose of this addendum is to remove solid waste disposal from the ITB title, document, and scope of services.
3. The Title of ITB # 2012-13/22 shall now be Recyclables Processing Services.
4. Included as an attachment to this addendum is an amended ITB #2012-13/22, Recyclables Processing Services. Words **bold** and underlined are additions, words ~~marked through~~ are deletions.
5. Any remaining reference to solid waste disposal or terms related thereto shall be considered immaterial, as this ITB is for Recyclables Processing Services only.

A signed copy of this addendum shall be included in your proposal, due Wednesday, May 22, 2013 at 11:00 a.m.

David Santucci, CPPB
Purchasing Manger
City of Deerfield Beach

The undersigned hereby understands and acknowledges that ITB #2012-13/22, Recyclables Processing Services does not include in any way solid waste disposal services.

Proposer's Name and Signature

Date

Company Name



City of
D E E R F I E L D

B E A C H

ADDENDUM #2

ITB # 2012-13/22
RECYCLABLES PROCESSING SERVICES

May 10, 2013

Our records indicate your firm is a plan holder of the above referenced ITB. The purpose of this addendum is to:

1. Refresh the ITB document, incorporating all changes (deletions and additions) made in Addendum #1. Please note, the table of contents and section numbering has changed accordingly.
2. Amend Section 2.17, Protest Procedures. Section 38-139 of the City of Deerfield Beach Code of Ordinances was amended by the City Commission at the May 7, 2013 Regular City Commission Meeting, Resolution No. 2013/016.
3. Provide notification that Section 2.27, Local Business Preference Program does not require any changes.
4. Remove Section 2.28, Small Disadvantaged Business Entity (SDBE) and related forms. The SDBE requirement was waived by the City Commission at the May 7, 2013 Regular City Commission Meeting, Resolution No. 2013/095.
5. Provide notification of changes to the following sections, beyond those mentioned above:
 - 1.8 - Bidder's Qualifications
 - 3.3 - Contract Award
 - 3.7 - Required Documents
 - 4.9 - Liquidated Damages
 - BP-9, Qualification Statement, Question 10
6. Address a vendor question.
 - Q. As per section 1.8.2 Designated Recycling Facility to be within 10 miles from City's Central Campus. Our facility is 13.1 miles. Just 3.1 miles more. Would the City extend the radius? or Would this limit our bid participation, due to the 3.1 miles more from the 10 miles proposed on this ITB.
 - A. The City will not extend the radius. Bids received from firms which do not meet the minimum requirements and qualifications will be deemed non-responsive.

ADDENDUM #2

**ITB # 2012-13/22
RECYCLABLES PROCESSING SERVICES
(CONT'D)**

Included as an attachment to this addendum is an amended ITB #2012-13/22, Recyclables Processing Services. The amended ITB is labeled SECOND AMMENDMENT. Bidder's shall reference and submit the required documents contained in ITB #2012-13/22, Recycling Processing Services, SECOND AMMENDMENT only. Words **bold** and underlined are additions, words ~~marked through~~ are deletions.

A signed copy of this addendum shall be included in your bid, due Wednesday, May 22, 2013 at 11:00 a.m.

David Santucci, CPPB
Purchasing Manger
City of Deerfield Beach

The undersigned hereby understands and acknowledges that ITB #2012-13/22, Recyclables Processing Services does not include in any way solid waste disposal services.

Proposer's Name and Signature

Date

Company Name



City of
D E E R F I E L D
B E A C H

ADDENDUM #3

**ITB # 2012-13/22
RECYCLABLES PROCESSING SERVICES**

May 17, 2013

Our records indicate your firm is a plan holder of the above referenced ITB. The purpose of this addendum is to extend the Bid Opening (Due Date) to allow the City to address vendor questions received by the Last Day for Questions due date, May 15, 2013, only. No additional vendor questions will be addressed. The City anticipates releasing a subsequent addendum no later than Tuesday, May 21, 2013.

BID OPENING (DUE DATE): Tuesday May, 28, 2013 at 10:00 a.m.

A signed copy of this addendum shall be included in your proposal, due Tuesday, May 28, 2013 at 10:00 a.m.

David Santucci, CPPB
Purchasing Manger
City of Deerfield Beach

Bidder's Name and Signature

Date

Company Name



City of
D E E R F I E L D
B E A C H

ADDENDUM #4
ITB # 2012-13/22
RECYCLABLES PROCESSING SERVICES

May 21, 2013

Our records indicate your firm is a plan holder of the above referenced ITB. The purposes of this addendum are to address vendor questions and make changes to the terms and conditions:

Questions and Answers: 1 through 51

- Replace Pages:**
- 5 with 5(a)
 - 6 with 6(a)
 - 9 with 9(a)
 - 12 with 12(a)
 - 13 with 13(a)
 - 15 with 15(a)
 - 16 with 16(a)
 - 17 with 17(a)
 - 19 with 19(a)
 - 24 with 24(a)
 - A-4 with A-4(a)
 - BP-15 with BP-15(a)

- Notes:**
1. Words **bold and underlined** are additions, words ~~marked through~~ are deletions.
 2. All replacements affect Recyclables Processing Services, ITB #2012-13/22, **SECOND AMMENDMENT** as issued through the release of Addendum #2, dated May 10, 2013.

A signed copy of this addendum shall be included in your bid, due Tuesday, May 28, 2013 at 11:00 a.m.

David Santucci, CPPB
Purchasing Manger
City of Deerfield Beach

Bidder's Name and Signature

Date

Company Name

Questions and Answers

Q1. My understanding was that the City guaranteed payment of processing cost of \$50 per ton. Yet the language in the agreement (see below) indicates otherwise when the AMV falls below \$50. Please clarify in writing whether we are guaranteed \$50/ ton despite market conditions.

3.5.2.1.4 If the AMV is less than the Contractor's Fee of fifty dollars (\$50.00), the Contractor shall make no payment to the City and the City shall make no payment to the Contractor.

At no time shall the City make payment to the Contractor for accepting, processing, or marketing Program Recyclables, regardless of the AMV. If the contractor is not guaranteed \$50 per ton and the AMV falls below \$50/ ton for a period of time but then exceeds this benchmark, can we continue to offset the \$50 cumulative shortfall generated during the prior months until we recover the life to date shortfall?

A1. The City is not guaranteeing payment of a processing cost of \$50 per ton. The formula provided in Section 3.5.1 is for calculating the revenue due from the Contractor to the City. In the unlikely event that the AMV drops below \$50 per ton, the City will allow this shortfall to be carried over to future months. Please refer to page 16(a) contained herein.

Q2. In Section 1.8.2 Minimum Qualifications, at the Pre-Bid, we had requested that the bidders or its key personnel or employees experience can be used in meeting the minimum qualifications for recyclables processing set forth in the Section entitled Minimum Qualifications.

A2. Refer to pages 5(a) and 6(a) contained herein.

Q3. In Section 5.9, Liquidated Damages, there is a penalty provision for disposing of recycled materials or recovered materials without the prior approval of the executive director. To our knowledge, there is no executive directly. Please identify the employee or contact person at the City to request this modification or change.

A3. The correct reference is Section 4.9. The provision is not a penalty but is used because of the difficulty in determining damages. Please refer to Addendum #2.

Q4. There is \$1,000 per occurrence liquidated damage provision in Section 5.9. As was indicated by ourselves and Waste Management, glass presently has a zero marketability. Consequently, because there are no markets, we would request that this provision be removed as it relates to glass. We recommend a text change that prior permission from the Town is provided for all recyclable materials or recovered materials that have an AMV \$0.00 or less.

A4 The correct reference is Section 4.9. Section 4.4.2 applies to all commodities listed in the Average Market Value (AMV) calculation on page BP-5, including glass. As stated in Section 3.5.1.3, if the bidder believes the AMV and revenue formula do not accurately reflect the bidder's costs and revenues, the bidder shall take that into account when providing the percentage it will remit, per the formula provided, to the City. Refer to page 16(a) contained herein.

Q5 Section 1.8 Bidder's Qualifications, Page 5: Section 1.8 – Bidder's Qualifications and Section 1.8.1 - Minimum Qualifications for Recyclables Processing Contractor conflict with one another can the city please consolidate and clarify the minimum qualifications?

A5 Refer to pages 5(a) and 6(a) contained herein.

Q6 Section 1.10 Performance Bond, Page 7: Can the City please confirm if the Performance Bond should only be presented after the contract is signed by both parties?

A6 Furnishing of the Performance Bond shall be concurrent with contract execution.

- Q7** Section 1.10.2, Page 7: Please consider deleting on line 3 "A" and substitute "A-."
A7 Your request has been considered, the answer is no.
- Q8** Section 1.10.4, Page 7: Please consider adding language to line 6 that states that a breach should only occur if either the Performance Bond or Letter of Credit expires.
A8 Your request has been considered, the answer is no.
- Q9** Section 1.10.5, Page 7: Please delete the following language on line 1: this Contract is breached, canceled or terminated other than by mutual and substitute the following language: the Contract materially breaches the Contract causing termination of the Contract, as provided herein.
A9 Your request has been considered, the answer is no.
- Q10** Section 2.5.2 – Variances, Page 8: Please consider deleting on line 3 the following language: review and approval by the City and substitute the following language: negotiation between the parties.
A10 Your request has been considered, the answer is no.
- Q11** Section 2.10 – Rejection of Bids, Page 8: Please consider deleting on line 2 the following language: part of bids.
A11 Your request has been considered, the answer is no.
- Q12** Section 2.15 – Indemnification, Page 9: Please consider deleting this section since Contractor is just receiving recyclables from the City at a designated facility.
A12 Refer to pages 9(a) and BP-15(a) contained herein.
- Q13** Section 2.29 – Assignment, Page 12: Please consider adding the following language after the word designee on line 4: provided, however, the Contractor may assign the Contract awarded pursuant to this ITB to any direct or indirect affiliate or subsidiary of the Contractor or to any person or entity succeeding to all or substantially all of the Contractor's assets (whether by operation of law, merger, consolidation or otherwise) without the written consent of the City.
A13 Your request has been considered, the answer is no.
- Q14** Section 2.34.1 – Termination for Cause, Page 12: Please consider deleting on line 1 the following language: Contractor and substituting the following language: either party. Please consider deleting on line 3 the following language: City and substituting the following language: non-defaulting party. Please consider deleting on line 3 the following language: Contractor and substituting the following language: defaulting party. Please consider deleting on line 6 the following language: three (3) and substitute the following language: fifteen (15). Please consider deleting on line 7 the following language: Contractor and substitute with defaulting party. Please consider adding on line 9 between the words the and satisfaction the following language: reasonable. Please consider deleting on line 10 the following language: City and substituting the following language: non-defaulting party. Please consider deleting on line 10 the following language: City and substituting the following language: non-defaulting party. Please consider deleting on line 12 the following language: Contractor and substituting the following language: defaulting party.
A14 Refer to page 12(a) contained herein.
- Q15** Section 2.35 – Contract Administration, Page 12: Please consider adding on line 4 between the words is and deemed the following language: reasonably.
A15 Your request has been considered, the answer is no.

- Q16** Section 2.38 – Other Governmental Agencies, Page 12 Please consider deleting this section.
A16 Your request has been considered, the answer is no.
- Q17** Section 2.42 – Risk of Loss, Page 13: Please consider deleting this section. Not applicable.
A17 Refer to page 13(a) contained herein.
- Q18** Section 3.3.2, Page 15: Please amend to conform with Section 3.3.1.
A18 Nonconformity does not exist.
- Q19** Section 3.3.4, Page 15: Which document will the City provide Contract with upon final execution and receipt of all required documents?
A19 A final version of Attachment “A” – Draft Contract.
- Q20** Section 3.5 – Revenues, Page 15: Please clarify this section.
A20 Refer to page 15(a) contained herein.
- Q21** Section 3.5.1.2, Page 16: How often can the City or Contractor request a composition study?
A21 Refer to page 16(a) contained herein.
- Q22** Section 3.6.1, Page 17: Please consider changing the word payment on line 1 to fee.
A22 Refer to page 17(a) contained herein.
- Q23** Section 3.8.1.1 – Commercial Liability Insurance, Page 18: Please delete on line 6 the following language: without restrictive endorsements. Please consider deleting on the fourth (4) bullet point the following language: with employee and contractual exclusions removed.
A23 Your request has been considered, the answer is no.
- Q24** Section 3.8.1 2 – Business Automobile Liability, Page 18: Please consider deleting on line 5 the following language: without restrictive endorsements.
A24 Your request has been considered, the answer is no.
- Q25** Section 3.8.1.4, Page 19: Pollution Liability Insurance, Page 19: Please consider deleting this section.
A25 Refer to page 19(a) contained herein.
- Q26** Section 3.8.2 – General, Page 19: Please consider deleting this section.
A26 Your request has been considered, the answer is no.
- Q27** Section 3.8.2.1, Page 19: Please consider deleting the following language on line 1: without any deductible amount unless otherwise. Please consider deleting the following language on line 2: noted in this Contract and shall be. Please consider deleting the following language on line 2: approved. Please consider deleting the following language on line 3: and having agents upon whom service of process may be made in Broward County, Florida.
A27 Your request has been considered, the answer is no.

- Q28** Section 3.8.2.3, Page 19: Please consider deleting on line 5 the following language: copies of renewal policies and substituting the following language: a new certificate of insurance.
A28 Please refer to 19(a) contained herein.
- Q29** Section 3.8.2.4, Page 20: Please consider deleting this section.
A29 Your request has been considered, the answer is no.
- Q30** Section 4.3.4, Page 22: Please consider deleting the following language on line 5: other and substituting the following language: delays due to the.
A30 Your request has been considered, the answer is no.
- Q31** Attachment "A", Section 1.3 Page A-1: After the word inconsistency please consider adding the following language: Where the terms and conditions set forth in the ITB and the Contractor's response to the ITB conflict, the terms and conditions in the Contractor's response to the ITB shall control. Attachment "A", Section 3.1, Page A-2: Please consider deleting this section. Not applicable. Attachment "A", Section 4.1, Page A-2: Please consider adding the word reasonable between the words Manager and determines on line 5.
A31 Your request has been considered, the answer is no.
- Q32** Attachment "A", Section 4.1, Page A-2: Please considering the following language in this section: for reasons including, but not limited to, CONTRACTOR's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices; failure to suitably perform the work, or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Contract and substitute the following language after the word cause: by either party in the event the other party fails to observe the terms and conditions of this Contract, and such failure continues or persist without remedy for more than fifteen (15) days after the receipt of due written notice from the other party.
A32 Your request has been considered, the answer is no.
- Q33** Attachment "A", Section 4.7, Page A-3: Please consider deleting this section.
A33 Your request has been considered, the answer is no.
- Q34** Attachment "A", Section 4.7.1, Page A-3: After the word terminated on line, please consider adding the following language: from working under the Contract, pursuant to Section 4.2. hereof. Please consider deleting the following language after may in line 1: assign the contract to another Contractor, or seek a new Contractor, until the contract is re let, or until the end of the contract term then in effect, at its sole option.
A34 Your request has been considered, the answer is no.
- Q35** Attachment "A", Section 6.1, Page A-4: Please consider deleting the following language on line 2: connection with and substituting the following language: pursuant to. Please consider deleting the following language on line 6: whether finished or Unfinished and substitute the following language: pursuant to.
A35 Your request has been considered, the answer is no.
- Q36** Attachment "A", Section 6.2, Page A-4: Please consider adding the following language on line 1 between the words right and to: at its sole expense.
A36 Refer to page A-4(a) contained herein.

- Q37** Attachment "A", Section 6.3, Page A-4: Please consider deleting this section.
A37 Your request has been considered, the answer is no.
- Q38** Attachment "A", Section 6.6, Page A-5: Please delete the following language on line 5: City and substitute the following language: Either's party's.
A38 Your request has been considered, the answer is no.
- Q39** Indemnification Clause, Page BP-15: Please consider deleting this page.
A39 Your request has been considered, the answer is no.
- Q40** 1.8 - What is a considered a principal? Is it an investor in the company? Is it a majority/minority owner? Is it a silent partner? What is considered key personnel? Is it personnel having manager position? Supervisor position? Lead worker status? Do key personnel have to be full-time employees? Part-time employees? Can key personnel be subcontractors? Can the key personnel's employment/contract be terminated immediately after the city has signed the contract? What constitutes similar size? Is it determines by square miles in the city? Is it determined by population? Is it determined by the tonnage?
A40 Refer to pages 5(a) and 6(a) contained herein. The City will not interfere with the Successful Bidders staffing decisions, unless otherwise specified in the contract documents. Refer to Section 2.24.
- Q41** 1.8.1 - Please clarify what do you determine as complexity to the City of Deerfield Beach? Please clarify what is meant by heavy truck routes? By documenting capacity. Does the city want the bidder to list its current capacity and delineate the capacities that have been committed to other contract; therefore the remaining capacity is what is available to the commitment to the City of Deerfield Beach? Does the city want the bidder to list its current capacity with no regards to capacity committed to other municipal contracts? Does the city want all NOV's issued to the bidder or limited to the facility listed on the Bid? If the Bidder is a recently formed Joint-Venture listing a facility currently under construction. Does the city want the NOV's issued to other facilities the bidder has association with to demonstrate environmental compliance history?
A41 Refer to pages 5(a) and 6(a) contained herein.
- Q42** 1.10.3 - Is the bidder required to have prior city approval prior to submitting a response to bid in order to use a non-local bank? If the bidder utilizes a facility which lacks adequate queued space for trucks, Would the City object the facility utilizing a public road to queued the waiting trucks? Does a bidder association with a failed attempt to offer Program Recyclables services have to be disclosed, i.e. ReCommunity?
A42 Approval prior to submitting a bid is not required. Refer to Section 4.2.1. Refer to the Qualification Statement.
- Q43** 3.2.2 - Does the city prefer any particular color ink for signatures?
A43 No.
- Q44** 3.2.3 - What documentation does the City require from Bidders utilizing a Joint-Venture? Do all members of a Joint-Venture have to sign? Does the evidence of authority to sign have to be notarized?
A44 Refer to Section 3.2. Signature must be by the person authorized by the joint venture agreement to execute documents. By signing the signatory asserts and represents that he/she is so authorized and shall be responsible under Florida law for any misrepresentations.

- Q45** 3.3.3 - If the City Commission has the ultimate authority to approve/or reject any and all bids? Does this mean that the City Commission has the authority to select as the winning bidder, a bidder that was not offering the highest revenue to the City?
A45 Refer to City Ordinance Chapter 38, Article IV.
- Q46** 3.5.1.2 - Can the contractor request a composition study of the Program Recyclables immediately upon the contract award? Is there a limitation on the number of composition studies that the contractor can request? Please clarify what is meant by "Any such study shall be conducted by the City". Does this mean city personnel or a third-party vendor selected by the City? What is the cost to perform a composition study? Has the city performed a composition study within the last 180 day? If so, Can the City provide the results of the study?
A46 Refer to page 16(a) contained herein. The costs of a composition study vary; but typically the cost should not exceed \$20,000. A Composition study has not been performed within the last 180 days.
- Q47** 3.5.1.3 - The formula outlined in Section 3.5.2.1 is missing. Would the city consider extending the due date of the bid, to allow bidders that time to analyze the missing data once the city provides it?
A47 Refer to Page 16(a) contained herein. The due date shall not be extended.
- Q48** 3.6.1 - If the CPI adjustment is limited to 75% of CPI, please explain the rational why the City limits it to not exceed 2%? Would the City consider adding a fuel adjustment in addition to the capped 2% CPI Adjustment?
A48 Your requests have been considered, the answer is no.
- Q49** 3.6.2 - Would the City consider the addition of the "Obamacare" as a change in law materially impacting the contractor's operations? If the City commission does not approve a rate adjustment due to a change in law, Does this allow the contractor the opportunity to terminate contract?
A49 Your request has been considered, the answer is no. Refer to Section 2.34.
- Q50** 3.7 - Is the bidder required to have a permanent office in the City?
A50 Refer to pages 5(a) and 6(a) contained herein.
- Q51** 4.3.7 - Does the contractor have to submit payment to the City for loads determined to contain excessive amounts of rejects?
A51 Contractor shall make payment for all inbound materials. Refer to Section 4.3, Section 4.4, and Pages BP-5 and BP-6.

All responses to questions pertaining to the technical specifications or bid requirements shall be issued through an official addendum. Please be advised that the City is contemplating a change to the protest procedure set forth in Section 38-139 of the Code of Ordinances as set forth in Section 2.17 contained herein. If the ordinance changing the protest procedure is adopted by the City Commission an addendum will be issued revising Section 2.17.1

1.6 Mandatory Pre-Bid Meeting

A mandatory pre-bid meeting will be held at 401 SW 4th St., Deerfield Beach, FL 33441 on Tuesday, May 7, 2013 at 10:00 a.m. EST. The purpose of the pre-bid meeting is to provide the City and Vendors the opportunity to clarify and discuss the ITB requirements, scope of services and/or specifications. Proposers should allow sufficient time to insure arrival prior to the indicated date and time.

Due to the importance of the Bidders having a clear understanding of the specifications/scope of work and requirements for this solicitation, attendance at this conference is mandated. Bids received from Bidders who have failed to attend the mandatory pre-bid meeting will be deemed non-responsive, will not be opened or accepted, and will be returned to the Bidder unopened.

1.7 Contract Term

1.7.1 Effective Date

The Effective Date of any contract resulting from this ITB is anticipated to be July 1, 2013 or upon such date that the contract is executed and signed by both the City and Contractor.

1.7.2 Commencement Date

The Commencement Date is the date that service is required to begin pursuant to such contract. The Commencement Date for each service is July 3, 2013.

1.7.3 Initial Term

The initial contract term shall be for five (5) years beginning on the Effective Date. The initial term for each service is July 1, 2013 to June 30, 2018.

1.7.4 Renewal Options

The City reserves the right and shall have the sole discretion to extend the contract for two (2) additional five (5) year renewal terms providing all terms, conditions and specifications remain the same; both parties agree to the extension; and such extension is approved by the City Commission in their sole discretion.

1.7.5 Contract Extension

In the event services are scheduled to end because of the expiration of the contract, the Contractor shall continue the service upon the request of the City Manager or designee. The extension period shall not extend for more than ninety (90) days beyond the expiration date of the existing contract. The Proposer shall be compensated for the service at the rate in effect when this extension clause is invoked by the City.

1.8 Bidder's Qualifications

~~Bidder shall be in the business of providing the services required in the specifications and scope of services and must possess sufficient financial support, equipment and organization to insure that it can satisfactorily perform the services if awarded a Contract. Bidders must demonstrate that they, or the principals and/or key personnel assigned to the project contract, have~~

~~successfully provided services with similar magnitude to those specified in the ITB to at least three cities similar in size and complexity to the City of Deerfield Beach or can demonstrate they have the experience with large scale public sector clients and the managerial and financial ability to successfully perform the services.~~

To be responsive to this ITB, the Bidder must document and demonstrate in its response that it, its key personnel (e.g., owners or full-time managers, supervisors, or lead personnel assigned to the project), or its subcontractors (jointly collectively called Bidder), meets the minimum qualification requirements as set forth in this section and on the Qualification Statement. The City's determination that any bidder has failed to meet the minimum qualifications stated herein will result in the Bid being deemed non-responsive. The City shall have the sole and absolute discretion in determining responsiveness and responsibility.

1.8.1 Minimum Qualifications for Recyclables Processing Contractor

~~Bidder must provide documentation that it meets the following minimum qualifications to provide Recyclable Materials processing services.~~

- Bidder must have at least five (5) years experience in providing processing services of similar scope (tonnage) ~~to communities similar in size and complexity to the City of Deerfield Beach.~~
- Bidder must have a licensed/permitted facility at which the City's Program Recyclables would be received ("Designated Recycling Facility"), whether the final processing facility or a transfer station, that is located within a ten (10) mile driving distance of the City's Central City Campus (401 S.W. 4th Street, Deerfield Beach, FL 33441) and that is operational at the time of Bid submission. Bidder shall provide documentation of driving distance, via ~~heavy truck routes~~ acceptable for use by collection vehicles.
- The Designated Recycling Facility and Designated Processing Facility identified to receive the City's Program Recyclables must be capable and permitted to accept materials as proposed. To demonstrate this ability, Bidder must:
 - Provide licenses and/or permits for the proposed facilities as set forth in Section 3.7 – Required Documents.
 - Provide copy of Florida Department of Environmental Protection (FDEP) Recovered Materials Certification.
 - Document that such facilities have the capacity to accept the City's Program Recyclables for the Term of the Contract. Bidders shall provide information regarding current processing capacity, throughput (including other contractual commitments), and any other relevant additional information.
 - Bidder must provide copies of all Notices of Violation and Consent Orders, including settlement agreements, and dismissals or final actions by the administrative body, issued to such facility the Designated Recycling Facility and Designated Processing Facility in the past five (5) years. Notices of Violation or Consent Orders which, in the City's sole opinion, would negatively affect the Solid Waste or Recycling operations of the City shall be cause for non-responsiveness.

1.9 Cost Recovery Fee

The Contractor understands and agrees that the cost of the bid process is a part of the cost of providing recyclables processing services and thus a responsibility of the Recyclables processing Contractor(s). Such costs, in time and expenses, in the amount of five thousand (\$5,000) were initially expended by the City, and such expenditure was for the benefit of the Recyclable processing Contractor(s).

1.9.1 A cost recovery fee payable to the City of Deerfield Beach shall be submitted with the Bid response in the amount \$5,000.

all costs associated with obtaining and maintaining all required licenses, certifications, and permits.

2.14 Insurance

The bidder's response shall include evidence of insurability meeting the minimum insurance requirements stated in the Special Terms and Conditions. The successful bidder shall not commence operations pursuant to the terms of this ITB and the resulting Contract, until a certificate of insurance naming the City of Deerfield Beach as additionally insured has been received and approved. The Bidder shall assume full responsibility and expense to obtain all necessary insurance.

2.15 Indemnification

The Contractor shall at all times indemnify, hold harmless and, at City Attorney's option, defend or pay for an attorney selected by City Attorney to defend the City of Deerfield Beach, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by intentional or negligent act of, or omission of the Contractor, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Contract including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against the City by reason of any such claim, cause of action or demand, the Contractor shall, upon written notice from the City, resist and defend such lawsuit or proceeding by counsel satisfactory to the City or, at City's option, pay for an attorney selected by the City Attorney to defend City. The provisions and obligations of this section shall survive the expiration or earlier termination of this Contract. ~~To the extent considered necessary by the Contract Administrator and the City Attorney, any sums due Contractor under this Contract may be retained by City until all of City's claims for indemnification pursuant to this Contract have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by City.~~

2.16 Legal Requirements

Applicable provisions of all federal, state, and county laws, and local ordinances, rules and regulations, shall govern development, submittal and evaluation of all bids received in response hereto and shall govern any and all claims and disputes which may arise between person(s) attaching a bid response hereto and the City by and through its officers, employees and authorized representatives, or any other person, natural or otherwise. Lack of knowledge by any Bidder shall not constitute a cognizable defense against the legal effect thereof.

2.17 Protest Procedures

In accordance with Section 38-139 of the City of Deerfield Beach Code of Ordinances, if a Bidder intends to protest a solicitation or proposed award the following shall apply:

- 2.17.1 Any respondent (also known as Bidder) to a competitive solicitation who is aggrieved in connection with the pending award of a competitive solicitation or any element of the process leading to the award of competitive solicitation may protest to the Purchasing Manager. A protest must be filed within five (5) business days of the first date that the respondent to the competitive solicitation knew or should have known of the facts giving rise to the protest, but no later than five business days of notification of the intent to award or any right to protest is forfeited. The protest must be in writing, must identify the name and address of the

protester, and must include a factual summary of, and the basis for, the protest. Filing shall be considered complete when the protest is received by the Purchasing Manager.

- 2.17.2 Upon receipt of a protest of the pending award of a competitive solicitation, the Purchasing Manager shall review the charge to determine whether the protest was timely filed. If upon review the Purchasing Manager determines that the protest was not timely filed, the Purchasing Manager shall dismiss the protest. If it is determined that the protest was timely filed, the Purchasing Manager shall notify all Bidders of the protest and inform them of the scheduled hearing before the City Commission and of their right to intervene. Any Bidder may formally intervene in the proceeding by filing a request to intervene with the Purchasing Manager.

- 2.17.3 The Purchasing Manager shall require a deposit from a protester to compensate the City for the expenses of administering the protest. If the protest is decided in the protester's favor, the entire deposit shall be returned to the protester. If the protest is not decided in the protester's favor, the deposit shall be forfeited to the City. The deposit shall be in the form of cash, a cashier's check, or a payment bond and shall be in the amount of 1% of the amount of the pending award, with a minimum deposit of \$250 and a maximum deposit of \$1,000.

- 2.17.4 The protester and intervener(s) may file written documentation relating to the protest with the Purchasing Manager. It shall be the obligation of such protester or intervener(s) to deliver said documentation at least one week prior to City Commission action on the protest.

- 2.17.5 The City Commission may hear from the protester and intervener(s) in its discretion or may dispose of the protest without permitting presentations on the protest. If, on its face, the protest does not state sufficient cause to warrant remedial action, the City Commission may deny the protest without further participation by the protester or intervener(s). The Commission, in its sole discretion, may deny the protest, grant the protest and fashion relief or remedial action as it deems appropriate, or reject all bids and begin the ITB process again.

2.18 Cone of Silence

In accordance with Section 38-140 of the City of Deerfield Beach Code of Ordinances, during the course of a competitive solicitation, a Cone of Silence shall apply as follows:

- 2.18.1 A Cone of Silence shall be in effect during a Competitive Solicitation beginning upon the advertisement for invitations to bid, requests for bids, requests for qualifications, or other competitive solicitation. The Cone of Silence shall terminate at the time the City Commission makes final award of a bid or gives final approval of a contract or contract amendment, rejects all bids or responses to the Competitive Solicitation, or takes other action which ends the Competitive Solicitation. The Cone of Silence shall continue through the negotiation phase for requests for bids and requests for qualifications and shall not end until the Commission gives final approval of the contract.

consent of the City. Any award issued pursuant to this ITB, and the monies, which may become due hereunder, are not assignable except with the prior written approval of the City Manager or selected designee.

2.30 Waiver

It is agreed that no waiver or modification of this contract or of any covenant, condition or limitation contained in it shall be valid unless it is in writing and duly executed by the party to be charged with it, and that no evidence of any waiver or modification shall be offered or received in evidence in any proceeding, arbitration, or litigation between the parties arising out of or affecting this contract, or the right or obligations of any party under it, unless such waiver or modification is in writing, duly executed as above. The parties agree that provisions of this paragraph may not be waived except by a duly executed writing.

2.31 Survivorship Rights

This contract shall be binding on both parties to the benefit of the respective parties and their executors, administrators, heirs, personal representative, successors and assignees.

2.32 Severability

If any term or provision of this contract is found to be illegal and unenforceable, such term(s) shall be deemed stricken and the remainder of the contract shall remain in full force and effect.

2.33 Force Majeure

If the City or the Contractor is prevented from or delayed in performing its duties pursuant to any contract resulting from this ITB due to Force Majeure, then the affected party shall be excused from performance thereunder during the period of such Force Majeure. The party claiming Force Majeure shall promptly notify the other party in writing when it learns of the existence of a Force Majeure condition and when the Force Majeure condition has terminated. The term "Force Majeure" shall mean any event or condition having a material and adverse effect on the rights, duties and obligations of a party hereunder that is beyond the reasonable control, and not the result of willful or negligent action or omission or a lack of reasonable diligence, of the party relying thereon as justification for not performing. Such events or conditions may include, but shall not be limited to, an act of God, epidemic, hurricane, earthquake, fire, explosion, storm, flood or similar occurrence, an act of war, effects of nuclear radiation, blockade, insurrection, riot, labor unrest (other than with respect to employees of the party claiming relief), civil disturbance, restraint of government or people or similar occurrences, or damage caused by Hazardous Waste, explosives or radioactive waste entering a facility unless knowingly accepted by Contractor. In any event, Force Majeure shall not include the following: (a) the failure of any subcontractor or any supplier to furnish labor, services, materials or equipment, unless caused by an event of Force Majeure; (b) the suspension, termination, interruption, denial or failure of renewal of any permit, license, consent, authorization or approval relating to the operation of a facility which is the result of any action or inaction or failure of the compliance by Contractor or any affiliate; (c) any change in law (other than to the extent that Contractor's physical ability to process waste or recyclables is eliminated due to a change in law); (d) loss or unavailability of personnel desired by Contractor to operate or maintain a facility; (e) wear and tear or obsolescence of any parts or equipment utilized in or at a facility; or (f) except as a result of an independent event of Force Majeure, the loss of or inability to obtain or retain any utility services, including water, sewerage, fuel oil, gasoline and electric power necessary for the operation of the facility.

2.34 Default and Termination

2.34.1 Termination for Cause

In the event the Contractor either party shall default in any of the terms, obligations, restrictions or conditions in the contract documents, the City non-defaulting party shall give the Contractor defaulting party written notice by registered, certified mail of the default and that such default shall be corrected or actions taken to correct such default shall be commenced within ~~three (3)~~ seven (7) calendar days thereof. In the event the Contractor defaulting party has failed to correct the condition(s) of the default or the default is not remedied to the reasonable satisfaction and approval of the City non-defaulting party, the City non-defaulting party shall have all legal remedies available to it, including, but not limited to, termination of the Contract in which case the Contractor defaulting party shall be liable for any and all damages permitted by law arising from the default and breach of the contract.

2.34.2 Termination for Convenience

Upon ninety (90) calendar days written notice to the Contractor, the City may without cause and without prejudice to any other right or remedy, terminate the contract for the City's convenience whenever the City determines that such termination is in the best interest of the City. Where the contract is terminated for the convenience of the City the notice of termination to the Contractor must state that the contract is being terminated for the convenience of the City under the termination clause and the extent of termination. The Contractor shall discontinue all work on the appointed last day of service. The City shall compensate the Contractor for all work properly performed prior to the termination.

2.34.3 Availability of Funds

The obligation of the City for payment to a Contractor is limited to the availability of funds appropriated in a current fiscal period, and continuation of the contract into a subsequent fiscal period is subject to appropriation of funds, unless otherwise authorized by law.

2.35 Contract Administration

Overall performance under the resultant contract shall be supervised by the Assistant Director of Environmental Services or designee. If at any time during the contract period, performance is deemed to be unsatisfactory, the City shall issue a formal letter to the Contractor. Upon notification by the City, Contractor shall take such steps necessary to perform as per contract requirements.

2.36 Advertising

In submitting a bid, the Bidder agrees not to use the results there from as a part of any commercial advertising without the prior written consent of the City.

2.37 Venue

The parties waive the privilege of venue and agree that all litigation between them in the state courts shall take place in Broward County, Florida and that all litigation between them in the federal courts shall take place in the US District Court for the Southern District of Florida.

2.38 Other Governmental Agencies

If the Bidder is awarded a Contract as a result of this ITB, Bidder will, if Bidder has sufficient capacity or quantities available, provide to other government agencies, so requesting, the products or services awarded in accordance with the terms and conditions of the ITB and resulting Contract. Prices shall be F.O.B. Destination to the requesting Agency.

2.39 Service Test Period

If the Bidder has not previously performed the services to the City, the City reserves the right to require a test period to determine if the Proposer can perform in accordance with the requirements of the Contract, and to the City's satisfaction. Such test period may be from sixty (60) to one-hundred twenty (120) days, and will be conducted under all specifications, terms and conditions contained in the Contract

2.40 Transfer of Responsibility

Upon expiration, termination, or cancellation of the contract, the contractor shall assist City of Deerfield Beach to insure an orderly transfer of responsibility and/or continuity of those services required under the terms of the contract to an organization designated by City of Deerfield Beach, if requested in writing. The contractor shall provide and/or perform any or all of the following responsibilities:

2.40.1 The contractor shall deliver, FOB destination, prepaid, all records, documentation, reports, data, recommendations, master, or printing elements, etc., which were required to be produced under the terms of the contract to City of Deerfield Beach and/or to City of Deerfield Beach's designee within seven (7) calendar days after receipt of the written request. Any and all records which are on electronic media must be delivered in a format which is compatible with the system(s) currently in use by City of Deerfield Beach.

2.40.2 The contractor shall agree to continue providing any part or all of the services in accordance with the terms and conditions of the contract for a period not to exceed ninety (90) calendar days after the expiration, termination or cancellation date of the contract for a price not to exceed those prices set forth in the contract.

2.41 Quantities

No guarantee or warranty is given or implied by the City as to the amount that may or may not be purchased from any resulting contract. The City reserves the right to increase or decrease quantities or add or delete any item from the contract if it is determined to be in the best interest of the City at its sole discretion.

2.42 Risk of Loss (Not Applicable)

~~The risk of loss, injury or destruction, regardless of the cause of the casualty, shall be on the Successful Bidder until the delivery of the completed project and facilities to the City, and inspection and final acceptance of the entire project by the City. Title to all goods, chattel and facilities shall pass to City upon delivery and acceptance of the goods by City as evidenced in writing.~~

3.2.3.3 All bids received from Bidders in response to the Invitation to Bid will become the property of the City of Deerfield Beach and will not be returned to the Bidders. In the event of Contract award, all documentation produced as part of the Contract shall become the exclusive property of the City.

3.2.3.4 Bids will be publicly opened in the Purchasing Division, 2nd Floor, 401 S.W. 4th Street, Deerfield Beach, FL 33441, on the due date and time specified. The Bidder's name will be read aloud. Bidders and the public are invited to attend. Bids will be tabulated and made available for review by Bidders and the public at such time as the City provides a notice of an intended decision or until 30 days after the bid opening, whichever is earlier.

3.3 Contract Award

3.3.1 The City shall determine which Bidders are responsible and responsive, quoting the highest revenue for Recyclables as indicated on the Bid Schedule. It is the intent of the City to award the Contract to the ~~highest~~ responsive and responsible Bidder quoting the highest revenue for Recyclables Processing services.

3.3.2. The City reserves the right to accept or reject any or all bids, or terminate the competitive solicitation process at any time and secure the required services by any other lawful means. The City also reserves the right to request additional information and waive minor irregularities or variations to the specifications and in the competitive solicitation process.

3.3.3 A recommendation of award to the highest responsive and responsible Bidder for Recyclables Processing services will be made to the City Commission. The City Commission has the ultimate authority to approve and/or reject any and all bids. Upon approval by the City Commission, the City Manager is authorized to execute a Contract on behalf of the City.

3.3.4 The City shall issue a Purchase Order and/or contract to the Contractor(s) upon final execution and receipt of all required documents.

3.4 Quantities

No guarantee or warranty is given or implied by the City as to the tonnage of materials that may or may not be delivered to the Contractor's designated facilities from any resulting contract. The City reserves the right to increase or decrease quantities or add or delete any item from the contract if it is determined to be in the best interest of the City at its sole discretion.

3.5 Revenues

This section specifies the formula that shall be utilized to calculate the revenue due to the City from the Contractor on a monthly basis. When bidding the percentage it will share with the City, Bidder Revenue shall take into account include all costs associated with the project including labor, equipment, supplies, management, travel, etc. No additional fees or shall not include any revenue sharing formulas will be considered as part of offsets to discount the Bid price.

3.5.1 Program Recyclables Revenue

3.5.1.1 The Contractor shall pay the City monthly for each Ton of inbound Program Recyclables delivered to the Designated Recycling Facility, as determined by the Designated Recycling Facility's scales. The payment per Ton shall be calculated as follows and as in the Bid Schedule for Recyclables Processing:

- 3.5.1.1.1** Each month, the Contractor shall calculate the Average Market Value (AMV) of the Program Recyclables, defined as the sum of the Southeast USA regional average commodity prices (U.S. Dollars per Ton) first posted in the month for which payment is being made in RecyclingMarkets.net multiplied by the composition percentages as defined in the Bid Schedule for Recyclables Processing. If at any time during the term of this Agreement RecyclingMarkets.net no longer posts or otherwise fails to provide the applicable market indices, then the parties shall mutually select an appropriate replacement source for the required information from among the sources recycling industry professionals utilize to obtain reliable Recovered Material pricing information.
- 3.5.1.1.2** The Contractor shall then deduct a Contractor's Fee of fifty dollars (\$50) from the AMV for the month for which payment is due to the City. The Contractor shall pay the City a percentage, as provided in the Bid Schedule for Recyclables Processing, of the remaining amount (AMV less Contractor's Fee) for each Ton of inbound Program Recyclables delivered to the Designated Recycling Facility during that month.
- 3.5.1.1.3** The Contractor's Fee of fifty dollars (\$50) shall be adjusted as detailed in Section 3.6.21 of this ITB.
- 3.5.1.1.4** ~~If the AMV is less than fifty dollars (\$50.00),~~ **Should the AMV fall below the Contractor's Fee of fifty dollars (\$50.00), the Contractor shall make no payment to the City and the City shall make no payment to the Contractor. In any month in which the AMV is less than the Contractor's Fee, the difference between the Contractor's Fee and the AMV multiplied by the Tons of inbound Program Recyclables delivered to the Designated Receiving Facility during that month ("AMV Shortfall") shall be calculated and deducted from future payments by the Contractor to the City.** At no time shall the City make payment to the Contractor for accepting, processing, or marketing Program Recyclables, **regardless of whether the Contractor has been reimbursed for the AMV Shortfall prior to Contract expiration or termination of the AMV**
- 3.5.1.2** The City or Contractor may request a composition study of Program Recyclables delivered to the Designated Recycling Facility **once per contract year and no sooner than ninety (90) days from Contract Commencement Date.** The party requesting such study shall pay for the study unless otherwise agreed upon. Any such study shall be conducted by the City **or designee selected by the City.** The study methodology shall include the sampling and manual, hand-sorting of incoming Program Recyclables, prior to any mechanical processing. At a minimum, Program Recyclables shall be sorted into the material categories listed in the Bid Schedule for Recyclables Processing, including any additional materials that may be added during Contract Term. The Contractor may have a representative onsite throughout the recyclables composition study. Study results are subject to final approval by the City, which shall not be unreasonably withheld. If approved by the City, adjustments to the composition percentages provided in Bid Schedule for Recyclables Processing shall be made and shall become effective for the following month and the remainder of the Contract, or until further adjusted in a future composition study.
- 3.5.1.3** The Contractor acknowledges and accepts that the formula outlined in Section 3.5.21.1 shall be used for calculating revenue throughout the term of the Contract. It is intended to reflect the current value of Program Recyclables, but might not be an exact calculation of that value. If the commodity revenue received by the Contractor differs from the market index or the Contractor's Fee does not accurately reflect the Contractor's cost for accepting, processing, and marketing

Program Recyclables, the Contractor shall have taken such items into consideration when bidding the percentage of the AMV less the Contractor's Fee that it will pay to the City. Any and all costs associated with accepting, processing, marketing, and transporting Program Recyclables shall be the responsibility of the Contractor.

3.6 Cost Adjustments

3.6.1 The Contractor's payment fee, defined in Section 3.5.1, shall remain the same through the first Contract Year. At the beginning of the second Contract Year and each subsequent Contract Year during the term of the Contract, the Contractor's Fee shall be adjusted based on seventy-five percent (75%) of the percentage change in the Consumer Price Index (CPI) between the month of March in the previous year and the month of March in the current year, rounded to the nearest tenth. The CPI will be the Consumer Price Index for the South Urban Region, All Items – All Urban Wage Earners and Clerical Workers, (series ID #CWURO300SA0) published by the United States Department of Labor, Department of Labor Statistics (<http://www.bls.gov/data/>). The total adjustment to the Contractor's Fee in any given year shall not exceed two percent (2%) of the previous year's Contractor's Fee. If the CPI is discontinued or substantially altered, the City may select another relevant price index published by the United States Government or by a reputable publisher of financial and economic indices.

3.6.2 The Contractor may petition the City for an additional rate adjustment resulting from a change in law materially impacting the Contractor's operations. The Contractor's request shall contain substantial proof and justification to support the need for the rate adjustment. The City may request from the Contractor such further information as may be reasonably necessary in making its determination. Within sixty (60) calendar days of receipt of the request and all other additional information required by the City, the Contract Administrator shall make a determination regarding the fairness of the request, and shall make a recommendation to the City Commission. The City Commission shall consider the request. If the City Commission approves the request, adjusted rates shall become effective upon the City Commission's approval. The decision of the City Commission shall be final and binding.

3.7 Required Documents

The following documents shall be submitted in the order listed below as a condition of this ITB at the time of submittal with the Bidder's response:

- 1) Bid Package
 - a. Bid Certification
 - b. Bid Schedule for Recycling Processing
 - c. Qualification Statement
 - d. Schedule A – Disclosure Form
 - ~~e. SDBE Affidavit~~
 - f. Indemnification Clause
 - g. Non-Collusive Affidavit
 - h. Drug Free Workplace Form
 - i. Local Business Affidavit (if applicable)
 - j. References
 - k. Variances to the ITB (if applicable)
- 2) Local Business Tax Receipt (Principle Place of Business)

Chapter 440, Florida Statutes, as may be amended from time to time, the "Workers' Compensation Law" of the State of Florida, and all applicable federal laws. In addition, the policy(ies) must include:

- Employers' Liability with a limit of One Million Dollars (\$1,000,000.00) each accident.

~~3.8.1.4 Pollution Liability Insurance~~ (not applicable for Contractor providing Recyclables Processing services).

~~Recognizing that the required work has the potential to involve the storage, processing or transporting of hazardous materials, the Contractor shall purchase and maintain, throughout the life of the contract, Pollution Liability Insurance which will respond to the bodily injury, property damage, and environmental damage caused by a pollution incident. The minimum limits of liability shall be \$1,000,000 per Occurrence / \$2,000,000 Aggregate~~

~~If coverage is provided on a claims made basis, an extended claims reporting period of four (4) years will be required. City shall also be named additionally insured.~~

3.8.2 General

If any operations are to be undertaken on or about navigable waters, coverage must be included for the U.S. Longshoremen & Harbor Workers Act and Jones Act.

3.8.2.1 Such policy or policies shall be without any deductible amount unless otherwise noted in this Contract and shall be issued by approved companies authorized to do business in the State of Florida, and having agents upon whom service of process may be made in Broward County, Florida. Contractor shall pay all deductible amounts, if any. Contractor shall specifically protect City and the Deerfield Beach City Commission by naming City and the Deerfield Beach City Commission as additional insured under the Commercial Liability Policy as well as on any Excess Liability Policy coverage.

3.8.2.2 Contractor shall furnish to City's Contract Administrator Certificate of Insurance or endorsements evidencing the insurance coverage specified herein within fifteen (15) calendar days after notification of award of the Contract. The required Certificates of Insurance shall name the types of policies provided, refer specifically to this Contract, and state that such insurance is as required by this Contract. Contractor's failure to provide to City the Certificates of Insurance or endorsements evidencing the insurance coverage within fifteen (15) calendar days shall provide the basis for the termination of the Contract.

3.8.2.3 Coverage is not to cease and is to remain in force (subject to cancellation notice) until all performance required of Contractor is complete. All policies must be endorsed to provide City with at least thirty (30) days' notice of expiration, cancellation and/or restriction. If any of the insurance coverages will expire prior to the completion of the work, copies of ~~renewal policies~~ **updated certificate(s) of insurance** shall be furnished at least thirty (30) days prior to the date of their expiration.

4.6.2 Within thirty (30) days of the end of each Contract Year, the Contractor shall provide the Contract Administrator with a report summarizing the total Tons of Program Recyclables delivered to the Designated Recycling Facility during the Contract Year and the net tonnage diverted from disposal. Additionally, the Contractor shall submit a copy of the annual report submitted to FDEP summarizing Recyclable Materials deliveries by type, quantity, and source.

4.7 Public Education and Information

4.7.1 The Contractor shall, at no cost to the City, provide an educational presentation and educational materials for distribution at least two (2) events per Contract Year as requested by the City.

4.7.2 The Contractor shall, at no cost to the City, provide tours of the Designated Recycling Facility upon at least seven (7) calendar days' notice by the City. The Contractor shall provide personnel (trilingual: English, Spanish and Creole upon request) to lead the tour and all necessary personal safety equipment. Designated areas for tour-group participants to safely observe the operations of the facility will be jointly agreed to by both the City and the Contractor prior to conducting any tours.

4.8 Invoicing and Payment

4.8.1 No later than the fifteenth (15th) day of each month, the Contractor shall submit a monthly report, in a form acceptable to the City, detailing the total revenue due to the City for the Program Recyclables delivered to the Designated Recycling Facility during the previous month.

4.8.2 The Contractor shall remit payment of said revenue, as detailed in the monthly report, within thirty (30) calendar days from the end of the month for which the payment is due.

4.9 Liquidated Damages

The parties understand that determining damages for the breach of certain provisions of the contract may be difficult. Therefore, the City may assess liquidated damages against the Contractor for failing to provide recyclables processing services in compliance with requirements of this ITB. It is hereby agreed that the City may invoice the Contractor and expect payment to be added to any monies due, or which may become due to the City, liquidated damages, and not as a penalty, in the following amounts:

- | | |
|--|-----------------------------|
| 1. Failure to accept Recyclable Materials during scheduled receiving hours (Section 4.3.2) | \$500 per unaccepted load |
| 2. Failure to provide a daily average delivery vehicle turnaround time that does exceed 20 minutes (Section 4.3.4) | \$300 per day |
| 3. Disposing of Recyclable Materials or Recovered Materials without prior approval of the Contract Administrator, who shall consider Average Market Value and other factors if applicable (Section 4.4.2) | \$1,000 per occurrence |
| 4. Failure to submit timely records and reports (Section 4.6) | \$200 per calendar day late |
| 5. Failure to make timely payment to the City (Section 4.8) | \$200 per calendar day late |

ARTICLE 6

MISCELLANEOUS

6.1 RIGHTS IN DOCUMENTS AND WORK

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Contract are and shall remain the property of CITY; and, if a copyright is claimed, CONTRACTOR grants to CITY a non-exclusive license to use the copyrighted item(s) indefinitely, to prepare derivative works, and to make and distribute copies to the public. In the event of termination of this Contract, any reports, photographs, surveys, and other data and documents prepared by CONTRACTOR, whether finished or unfinished, shall become the property of CITY and shall be delivered by CONTRACTOR to the Contract Administrator within seven (7) days of termination of this Contract by either party. Any compensation due to CONTRACTOR shall be withheld until all documents are received as provided herein.

6.2 AUDIT RIGHT AND RETENTION OF RECORDS

CITY shall have the right at its sole expense to audit the books, records, and accounts of CONTRACTOR and its subcontractors that are related to this Project. CONTRACTOR and its subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project. All books, records, and accounts of CONTRACTOR and its subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, CONTRACTOR or its subcontractor, as applicable, shall make same available at no cost to CITY in written form.

CONTRACTOR and its subcontractors shall preserve and make available, at reasonable times for examination and audit by CITY, all financial records, supporting documents, statistical records, and any other documents pertinent to this Contract for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Contract. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by CITY to be applicable to CONTRACTOR's and its subcontractors' records, CONTRACTOR and its subcontractors shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CONTRACTOR or its subcontractors. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for CITY's disallowance and recovery of any payment upon such entry.

CONTRACTOR shall, by written contract, require its subcontractors to agree to the requirements and obligations of this Section 6.2.

6.3 COMPLAINTS AND DISPUTES

All complaints concerning misconduct on the part of the Contractor or disputes between City staff and the CONTRACTOR are referred to the City Manager or his designee, who shall conduct investigations and inquiries, including discussions with the CONTRACTOR and involved staff. The determinations of the City Manager or designee shall be binding upon the parties, and failure of the CONTRACTOR to follow any such determination could be considered a material breach and subject the CONTRACTOR to termination for cause. The CONTRACTOR agrees that any complaints received by the City concerning misconduct on the part of the CONTRACTOR, such as excessive charges, poor business practices, etc., will be referred to the Office of the City Manager for appropriate action. The CONTRACTOR agrees to make any complaints concerning the City of Deerfield Beach available to the Office of the City Manager for action as required.

