

ADDENDUM NO. 5

REQUEST FOR PROPOSALS TO ESTABLISH A SOLID WASTE MANAGEMENT CONVERSION TECHNOLOGY FACILITY SANTA BARBARA, CALIFORNIA

April 15, 2010

This Addendum No. 5 provides answers to written questions submitted through April 2, 2010, and provides other clarifications to the RFP.

- 1. We understand:**
 - a. The facility must be designed to process a waste throughput of 222,756 tpd (page 4-1).**
 - b. The Minimum Annual Delivery Requirement is 192,102 tpy (page 5-2).**
 - c. The Maximum Annual Delivery Threshold is 222,756 tpy (page 5-2).**

The capital cost, the resultant debt service and other costs associated with the capital cost, such as debt service coverage, will be the same for either the minimum or maximum waste throughput levels. A significant portion of the operation and maintenance costs are fixed (i.e., labor, insurance and most of the equipment repair and replacement costs). These annual operation and maintenance costs do not depend on the amount of waste processed. There are some variable operation and maintenance costs, but they are a small percentage of the overall annual cost.

Revenues from the sale of energy and recycled products will be about 16% less for the minimum case compared to the maximum case. And finally, the divisor used to calculate the tipping fee will be 16% lower for the minimum case.

In summary, the total annual cost for the minimum case is close to the maximum case. Revenues and the quantity of waste are 16% lower. We estimate the overall difference in tipping fee from the minimum to the maximum case will be about 23%.

Our concern is, according to paragraph 5.2.1 of the RFP, the Contractor will be paid based on the number of tons delivered. This tells us we should base our proposal on the minimum delivery requirement. However, this would unfairly penalize the County if more than the minimum waste is delivered by a 23% increase in the cost per ton of waste processed. Our question is for which case (minimum or maximum) should we complete the Pricing Proposal Forms?

We recognize the stated concern regarding the range between the minimum and maximum tonnage commitments. This was discussed at length during the preparation of the RFP. The waste delivery requirements specified in the RFP were determined by participants after significant consideration of potential future needs, and will remain as listed.

The participants seek competitive proposals and the manner in which the proposed Acceptable Waste Tipping Fee (AWTF) is calculated is at the discretion of the Proposer. The AWTF shall apply to all quantities of Acceptable Waste delivered to the Facility. The AWTF times the quantity of Acceptable Waste delivered shall be the only compensation paid to the Contractor, except for (i) a Shortfall Charge levied by the Contractor in the event Acceptable Waste delivered to the Facility is below the aggregate Minimum Annual Delivery Requirement; (ii) an Excess Tonnage Charge levied by the Contractor in the event Acceptable Waste delivered to the Facility exceeds the aggregate Maximum Annual Delivery Threshold, and (iii) monthly adjustments and payments that may be due the Contractor for conditions such as Uncontrollable Circumstances.

Proposers are reminded that the RFP defines Acceptable Waste to include agricultural plastic, tires, and sludge and residuals from water and wastewater treatment in addition to the municipal solid waste currently being landfilled. Estimates of the quantity of such waste generated within the County that may be available to the Contractor are provided in Section 3.5 of the RFP. Proposers are encouraged to consider these additional wastestreams as a source of Spot Market Waste to help "bridge" the differences between the minimum and maximum tonnage commitments.

2. **Paragraph 5.1.5 of the RFP defines a Periodic Delivery Reset procedure. The procedure permits each Public Participant to reset its waste delivery requirement, for the term of the agreement, by 10% beginning with the sixth year in three year increments.**

We calculate in the last three years of the 20 year term of the agreement, the waste supplied to the project could be reduced to 113,434 tpy, a 40% reduction based on the Minimum Annual Delivery Requirement. The Contractor may try to obtain Spot Market Waste. However, there is no assurance this waste would be available. A 40% reduction in waste supply would cause a \$19 million per year shortfall in required project revenues (without considering the affect of 17 years of escalation). The project would not be able to continue to process waste.

We are concerned about several issues. They are:

- a) The Public Participants might decide to withhold waste from the project because they found a less costly solution.**
- b) Spot Market Waste may be more difficult to attract for the same reason.**
- c) The RFP prohibits the Contractor from going outside Santa Barbara County to attract waste.**

We request the County reconsider their position with respect to waste supply. One way to mitigate the problem would be for the Public Participants to agree to provide all the waste they collect. A second solution could be to allow the Contractor to obtain waste from neighboring counties in the event a drastic reduction in County waste supply occurs. There are probably other ways to mitigate this problem.

The Public Participants intend to commit municipal solid waste that is being disposed at the landfill to the Project. The intent of the Periodic Delivery Reset provision is not to allow the Public Participants to seek out other disposal methods, but to provide the Public Participants the flexibility to enhance existing waste recycling and diversion programs and/or initiate new programs that may be beneficial or otherwise desirable to the Public Participants.

See response to Question #1, above, regarding Spot Market Waste. Proposers are reminded that the Most Favored Pricing provisions of the RFP (Section 5.2.4) do not apply to disposal agreements with terms of less than three (3) years or to Spot Market Waste that is accepted by the Contractor in the event of delivery resets by Public Participants with resulting processing capacity availability. In the event of tonnage delivery below the minimum annual requirements, a new price for Spot Market Waste may be negotiated (subject to approval by the Public Participants) in order to mitigate the loss of income. For Proposal purposes, Proposers shall assume that the Regional Solid Waste System Fee shall be paid on all tons including Spot Market Waste until the fee is paid in full. Once the entire Regional Solid Waste System Fee has been paid by the Contractor this fee would not have to be paid for any additional waste received. The County is willing to have further discussions with the party selected as the Preferred Proposer regarding pricing for Spot Market Waste and payment of the Regional Solid Waste System Fee in consideration of encouraging the acquisition of Spot Market Waste.

Proposers are also reminded that Section 8.8.2 of the RFP allows Proposers to indicate specific provisions of the terms and conditions to which it takes exception and offer alternative contract language which it would accept in the

form of a markup. Proposers must offer a Base Proposal consistent with the tonnages and reset provisions provided in Sections 5.1.4 and 5.1.5 of the RFP, but may offer Alternative Proposals with different business terms and conditions.

3. Additional clarification regarding the Regional Solid Waste System Fee is provided below.

During the last expansion of the Tajiguas Landfill in 2002, the Board of Supervisors of the County of Santa Barbara directed staff to find an alternative to landfilling. Since that time, our efforts and the support from local elected officials has increased with an emphasis on establishing a conversion technology facility to treat and reduce our community's waste locally.

Any long-term alternative to operating the Tajiguas Landfill as is will require our community to maintain existing environmental controls at the Tajiguas Landfill as well as finance state-mandated closure and post-closure monitoring and remediation efforts. The costs for these mandated programs were used in calculating a Site Lease Payment for a proposed conversion technology facility. To better reflect the necessity of these costs (along with other less significant costs like the Contract Administration Payment and Grant Fund Payment) we refer to them as a "Regional Solid Waste System Fee" in Addendum #3 of the Request for Proposals.

The fiscal impact of the Regional Solid Waste System Fee is expected to be a pass-through cost to our ratepayer. This fee will not be included when considering the minimum criterion of \$100 or less per ton for processing municipal solid waste. This criterion was defined before our Regional Solid Waste System Fee was estimated. This fee may change depending on the conversion technology selected and the length of term of the operations agreement.

The Regional Solid Waste System Fee would affect the cost of any other long term solid waste management option. For example, if the County were to ship its waste to another landfill, the Regional Solid Waste System Fee combined with additional transportation costs and the tipping fee may exceed \$100 per ton.

It is important to include the Regional Solid Waste System Fee at the beginning of this process to ensure that the public and elected officials are aware of the total cost to pursue this project. This Fee will be included in any comparison to other future long-term solid waste management options.