

**The City of New York
Department of Sanitation
Bureau of Waste Prevention, Reuse and Recycling**

**Request for Proposals
to Accept, Process and Market
Recyclables**

Procurement Identification Number: 82703BR00071

Authorized Agency Contact: Proposers are advised that the Agency's authorized contact person for ALL matters concerning this RFP is:

**Robert Lange, Director
Bureau of Waste Prevention, Reuse and Recycling
44 Beaver Street, 6th Floor, New York, NY 10004
(212) 837-8156/ rwlange.nyrecycles@verizon.net**

IT IS ILLEGAL TO ENGAGE IN PRACTICES THAT UNDERMINE OR THWART THE FAIR AWARD OF THE CONTRACT RELATED TO THIS RFP. EVERY EFFORT HAS BEEN MADE TO ENSURE THAT THE AWARD OF THIS CONTRACT IS BASED ON JUST AND FAIR PRACTICES. CRIMINAL VIOLATIONS WILL BE PROSECUTED TO THE FULLEST EXTENT OF THE LAW.

THE NEW YORK CITY COMPTROLLER IS CHARGED WITH THE AUDIT OF CONTRACTS IN NEW YORK CITY. ANY PROPOSER WHO BELIEVES THAT THERE HAS BEEN UNFAIRNESS, FAVORITISM, OR IMPROPRIETY IN THE PROPOSAL PROCESS SHOULD INFORM THE COMPTROLLER, OFFICE OF CONTRACT ADMINISTRATION, ONE CENTRE STREET, ROOM 835, NEW YORK, NY 10007, (212) 669-3000. IF YOUR PROPOSAL IS SELECTED FOR AWARD, YOU WILL BE EXPECTED TO SIGN AN AFFIDAVIT STATING THAT YOU ARE UNAWARE OF ANY IMPROPRIETIES THAT CREATED AN UNFAIR ADVANTAGE DURING THE DEVELOPMENT, EVALUATION, AND SELECTION PHASES OF THIS RFP PROCESS.

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DEFINITIONS

Acceptance: The act of receiving Recyclables deliveries from Authorized Vehicles.

Acceptance Facility: An appropriately authorized, licensed, permitted or registered facility to which Recyclables are delivered by Authorized Vehicles.

Acceptance Facility Site: The block and lot numbers corresponding to the property on which the Acceptance Facility is located.

Agreement: The contractual agreement between the City and the Contractor.

Alternate Proposer: A Proposer, if any, designated by the City to participate in Contract negotiations in the event the City and the Selected Proposer do not execute a Contract.

Alternative Processing Technologies: Machinery and/or processes for sorting, separating, cleaning, baling, categorizing, weighing, and/or any other activities related to preparing delivered Recyclables for Marketing that have not been utilized under prior contracts; as well as machinery and/or Processing for minimizing back-end Residue, facility emissions or odors, or improving other aspects of facility operation that have not been utilized under prior contracts.

Assignment: The assignment, transfer, conveyance or other disposition of the Contract, or of the Contractor's rights, obligations or duties under, or right, title and interest in, the Contract, in whole or in part. A sale or any other disposition of a majority interest in the Contractor or of any other interest that results in a change in the effective Control of the Contractor, shall also be deemed to constitute an Assignment.

Authorized Deliverer: Any Entity or person designated and authorized by the City to deliver Recyclables to the Contractor. Each Authorized Deliverer will have a DSNY Identification Number.

Authorized Vehicle: Any vehicle that the Contractor and the City determine to be acceptable for the delivery of Recyclables to a Facility by the City or its Authorized Deliverers.

Back-End Residue: Any material, other than Processed Recyclables, that remains after the Recyclables have undergone Processing.

Base Price: Price initially calculated as the difference between the Composite Index Price and the Processing Cost, used as basis for calculating Purchase Amount while the Contract is Revenue-based. See Appendix II

Beverage Cartons: Laminated paper beverage receptacles, including gable-top milk and juice cartons and aseptic containers.

Billing Period: Each calendar month during the Term of the Contract, except that the first and final Billing Periods may be less than a full calendar month, as follows:

- A. the first Billing Period shall begin at 12:01 AM on the first day of the first Contract Year and shall end at close-of-business on the last day of the calendar month in which that date occurs, and
- B. the last Billing Period shall end on the Termination Date of the Contract.

BWPRR: Bureau of Waste Prevention, Reuse and Recycling of the City of New York Department of Sanitation.

Ceiling Price: US dollar amount per US Ton, as specified in the Contract, above which the Base Price may not go.

City: The City of New York.

City Holidays: New Year's Day, Lincoln's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Election Day, Veterans Day, Thanksgiving Day and Christmas Day. City Holidays may be changed upon written notice from the City. If one of the above national holidays falls on a Saturday, the City Holiday shall be the preceding Friday, and if it falls on a Sunday, the City Holiday shall be the subsequent Monday. If Election Day and Veterans Day occur during the same calendar week, one of those two City Holidays shall be designated a Workday by DSNY.

Collective Bargaining Contract: An agreement between the City and one of its unions that is entered into under the City's Collective Bargaining Agreement Review and Approval Procedures as amended.

Commencement Date: The date the Contractor is scheduled by DSNY to start work on the Contract, as stated in DSNY's written order to commence work.

Composite Index: Index estimating relative composition of metal, plastic, Residue and (if applicable) glass in Recyclables loads delivered by DSNY to contractor.

Composite Index Price: Rolling average of prices for metal, plastic and (if applicable) glass commodities, as published in a publication of record, weighted by the Composite Index.

Commissioner: The Commissioner of the City of New York Department of Sanitation.

Confidential Information: Proprietary information now or hereafter owned, licensed to, or Controlled by a Proposer, including information which is plainly marked "confidential" by the

Proposer, but not including information, data, material, or documentation of any type or description in the public domain or such information, data, material, or documentation as may be placed in the public domain during the RFP process.

Consumer Price Index: The index published by the Bureau of Labor Statistics of the United States Department of Labor, for all Urban Consumers, for All Items in the New York-Northern New Jersey-Long Island, NY-NJ-CT-PA Area, not seasonally adjusted, for the federally-selected Base Period of 1982-84=100, or any successor index thereto. If the Consumer Price Index ceases to be published, and there is no successor thereto, such other similar index as the City designates and the Contractor approves, which approval shall not be unreasonably withheld, shall be substituted for the Consumer Price Index. If the Consumer Price Index is not immediately available, payments requiring such index for calculation shall be paid based on a reasonable estimate of the index, and any deficiency shall be paid along with, or overpayment credited against, the next payment due immediately after the index is available.

Contamination: The presence of materials not designated for recycling in and among collected Recyclables. These materials may include: non-designated plastics; food Residues; and refuse items.

Contract: An agreement resulting from the RFP process between a selected Proposer and the City to Accept, Process and Market Recyclables.

Contract Year: The 12 month period commencing at 12:01 AM on the Delivery Date and ending on 12:01 AM on the day before the first anniversary thereof and each 12 month period thereafter during the Term of Contract, commencing on each anniversary of such date.

Contractor: The Proposer selected as a result of the RFP process who has executed a Contract registered in accordance with the laws and regulations of the City.

Control: For the purposes of the RFP, the Contractor's ownership of, or affiliation with the owner of (including joint-venture with), a facility such that the Contractor is able to fulfill all terms of the Contract to accept, process and market Recyclables.

Cost-Neutral Basis: A Contractual arrangement between the City and the Contractor that entails no monetary exchange between the Contractor and the City but does entail exchange of goods or services.

Credit Balance: Running balance of DSNY Credits accruing in cases of adjustment of the Base Price down, as specified in the Contract.

Delivery Date: Date selected at the sole discretion of DSNY after DSNY receives from the Contractor all of the documentation required by Section 2.1.2 of the "Proposed Detailed Specifications" (Appendix I).

Delivery Information: All information about a delivery of Recyclables by the City that the Contractor is required to include on a Delivery Receipt.

Delivery Receipt: DSNY's Recyclables delivery receipt, Form DS 1637 (or a successor document, the document on which is recorded all information about the delivery of a load of Recyclables, as such form may be amended from time to time, a copy of which is attached as Attachment 8.

Department: The Department of Sanitation of the City of New York.

DSNY: The Department of Sanitation of the City of New York.

Emergency Notice: A notice given by the Contractor to DSNY that:

- (1) the Acceptance Facility will be closed for a period of time and cannot accept Recyclables in accordance with the Contract; or
- (2) the Acceptance Facility has a Weigh Scale Malfunction, and will be open, but will be able only to provide manual records of each Collection Vehicle's delivery of Recyclables.

Entity: Any organization, including but not limited to, a partnership, a joint venture, a corporation, an estate, a trust, an unincorporated association, any Federal, State or municipal government (or bureau, department or agency thereof) and any fiduciary acting on behalf of any such an organization.

Evaluation Committee: The committee composed of Department representatives for the purpose of evaluating Proposals and Proposers.

Expense Basis: A Contractual arrangement between the City and the Contractor that entails or has the potential to entail payment to the Contractor by the City.

Fiscal Year (FY): The City's Fiscal Year, which begins July 1st and ends the following June 30th of the following calendar year.

Front-End Residue: Any material, other than Processed Recyclables, removed from Recyclables prior to Processing.

Guaranteed Daily Delivery Amount: The minimum number of US Tons of Recyclables to be delivered under the Contract per Working Day to the Acceptance Facility by the DSNY.

Guaranteed Monthly Delivery Amount: The minimum number of US Tons of Recyclables to be delivered under the Contract per month to the Acceptance Facility by the DSNY.

Hazardous Substances: Any material or substance regulated from time to time as a toxic or hazardous waste or substance under any applicable federal, state or local law, regulation, rule or ordinance, because of its potential risk to human health or the environment, including any material or substance containing any of the hazardous characteristics or constituents set forth in 40 C.F.R. Sec. 261.20 et seq., as replaced or amended, listed as a hazardous waste pursuant to 40 C.F.R. Sec. 261.30 et seq., as replaced or amended, defined as a hazardous substance in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sec. 9601 et seq., as replaced or amended, or defined as a toxic or hazardous waste in the Solid Waste Disposal Act, 42 U.S.C. Sect. 6901 et seq. as replaced or amended, or defined as a hazardous waste or hazardous substance under the statutes and regulations of the State of New York, New York Environmental Conservation Law, Article 27, as replaced or amended, or petroleum as defined within the New York Navigation Law, Article 12.

Inflation Adjustment: An adjustment to the Ceiling Price, the Floor Price, the Processing Cost, or liquidated damage amounts (LDs), to take into account the effects of inflation.

LD: Liquidated Damage

Late Payment Charges: Charges that the Contractor will pay DSNY for late payment of any DSNY invoices.

Law(s): All laws, rules, regulations, orders, ordinances, statutes, codes, executive orders, resolutions, permits, and requirements of all governmental authorities and agencies having jurisdiction over the parties, the facility site(s), the facility(ies), the Contract, or the activities contemplated by the Contract.

Letter of Credit: An irrevocable letter of credit in the form annexed to these Specifications as Attachment 5, issued by a bank satisfactory to the City.

Liquidated Damages: Amounts payable by the Contractor to the City for specified operational failures under the Contract as acknowledgment by the parties that actual damages for each violation are difficult or impossible to ascertain.

Major Subcontractor: A Subcontractor that Controls a Processing Facility.

Marketing: The act of selling Processed Recyclables to buyers intending to put them to beneficial use.

Marine Transfer Station: Waste and Recyclables transfer station sited on the water, accessible by barge and truck.

Materials Recovery Facility: Facility at which Recyclables are processed to clean, sort, bale or otherwise prepare them for market.

Maximum Daily Delivery Amount: The maximum number of US Tons of Recyclables that the Contractor is required to accept under the Contract at the Acceptance Facility on a Workday.

Maximum Weekly Delivery Amount: The maximum number of US Tons of Recyclables that the Contractor is required to accept under the Contract at the Acceptance Facility in each calendar week.

MGP: Commingled household metal, plastic jugs and bottles, glass bottles and jars, and Beverage Cartons collected under DSNY's curbside and containerized Recycling Program.

Mixed Metal: Ferrous, aluminum, and other nonferrous metal household/institutional items collected under DSNY's curbside and containerized Recycling Program.

Monthly Payment: The amount payable for each Billing Period according to provisions of the Contract, between either party.

Monthly Report: A written report describing in detail the delivery and Acceptance activities that occurred during that Billing Period.

MP: Commingled household/institutional metal, plastic jugs and bottles, and Beverage Cartons collected under DSNY's curbside and containerized Recycling Program.

MRF: Materials recovery facility.

MSW: Municipal solid waste.

MTS: Marine transfer station.

Municipal Solid Waste: (1) Refuse and (2) Recyclables generated by residents and public/non-profit (institutional) entities. In this RFP, MSW does not include commercial waste, which is managed privately in New York City.

Notice of Award: Notice sent by DSNY selecting the Contractor's Proposal for the Contract.

Official Delivery Records: The Delivery Records transmitted to DSNY by the Weigh Scale Computer, or, when transmission is not possible, the Delivery Receipts.

Order to Commence Work: A document DSNY sends to a Contractor directing it to commence work under a contract.

Paper: Commingled household/institutional newspaper, white paper, old corrugated cardboard, magazines/glossy paper, smooth cardboard, paperback books, and mixed paper collected under DSNY's curbside and containerized Recycling Program.

Payment Structure: Price estimates, formulas, procedures, calculation methods, assumptions, justifications, and other necessary information pertinent to monetary exchanges or accruals of credit or debit balances between the Contractor and DSNY for the Acceptance, Processing, and Marketing of Recyclables.

Price Proposal: That section of the Proposal submitted in response to this RFP that proposes a per US Ton Processing Cost as well as other price and cost-related information requested on the Price Proposal Form (Attachment 1)

Processed Recyclables: Recyclables from which all the Residue has been removed and which has otherwise undergone Processing so that it is ready for Marketing to an end-user, broker, or other party available to purchase it for Recycling or other market use. Processed Recyclables include:

- A. any Processed material for which a market exists; and
- B. any material expressly designated as such by the City in connection with implementation of its Solid Waste Management Plan.

Processing: An operation or series of operations that enhances, sorts, cleans or otherwise prepares Recyclables for Marketing.

Processing Cost: The cost listed in the Price Proposal to Process the Recyclables, expressed on a dollars per US Ton basis, and reflecting operations, overhead, and profit.

Processing Facility: The facility(ies) identified by the Proposer as the place(s) where Processing of delivered Recyclables will take place.

Procurement Rules: The City Procurement Policy Board Rules for the procurement of goods and services, adopted August 1, 1990, as such rules may be amended from time to time.

Proposal: The document submitted in response to the RFP as an offer to provide the goods and perform the services described in the RFP.

Proposal Bond: A security for the Proposer's good faith negotiation of an agreement with the Department, pursuant to its Proposal, from a surety duly licensed to do business in the State of New York, with an office in New York City, to be returned within a period specified by the Department after award of the Contract.

Proposal Deadline: The date and time set by the City as the deadline for submission of Proposals by Proposers in response to the RFP.

Proposer: A person or Entity submitting a Proposal in response to this RFP, also encompassing proposed Subcontractors.

Purchase Amount: The monthly amount payable by the Contractor to DSNY while the Contract operates on a Revenue Basis, calculated as the Base Price (adjusted, if necessary) multiplied by the number of US Tons of delivered Recyclables for that Billing Period.

Recyclables MP or MGP, or any combination of metal, glass, plastic and Beverage Cartons designated under the curbside and containerized Recycling Program, whether sorted or unsorted, loose, bundled, bagged or baled, and any Residue contained therein, which is collected by the City to be delivered to the Contractor.

Recyclables Characterization Study: Study undertaken to characterize the material composition of Recyclables deliveries using generally accepted industry methods.

Recycle: To perform a series of activities by which materials that would become or otherwise remain solid waste are diverted from the waste stream for collection, separation and Processing, and are used as raw materials or mill feedstocks in lieu of, or in addition to, virgin materials in the manufacture of goods sold or distributed in commerce, or the reuse of such materials as substitute for goods made from virgin materials.

Recycling Program: The DSNY-managed program for the curbside and containerized collection of designated materials, including (currently) metal and paper; as well as (formerly and in the future) plastic and glass, from NYC's residents and public institutions.

Refuse: All putrescible and nonputrescible materials or substances that are discarded or rejected as being spent, useless, worthless, or in excess to the owners at the time of such discard or rejection, unless expressly exempted as such in Local Law 19.

Residue: Collectively, Front-End Residue and Back-End Residue.

Revenue Basis: A Contractual arrangement between the City and the Contractor that entails payment to the City by the Contractor, and precludes payment to the Contractor by the City.

RFP: Request for Proposals

Scenario One: In this RFP, a scenario in which DSNY contracts for Acceptance, Processing and Marketing of MP.

Scenario Two: In this RFP, a scenario in which DSNY contracts for Acceptance, Processing and Marketing of MGP.

Scenario Three: In this RFP, a scenario in which DSNY contracts for Acceptance, Processing and Marketing of MGP and Paper in separate streams, but under the same contract.

Solid Waste Management Plan: The City's solid waste management plan, as approved by the State, and as such a plan may be amended from time to time.

State: The State of New York.

Subcontractor: One who contracts with the selected (prime) Contractor, to provide any services that are within the scope of the Contract.

Technical Proposal: That section of the Proposal submitted in response to this RFP that proposes an approach to the delivery of services described herein, without reference to cost.

Term: The period beginning on the Commencement Date and ending on the Termination Date.

Termination Date: The last day of the Contract, whether it occurs by expiration or otherwise.

Total Other Charges: Charges other than the Purchase Price accruing in a Billing Period in accordance with the provisions of Section 5.4 of "Proposed Detailed Specifications" (Appendix I).

Tpd: US Tons per day.

Uncontrollable Circumstance: Any act, event or condition, whether affecting the Contractor or the City, to the extent that it has a materially adverse effect on the ability of either party to perform any obligation under the Contract (except for payment obligations), if such act, event or condition is beyond the reasonable control and is also not the result of the fault or willful or negligent or intentional act or omission of the party relying thereon as justification for not performing an obligation or complying with any condition required by such party under the Contract.

- (A) Uncontrollable Circumstances include, without limitation: acts of God; acts of war or terrorism; strikes; work stoppages or other labor disputes or disturbances; Weather Emergencies or other conditions affecting collection or delivery of Recyclables; the availability of Recyclables for collection; the scavenging of Recyclables; a change in the Solid Waste Management Plan; and lack of funding for the City's recycling program.
- (B) Uncontrollable Circumstances do not include a change in any Laws (other than the Solid Waste Management Plan), an inability of the Contractor to obtain or maintain financing, or any other financial condition of the Contractor.

US Ton: The US measurement equal to 2,000 pounds avoirdupois.

VENDEX Questionnaires: Questionnaires required by the City of all prime Contractors, Major Subcontractors, and most other Subcontractors, information from which is entered into the City's automated Vendor Information Exchange System.

Weather Emergency: A weather condition that affects deliveries of Recyclables. The most common Weather Emergency is the arrival or impending arrival of snow, but hurricanes or other weather conditions may also become Weather Emergencies. A Weather Emergency shall last until DSNY notifies the Contractor that the Weather Emergency is over.

Weigh Scale Computer: A computer that takes its weight readings directly from a Weigh Scale.

Weigh Scale Malfunction: An instance in which a Weigh Scale or a Weigh Scale Computer does not operate in accordance with its specifications and certification, fails to provide an Authorized Vehicle with a complete and legible Delivery Receipt, or otherwise fails to operate to the requirements of this Contract.

Weigh Scale: A scale located at the Acceptance Facility that has been approved, in writing, by DSNY for use under the Contract.

Workday: Any calendar day other than Sunday and City Holidays, unless the City notifies the Contractor by telephone or in writing, at least 12 hours in advance, that the City has designated a particular City Holiday or Sunday as a Workday.

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**NOTE: ALL CAPITALIZED WORDS IN THE RFP
TEXT THAT WOULD NOT NORMALLY BE
CAPITALIZED ARE DEFINED IN THE
“DEFINITIONS” SECTION OF THIS RFP.**

I. TIMETABLE AND BASIC INFORMATION

I. A. Release Date for this Request for Proposals:

August 27,2003

All questions and requests for additional information relating to the RFP or the project should be directed to Robert Lange, the DSNY's Authorized Contact Person and Director of the Bureau of Waste Prevention, Reuse and Recycling, at:

Bureau of Waste Prevention, Reuse and Recycling
City of New York Department of Sanitation
44 Beaver Street, 6th Floor, New York, NY 10004
tel. 212-837-8156
fax 212-837-8026
email rwlange.nycrecycles@verizon.net.

Any questions which in the opinion of DSNY warrant a written reply or RFP amendment will be furnished to all parties receiving a copy of this RFP and attending the Pre-Proposal conference. DSNY will not consider information that is not contained in this RFP or subsequent amendments, and/or other written correspondence in the evaluation of Proposals.

I. B. Pre-Proposal Conference

Beginning at 10:30 AM on **September 10, 2003**, a pre-Proposal conference for this RFP will be conducted in the City of New York Department of Sanitation conference room, at 44 Beaver Street, 12th floor, New York, NY 10004.

Attendance at the pre-Proposal conference is highly recommended. Proposers should notify Director Lange of the names and affiliations of those who will attend the pre-Proposal conference at least 72 hours before the pre-Proposal conference is scheduled to begin.

I. C. Proposal Due Date, Time, and Location

Date: November 12, 2003

Time: 10:30 AM

Address Proposals to:

Mr. Ronald Blendermann
Agency Chief Contracting Officer
City of New York Department of Sanitation
51 Chambers Street, Room 801
New York, NY 10013

Submit ten (10) copies of the Proposal to DSNY. The Proposal is to be submitted with an original letter of transmittal that will be an integral part of the Proposal (see RFP Section IV for instructions).

Proposals will only be accepted if received in the Department's offices (not postmarked) – by mail or hand delivery – by 10:30 AM Eastern Daylight Savings Time on the designated date. Clearly mark the outer sealed envelope of the Proposal package with the words, "Proposal to Accept, Process and Market NYC Metal, Glass, and Plastic Recyclables RFP Response," and the PIN Number 82703BR00071.

Proposals received at this location after the Proposal Due Date and Time are late and shall not be accepted by DSNY, except as provided under New York City's Procurement Policy Board Rules. DSNY will consider requests made to Mr. Lange to extend the Proposal Due Date and Time prescribed above. However, unless DSNY issues a written addendum to this RFP which extends the Proposal Due Date and Time for all Proposers, the Proposal Due Date and Time prescribed above shall remain in effect.

The Proposal shall be considered valid for a period of at least 210 calendar days from DSNY's receipt in order to accommodate post-selection Contract review and approval, and Contract registration.

I. D. Anticipated Contract Term and Start Date

It is anticipated that the Term of the Contract awarded from this RFP will be for twenty (20) years. The Contract may include one or more options to renew for incremental periods of up to ten (10) years each. The Department reserves the right, prior to Contract award, to determine the length of the initial Contract term and each option to renew, if any.

With the contract negotiations and site development necessary, the Department does not anticipate that work will begin for several years. However, the Department is prepared to begin work under the Contract as early as April 1, 2004, should the selected Proposer(s) be ready at that time, Contract negotiations be completed, and Contract documents be prepared in time to meet this deadline.

I. E. Obtaining Additional Copies of the RFP

Additional copies of the RFP are available from the Contracts Unit, NYC Department of Sanitation, 51 Chambers Street, Room 806, New York, NY 10007; telephone (212) 788-8085.

I. F. Important Information for Proposers

- I.F. 1. All prospective Proposers should carefully read RFP Section VI , "General Information for Proposers." This section discusses the rights and responsibilities of the City and Proposers with respect to the RFP and the Proposal process.

I.F. 2. Within 45 days of award, but prior to the commencement of work, the Contractor(s) must evidence insurance coverage in the amount of \$15 million commercial general liability and excess liability combined, \$3 million in auto, \$1 million for Employers' Liability, and the statutory amount for Workers' Compensation Coverage, as detailed in Appendix VII, "Insurance and Security Requirements."

I.F. 3. Questions

All questions relating to the RFP or the project should be directed to Robert Lange at the Bureau of Waste Prevention, Reuse and Recycling, City of New York Department of Sanitation, 44 Beaver Street, 6th Floor, New York, NY 10004, 212-837-8156, or at rwlange.nycrecycles@verizon.net. Any questions which in the opinion of the Department warrant a written reply or RFP amendment will be furnished to all parties receiving a copy of this RFP until the Proposal Due Date. Verbal information which is not contained in this RFP or subsequent amendments, and/or other written correspondence, will not be considered by the Department in evaluating the Proposals.

I.F. 4. Disclaimers

- I.F.4. a. This RFP does not commit the City to award a contract.
- I.F.4. b. All materials submitted in response to this RFP become the property of the City.
- I.F.4. c. The City reserves the right to conduct discussions with one or more Proposers. No Proposer shall have any rights against the City as a result of such discussions.
- I.F.4. d. The City reserves the right to waive irregularities in connection with any submission or any other aspect of this procurement.
- I.F.4. e. All responses submitted are made at the sole cost of the Proposer.

II. SUMMARY OF THE REQUEST FOR PROPOSALS

NOTE: THIS SUMMARY PROVIDES BACKGROUND FOR AND OVERVIEW OF THE SERVICES FOR WHICH THIS RFP IS BEING ISSUED. IT IS NOT INTENDED TO REPLACE A FULL REVIEW OF THE RFP IN ITS ENTIRETY.

II. A. Purpose of RFP

The City of New York Department of Sanitation is seeking one or more appropriately qualified vendors to provide all facilities, equipment, labor, and services necessary to accept, process and market some or all of the Recyclables collected under New York City's Recycling Program. It is imperative that vendors be technologically and operationally capable of handling the City's Recyclables as they are now. Proposals based on scenarios in which DSNY, through education, enforcement, or other means, alleviates contamination or glass breakage will not be considered. Greater consideration will be given to Proposers that demonstrate at least one year of successful experience in Processing residentially-collected metals; commingled metal, glass and plastics; or other residential Recyclables.

Proposals are to address two distinct scenarios as part of one overall response.

- The first is for the Acceptance, Processing, and Marketing of some or all of the expected 400 US Tons per day (US Tpd) of commingled residential mixed metal, plastic jugs/bottles, and Beverage Cartons (collectively, "MP") expected to be collected under the Recycling Program upon reinstatement of plastics and Beverage Cartons collection. Firms that can only accept small tonnages of Recyclables, that have insufficient technology to keep substantial tonnages moving through their facilities, and/or that lack the ability to market materials and hence experience stockpiles that interfere with their own operations should not submit Proposals. Because of the dependability of markets for these materials, DSNY expects Proposals on a Revenue Basis, i.e., that specify a minimum purchase price that the Contractor will pay DSNY per US Ton, with provisions for additional revenue sharing with DSNY if market prices rise above a certain level. This price will serve to partially reimburse DSNY for the cost of transporting each Ton of Recyclables from the end of a collection route to the Acceptance Facility.
- The second scenario, which must be addressed in the same Proposal, is for the Acceptance, Processing, and Marketing of some or all of the anticipated 1000 US Tpd of commingled residential mixed metal, plastic jugs/bottles, and paper Beverage Cartons, and in addition, commingled glass jars and bottles (collectively, "MGP"). Because of the overall weakness of glass markets, DSNY will consider Proposals on an Expense Basis that specify a negative purchase price per US Ton, i.e., a per US Ton price that DSNY will pay the Contractor to cover Processing costs, with provisions for offsets if market prices rise above a certain level. Proposals for MGP on a Revenue Basis will, of course, be accepted as well for Scenario Two.

In addition, DSNY will consider alternative and additional Proposals on a Revenue, Cost-Neutral, or Expense Basis to accept, process and market MGP in conjunction with a portion of NYC's Paper. This portion would be the tonnage of recovered Paper over and above the tonnage committed to Visy Paper – at the moment this balance totals approximately 850 US Tpd of paper. The selected Contractor(s) would have to accept, process and market both MGP and Paper. Therefore, Proposers may not make Proposals for Paper alone. The schedule to commence work for this scenario is approximately five years from the award of a Contract from this RFP.

It should be noted that under this scenario, collection and delivery of MGP and Paper would take place separately (i.e., this would not be a single-stream recycling program.) Proposers would have to demonstrate Control of facilities operationally capable and fully authorized, licensed, permitted and/or registered to accept the projected Paper and MGP tonnages generated under the NYC Recycling Program. It should also be noted that DSNY's willingness to consider Proposals for MGP and Paper in no way indicates specific plans or intentions regarding Paper Recycling.

DSNY is also interested in Proposals that contain additional provisions for the Acceptance, Processing, and Marketing of other materials from the NYC residential/institutional waste stream, such as #3 -7 plastics, textiles, bulk wood, and auto tires – assuming viable markets exist and can be demonstrated as part of the Proposal to exist. However, provisions for these materials are strictly secondary to the main goal of the RFP – namely Acceptance, Processing and Marketing of Recyclables. It should be noted that the inclusion of additional materials in this RFP in no way indicates DSNY's plans, willingness, ability, or intention to collect additional materials, over the next twenty years.

As a result of this solicitation, DSNY expects to execute one or more full service Contracts of at least twenty (20) years duration. Each Contract will address Acceptance, Processing and Marketing of MP, and potentially MGP thereafter, as distinct parts of one overall document. The Department anticipates initially awarding one or more Contract(s) for MP. The Contract(s) will include, as part of the Contract terms, an allowance for the MP provisions to be superseded if and when the Department elects to begin collecting and delivering MGP. In that case, the Contract terms provide for the enactment of MGP provisions, to continue for the remainder of the twenty years.

Proposers should be aware that the final Contract(s) awarded from this RFP will include a provision allowing for renegotiation of some or all of the Contract terms, should the underlying economics of recycling metal, glass, plastic, Beverage Cartons or other materials change substantially. Such renegotiation will be exercised at the City's sole discretion.

DSNY recognizes that any Entity interested in Acceptance, Processing and Marketing MP/MGP streams will need sufficient quantities of Recyclables to justify investment. Consequently, DSNY encourages Proposals from Proposers with Control of one or more facilities to secure the entire amount of MP, and potentially the entire amount of MGP, that DSNY collects and delivers, as projected in Appendix III, "Anticipated Tonnages." Under such an arrangement, DSNY will benefit through a lower per US Ton cost, and the Contractor will benefit by having a greater volume of material over which to spread its operating costs. Because this arrangement is

optimal for both parties, DSNY will give greater weight to Proposals to accept, process and market the entire stream of MP and/or MGP Recyclables.

II.A. 1. Background

The Department handles collection, transport, and disposal of MSW from New York City residents and many public/non-profit institutions. Refuse is presently exported via truck or rail for disposal. Residential metal and paper are collected in separate streams for recycling on a Revenue Contract basis. Metal Recyclables from self-help sites and institutional disposal are collected as a separate stream, and are currently managed under Revenue Contracts as well.

Between 1990 and 1995, materials collected under the Recycling Program included newspaper, magazines, and cardboard; metal cans; glass jars and bottles; and plastic jugs and bottles. During the period 1995 - 1997, the Program underwent expansion, with the addition of mixed paper to the Paper category, and household metal and Beverage Cartons to the MGP category. This collection scheme applied through FY 2002.

Under the expanded Program, residents and some public institutions were required to source-separate recyclable waste into Paper and MGP streams and set them out separately in color-coded bins or bags. Material was collected at curbside using rear-loading, compacting vehicles (packer trucks) with a single-hopper capacity of 25 cubic yards, or a dual-hopper capacity of 10-15 cubic yards. Containerized recycling was collected using integrated front-end-loader vehicles (EZ-Pack trucks). Curbside materials comprised 90% of deliveries, and containerized the remaining 10%. From time to time, other appropriate vehicles were used for collection by the City.

In FY 2002, institutions and residents generated approximately 3.2 million US Tons of MSW, approximately 21% of which (around 665,000 US Tons) was diverted from disposal to recycling under the Recycling Program. In that year, DSNY collected approximately 300,000 US Tons of commingled metal, glass, plastic, and Beverage Carton Recyclables under the Recycling Program. This was an average of roughly 1,000 US Tons per day.¹ Paper recycling accounted for around 365,000 additional tons. Other sources of Department-managed waste, including construction and demolition debris, inter-agency fill, and lot cleaning, accounted for around 1.87 million US Tons of waste during that year. Roughly a third of this latter amount was recycled as scrap or fill material.

One consequence of the general economic decline that followed 9/11 was the passage of Local Law 11 of 2002, which temporarily suspended DSNY's glass, plastics, and Beverage Carton recycling for Fiscal Year 2003. Between July 2002 and June 2003, DSNY collected Paper in one stream and household metal (cans, foil, appliances and other metal consumer items) in a second. Metal tonnage averaged roughly 260 US Tons per day during that period, including household bulk. Per Local Law 11, the Department resumed collection of plastic bottles and jugs,

¹. Averages are calculated on a 302 working day per year basis

as well as Beverage Cartons in July 2003, with collection of glass bottles and jars to follow starting April 1, 2004.

After a period of adjustment, plastics are expected to add roughly 140 US Tpd to existing collections, and glass another 600-700 US Tpd. The impact of adding Beverage Cartons will be negligible.

II.A. 2. Present Situation

The immense size of New York City’s population and waste stream, the presence of valuable materials such as aluminum, ferrous metals, and HDPE/PET plastics in its recycling stream, as well as the fact that its recycling program is enforced by law, creates very favorable conditions for businesses seeking to buy and process commingled MP, and to a lesser extent, MGP Recyclables, collected under the DSNY’s curbside and containerized Recycling Program.

While the exact proportion of metal to glass to plastic in New York’s residential/institutional MSW has not been definitively assessed since 1989, there have been several independent waste characterization studies that have provided estimates since then (see Appendix IV, “Composition Estimates for Recyclables”)

From these studies and other DSNY data (presented in Appendix III), Proposers can expect MP to average 400 US Tpd, and MGP to average 1,000 US Tpd, upon resumption of plastics collections, and then glass, under the Recycling Program. Based on DSNY’s experience and prior studies, DSNY estimates the composition of the reinstated MP and MGP streams as follows:

	<u>MP</u>	<u>MGP</u>
steel cans	54.26%	17.28%
aluminum cans	2.10%	0.67%
amber glass		2.00%
green glass		5.00%
clear glass		10.00%
mixed cullet		40.93%
mixed HDPE	16.80%	5%
natural HDPE	4.14%	1.32%
mixed PET	7.69%	2.45%
residue	15.00%	15.00%
Total	100.00%	100.00%

In addition, DSNY’s five years of experience under its previous MGP Processing contracts enables the following general statements to be made about New York City’s MGP stream as of FY 2002:

- ▼ it contained tonnages of HDPE and PET containers, ferrous, non-ferrous, and aluminum were generated on a remarkably steady basis;
- ▼ front-end residue was around 15%, composed predominantly of organics and nondesignated plastics;
- ▼ due to DSNY’s use of compactor trucks, the majority of collected glass in MGP deliveries arrived at facilities broken and soiled with organics.

Appendices IV and V present further detail about these characteristics.

It should be noted that under prior contracts, Processing facilities were: (1) often housed in space with very limited square footage; (2) generally equipped with sorting technology that included trommels, magnetic/eddy current separators, and balers; (3) generally equipped with sorting technology that was between five to nine years old as of 2002; (4) heavily reliant on manual sorting; (5) without optical sorting technology; and (6) without glass-benefication technology or established relationships with glass-benefication facilities. They thus lacked technological options to handle problems of broken glass and contamination that characterized MGP loads.

With full reinstatement of plastics and glass collections, Contractors can expect a diversion rate comparable to pre-suspension levels. Since the suspension of glass, plastic, and Beverage Carton collection in July 2002, recovery of these materials has fallen to zero, and the diversion rate is now roughly half its previous rate of 19-21%. At the same time, the high visibility of the issue of restoring recycling in the media, combined with the fact that DSNY has proven methods for public education and enforcement of commingled MGP recycling, suggests that a return to pre-suspension tonnages, given some months of adjustment, is very likely.

Proposers should formulate Proposals based on the anticipated tonnages and characterization of MGP as presented in Appendices III and IV. In particular, Proposers must be prepared for a Front-End Residue rate of around 15% due to the unusual demographic and housing characteristics of New York City. The connection between these characteristics, Recycling Program performance, and public education is discussed in Appendix V, "Statements on Contamination."

II.A. 3. Agency Goals

DSNY seeks Proposals that detail the siting, specifications, and operations of facilities to receive and process Recyclables as described above. The Department expects concrete plans to process Recyclables using the most appropriate technology, and reflecting the highest possible level of efficiency. The Department also requires feasible, proven plans to market materials for beneficial use – either as inputs to secondary Processing or end-use manufacturing, or as finished product.

Proposers are encouraged to be creative about partnering with secondary processors, manufacturers, and others; and identifying new markets for Processing materials. At the same time, Proposers must be cognizant of the constraints of New York City and its waste stream, which limit the scope of plans to accept, process, and market NYC Recyclables. These constraints include (1) the need for sufficient scale of capacity to keep tonnages moving through the system; (2) the necessity of securing primary Processing capacity and capability before developing plans for secondary Processing of materials or manufacturing ventures; (3) the importance of making the most of the technological advances in Processing that have taken place over the past decade; and (4) the need for proposed facilities to already have been sited, or have a reliable siting plan.

In this context, Proposers are also encouraged to consider transport technologies that are minimally burdensome environmentally – namely rail and barges. Furthermore, DSNY expects Contractors to operate their facilities in a manner that will minimize impact on the surrounding community, making the most of odor control technology and building design, and buffering the facility from the surrounding community through attractive fencing, berms, and plantings.

Proposers should demonstrate a sophisticated understanding of recycling markets and the secondary materials economy. They should be aware of, and plan for, extreme market volatility as well as market exchange on local, regional, national, and global scales simultaneously. They should also be versed and interested in promoting local economic development of recycling-related businesses (in secondary Processing, value-added manufacturing, end-use manufacturing, or other activities), given the priority of maintaining reliable Acceptance, Processing and Marketing of materials overall.

DSNY requires a Revenue Basis payment structure for Acceptance, Processing and Marketing of MP. It also expects that Proposers make a creative and good-faith effort to minimize expenses or develop a revenue arrangement for Acceptance, Processing and Marketing of MGP.

On an operational level, DSNY seeks Proposals that maximize delivery efficiency for DSNY trucks, and, utilizing a sophisticated understanding of process flows, suggest protocols for minimizing truck queuing.

Locating Acceptance Facilities in separate boroughs of the City will also contribute to improved operations and environmental impacts.

To summarize, DSNY's goals for the Contracts awarded from this RFP are to:

- (1) forge reliable, long-term relationships with entities capable of accepting all or a significant portion of DSNY Recyclables as they are collected, and with complete reliability;
- (2) see that market value of materials from Recyclables is maximized using all the resources available in the recycling industry – including Processing technology and Marketing expertise;
- (3) minimize the amount of zero-value commodities and/or Residue resulting from Recyclables Processing, using similar resources;
- (4) think creatively and realistically about partnering or subcontracting relationships for secondary Processing, remanufacturing, or other features of recycling economic development;
- (5) to the extent feasible, link the contractual relationship to local economic development in terms of business growth and jobs in the NYC area, provided that goals above are met;

- (6) to the extent feasible, minimize the environmental impacts associated with transport of Recyclables and community siting of Acceptance and Processing facilities;
- (7) establish MP Recyclables Acceptance, Processing and Marketing on a Revenue Basis, subject to the laws and procedures governing Revenue Contracts; and establish any subsequent MGP Acceptance, Processing, and Marketing either on an Expense Basis that minimizes costs to the City; or on a Revenue Basis;
- (8) achieve maximum operational efficiency during the Recyclables delivery process, especially with respect to minimizing queuing time.
- (9) encourage the geographic dispersion of Acceptance Facilities throughout the City.

II.A. 4. Extra Weight for Proposals that Respond to Goals 1 - 9 Above

In light of these goals, DSNY will give extra weight to the following:

- II.A.4. a. proposed facilities that are already under the Proposer's Control and require minimum development to be ready;
- II.A.4. b. facilities that propose to reduce outgoing traffic through barge or rail transport of Recyclables;
- II.A.4. c. facilities that can receive materials by barge from DSNY;
- II.A.4. d. strategically located and/or numerous facilities that reduce DSNY transportation burden and cost;
- II.A.4. e. beneficial revenue sharing arrangements;
- II.A.4. f. Proposals that realistically propose to maximize recycling and beneficial reuse;
- II.A.4. g. new technology, especially in the area of automating previously manual processes;
- II.A.4. h. new, but practicable, Marketing ideas for Processed Recyclables;
- II.A.4. i. viability of Proposal for economic development in New York City, as coordinated by the EDC;
- II.A.4. j. Proposals that suggest delivery procedures that maximize efficiency for DSNY drivers, especially in the area of queuing time.

- II.A.4. k. Proposals that locate Acceptance facilities in different boroughs of New York City, as opposed to two or more in one borough.

II. B. Service Options

This RFP seeks Proposals that cover two distinct scenarios:

1. Scenario One/Required: Acceptance, Processing and Marketing of MP on a Revenue Basis
2. Scenario Two/Required: Acceptance, Processing and Marketing of MGP on an Expense or Revenue Basis
3. Scenario Three/Optional: Acceptance, Processing and Marketing of MGP in conjunction with Paper

Proposers may address additional scenarios in which other materials are collected separately or commingled with MGP, including but not limited to: #3-#7 plastics, textiles, bulk wood, and auto tires.

Proposers may address each option sequentially, as separate sub-Proposals, or in any other consistent and comprehensible manner.

II. C. Service Areas

This RFP seeks services for Recyclables collected throughout the five boroughs of New York City, which are divided into 59 sanitation districts. Acceptance Facilities must be located within New York City limits

However, Proposers should not structure their RFP responses by anticipated district, borough, or other geographic area to be served as origin of delivered Recyclables. DSNY will determine origin depending on location of proposed Acceptance capacity and DSNY's calculation of its own transportation costs and logistics. DSNY calculates transportation costs from its routes to proposed Acceptance Facilities on a per-Ton basis. Such transportation costs will be a factor in determining awards.

II. D. Anticipated Contract Term

It is anticipated that the term of the Contract(s) awarded from this RFP will be for twenty (20) years. The Contract(s) may additionally include one or more ten-year options to renew. The Department reserves the right, prior to Contract award, to determine the length of the initial Contract term and each option to renew, if any.

Based on the Contract negotiations and site development necessary, the Department does not anticipate that work will begin for several years. However, the Department is prepared to begin work under the Contract as early as April 1, 2004, should the selected Contractor(s) be ready at that time. In addition, it is anticipated that the schedule to commence work for any financial arrangement involving Processing of MGP and Paper (Scenario Three) would begin approximately five years from the award of a Contract. Therefore, the Contract resulting from this RFP may be structured both operationally and financially to allow the staged phase in of one or more of the Scenarios outlined in the RFP.

II. E. Anticipated Payment Structure

The payment structure of the Contract(s) awarded from this RFP will initially be on a Revenue Basis for Acceptance, Processing, and Marketing of MP. If and when the Department moves from MP collection under its Recycling Program to MGP collection, and if the Department and the Contractor have agreed to MGP Processing on an Expense Basis, the Contract provisions agreed upon for MP will no longer apply. Any and all accumulated Credit Balances for either party will be deemed null and void (see Appendix II for an explanation of Credit Balances.) The Contract Term will thenceforth be subject to the Standard Cancellation for Lack of Funds provision included in all City Expense-Based Contracts. DSNY understands that any Company contracting with the City will be subject to more risk if and when the Contract goes Expense, and will be prepared to address this fact during Contract negotiations in the form of a compensation provision, to be mutually agreed upon by both parties. Further details can be found in Section 2.2 of Appendix I, attached.

Proposers will be asked to formulate separate Price Proposals for each scenario of the Contract, covering MP and MGP, respectively. Price Proposals for MP should be structured such that the Contractor will pay DSNY a fee for delivered materials to offset the costs DSNY incurs to transport and deliver Recyclables to the Acceptance Facility. Price Proposals for MGP may be structured on an Expense or Revenue Basis.

DSNY believes that, given the right payment structures, Revenue and Expense arrangements can be achieved that maximally benefit DSNY and at the same time ensure the Contractor profit in the long term. Full details and recommendations for such structures are detailed in Appendix II. Proposers are required to formulate their Proposals in accordance with these recommendations, but may propose alternate Payment Structures in addition to those required by DSNY, provided a positive per US Ton purchase price is maintained for MP.

II. F. Minimum Qualification Requirements

NOTE: THE PROPOSER WHO OFFICIALLY SUBMITS THE PROPOSAL WILL BE REFERRED TO AS “THE PROPOSER”. SUBCONTRACTING ENTITIES WILL BE CALLED “SUBCONTRACTORS.”

The following are Minimum Qualification Requirements of this RFP. Proposals that fail to meet all of these requirements will be rejected.

- II.F. 1. The Proposer must submit a \$50,000 Proposal Bond with the Proposal as Proposal security in accordance with the instructions in Attachment 9, to be returned upon the award of the Contract;
- II.F. 2. Acceptance Facility Requirements

At the time the Proposal is made, the Proposer must have Control of two or more Acceptance Facility(ies), each with a minimum combined Acceptance capacity of 3,000 US Tpd or 18,000 US Tons per week, and a storage capacity of at least 3,000 US Tpd or 18,000 US Tons per week, at each proposed Acceptance facility.

Greater consideration will be given to Acceptance Facilities that have two (2) Weigh Scales capable of registering truck weight – one for full trucks arriving at a Facility (a “weigh-in scale”); the other for empty trucks leaving a facility after tipping (a “weigh-out scale.”) These scales would optimally be positioned on each Facility’s property to as to minimize contact between incoming and outgoing vehicles. Data from both scales would be used to record delivery load weight based on truck tare weight. Both would have to be electronically linked to computer system capable of producing one receipt at the weigh-out scale. In the event that a two-scale system is not possible, Proposers should come forth with alternatives to weighing technology and operations that respond to the concerns outlined above, and minimize the queuing time for DSNY delivery vehicles. Further information about DSNY’s Weigh Scale Requirements is in Section 4 of Appendix I, “Proposed Detailed Specifications.”

- II.F. 3. Processing Facility Requirements

At the time the Proposal is made, the Proposer must have Control of, or a relationship with a Major Subcontractor with Control of, one or more Processing Facility(ies) of sufficient combined capacity to handle all material accepted at the Acceptance Facilities in a timely fashion, i.e., in such a way that backups, bottlenecks, or operational failures at the Processing Facility(ies) do not hinder the Acceptance Facility’s ability to reliably accept DSNY tonnages daily and weekly. Further details on this topic are in Section 3 of Appendix I, “Proposed Detailed Specifications.”

Tipping areas should be of a size that allows more than one vehicle to tip at a time, and which allow multiple vehicles to unload and weigh-out without interference.

- II.F. 4. Affirmation of Payment Provisions

Proposers must affirm in the cover Letter of Transmittal accompanying their Proposal that the portion of their Technical and Cost Proposals for the Acceptance, Processing, and Marketing of MP will be Revenue Based, entailing a payment to DSNY for each US Ton accepted as reimbursement for costs of transport and delivery of Recyclables to the Acceptance Facility.

Proposals that do not affirm this will not be considered. See RFP Section IV.A.1.k for instructions on this affirmation requirement.

III. SCOPE OF SERVICES

III. A. General Assumptions Regarding Contractor Approach

The Department assumes that the Contractor would address the following general elements in formulating its approach to Acceptance, Processing and Marketing of Recyclables:

III.A. 1. Basic Constraints on New York City Recycling

The development of Acceptance, Processing, and Marketing infrastructure in New York City since the enactment of Local Law 19 in 1989 has been constrained and guided by several interrelated factors. The Contractor would understand and work within these constraints, as follows.

III.A.1. a. Need for Substantial Capacity

With a total Recyclables stream averaging 1,300 US Tpd for paper, and nearly 1,000 US Tpd of MGP, capacity is arguably *the* crucial factor in NYC recycling. Because of the transportation costs and operational logistics associated with delivering Recyclables to Acceptance facilities, the Contractor would have sufficient capacity to handle a significant part or all of this tonnage.

Capacity is a product of the interaction of facility space with Processing and Marketing capability. Together, these factors determine how much can be delivered, and how quickly it can move through the facility and out again. Capacity is also determined by the legal and regulatory ability to accept Recyclables. In other words, the Contractor would have Control of authorized, licensed, registered and/or permitted sites.

III.A.1. b. Reliability

DSNY is under a mandate not only to recycle, but to collect waste daily. Failure to do this would result in public health threats, traffic disruption, and ultimately paralysis for the City. This imperative applies no less to recycling than it does to refuse. As a consequence, the Contractor would have sufficient capacity to reliably handle large tonnages. Except in cases of Weather Emergencies or Uncontrollable Circumstances, the Contractor's Facilities would accept deliveries on any day, and in a timely manner.

Moreover, since reliability depends on the uninterrupted movement of materials through Acceptance and Processing steps, it is imperative that the Contractor have access to shipping containers for transporting outgoing material, and can demonstrate this access in the Proposal, as well as demonstrate proven and dependable disposal options for Residue.

III.A.1. c. Primary Processing First

A third constraint has to do with the stages Recyclables move through on their way to re-entering beneficial use. These stages are as follows:

generation – transport – Acceptance – 1° Processing – 2° Processing – remanufacture

Primary Processing of commingled materials entails sorting Recyclables from nonrecyclables, as well as sorting different Recyclables from each other. It also includes baling of sorted materials, and Residue disposal. The Contractor would have primary Processing capability in that it would have Control over a primary Processing facility for the accepted material, or have a reliable primary processor as Major Subcontractor.

III.A.1. d. Proven Technologies

The Contractor would utilize a Processing technology that is well beyond the design stage, and has been proven to process materials under field conditions similar to New York City. Moreover, the Contractor's planned technology would produce an output that conforms to the its operational and financial expectations.

III.A.1. e. Volatile Markets

Because of the unalterable nature of secondary commodities markets, the Contractor would expect large fluctuations in the prices of recycled materials, particularly metals and plastics. Its business plans would include methods for managing assets, liabilities, and cash flows in an unpredictable environment.

III.A.1. f. Quality and Composition of NYC Recyclables

For reasons detailed in Appendix V, it is reasonable to expect contamination of the MP and MGP stream with organics, nondesignated plastics, and some refuse. In addition, in the case of MGP, there is likely to be significant glass breakage. The Contractor's Proposed facilities would have capacity to accept agreed-upon quantities of Recyclables in whatever condition delivered by DSNY. It is imperative that facilities be technologically and/or operationally capable of handling the City's Recyclables as they are now. For this reason, Proposals based on scenarios in which DSNY, through education, enforcement or other means, alleviates contamination or glass breakage will not be considered.

III.A. 2. Capitalize on Markets

To ensure the continued viability of recycling in NYC, Marketing plans would maximize prices for processed Recyclables. Where possible, the Contractor would aim to market to the

highest value end-uses available. Conversely, the Contractor would seek to minimize zero-value transfers of material for beneficial use, especially in landfill applications.

The Contractor would have a sophisticated understanding of recycling markets and the secondary materials economy. It is crucial that this understanding go beyond the local level to make the most of the rapidly globalizing world economy, and the proliferation of business relationships that e-commerce has facilitated.

The Contractor would balance profit maximization against protection from risk. In addition to the ability to generate revenues needed to make NYC Recycling feasible, DSNY is looking for long-term stability in its Contracts.

III.A. 3. Make the Most of Innovative Collaborations

The Contractor would be creative about partnering with secondary processors and/or remanufacturers, and in identifying new markets – provided it remain cognizant of the constraints on recycling in NYC today. As part of this goal, the Contractor would consider the viability of recycling additional materials, including but not limited to, #3-7 plastics, textiles, bulk wood, and tires. This suggestion, however, in no way commits DSNY to any programmatic changes in what is collected.

III.A. 4. Foster Realistic Local Economic Development

To the extent feasible, the Contractor would link contractual relationship with the City to activities fostering local economic development. This would mean making use of the various city, state and nonprofit economic development resources available when it is in the Contractor's interest to do so. Such resources – which include tax abatements, grants, loans, and technical/regulatory assistance – are designed to encourage businesses to locate within New York City boundaries and to bring profits and jobs to the City proper.

DSNY will work with selected Contractors and the City's Economic Development Corporation to maximize the chances of developing plans beneficial to both the City and the Contractor.

III.A. 5. Minimize Environmental Impacts

Local and long-haul truck traffic is the most serious environmental impact – in terms of air and noise pollution – that is associated with recycling. To the extent feasible and practicable, the Contractor would develop alternatives to truck transfer, including barge, rail, and alternative-fuel vehicles, provided these alternatives are tested and proven under NYC conditions, and their use fits with a workable overall plan.

In particular, the Contractor would receive Recyclables directly from DSNY via barge, as is currently done with Visy Paper. Barge and MTS specifications are referenced in Appendix VIII.

III.A. 6. Maximize Financial Benefits to the City

In theory, the City prefers to contract on a Revenue Basis rather than on an Expense Basis for Acceptance, Processing and Marketing of its Recyclables. The reason for this preference goes beyond the partial reimbursement to the City for transport of Recyclables from collection routes, and delivery to Acceptance Facilities that the City receives under Revenue Basis arrangements. Expense Contracting does not foster continued innovation in technology and efficiency, nor does it drive efficient Marketing, to the extent that Revenue Contracting does. This is especially true when Expense Contracts are of a limited duration, as they were under the previous five-year contracts for MGP Processing. Furthermore, Expense Contracts are subject to rules and procedures, including the right of the City to cancel for budgetary reasons, that Revenue Contracts are not.

In practice, however, DSNY acknowledges that the weak markets for glass make MGP Acceptance, Processing and Marketing extremely difficult to contract for on a Revenue Basis under NYC's Recycling Program. This reality stems from several characteristics specific to NYC. First, the City's population and density preclude scenarios for glass dropoff or collection in a non-compacting separate truck compartment – as practiced in smaller cities in the US and abroad. Second, markets for glass on the Eastern seaboard are substantially weaker than those on the West Coast due to the latter's (1) strong recycled-content laws for glass production in California; and (2) winery markets for mixed and green glass. Third, unlike California's container deposit legislation, New York State's Bottle Bill Law contains no provisions for State redemption of glass deposit containers. The State of California pays public and private MRFs for unsorted glass deposit containers on a per US Ton basis. For these reasons, the revenue potential of commingled MGP Acceptance, Processing and Marketing in other localities, particularly those in California and nearby states, is not comparable to that in New York City.

Given these realities, the Contractor would formulate its approach to MP Acceptance, Processing and Marketing on a Revenue Basis, and its approach to MGP Processing on a Revenue or Expense Basis. The Contractor would also consider alternatives for Acceptance, Processing and Marketing of MGP (for instance, in conjunction with Paper) that might enable contracting on a Revenue Basis.

III.A. 7. Maximize Delivery Efficiency

DSNY will give its highest rating to the Proposal that credibly promises the quickest turnaround time when a DSNY vehicle delivers Recyclables to the Acceptance Facility. Ideally a vehicle would be able to scale in, tip, and scale out in five minutes or less. The Department's Export contracts have specified a 25 trucks per hour (2.4 minutes per truck) turnaround time. However, the Department understands that recycling is not refuse, and therefore this may be an unrealistic number per hour for Processing recyclables. Overall, the Contractor would take into account the particular manner in which DSNY collects and delivers Recyclables.

The DSNY workday is generally divided into three shifts. Collections take place throughout a particular shift and deliveries are made either at the end of that shift, by the

collection crew, or at the start of the next shift, by a relay driver. This means that large numbers of vehicles can arrive at an Acceptance Facility in the space of a couple of hours, resulting in long queues, and then nothing else will arrive for eight hours or more. Although DSNY would prefer to spread its deliveries throughout the workday, current work rules preclude that as a possibility for the foreseeable future.

The Contractor would accommodate the manner in which DSNY delivers Recyclables (i.e., not in a steady stream but in periodic large loads). In an ideal Proposal:

- III.A.7. a. a DSNY vehicle would arrive at the Acceptance Facility and be able to enter immediately without having to wait on queue;
- III.A.7. b. all movement into, through, and out of the Acceptance Facility would be in a forward direction on one-way roads;
- III.A.7. c. the only time a vehicle would back up would be to tip, but DSNY would prefer a plan which enabled a vehicle to tip *without* having to back up;
- III.A.7. d. the tipping floor would be able to accommodate at least three vehicles at the same time;
- III.A.7. e. the scale house would be configured so that the driver of a vehicle on the weigh scale would be able to exchange paper work with the scale master without exiting the vehicle;
- III.A.7. f. either a tare-weight system or separate inbound and outbound scales would be used so that inbound and outbound vehicles do not contend for the same scale platform.

III. B. Specific Assumptions Regarding Contractor Approach

The Department expects that the Contractor would address the following specific elements in formulating its approach to Acceptance, Processing and Marketing of Recyclables pertaining to: (1) facility design, siting, and specifications; (2) limits and requirements of delivery and Acceptance of Recyclables; (3) technology employed by the Contractor for primary Processing; (4) procedures for Marketing materials that have gone through primary Processing; (5) the disposal of post-Processing Residue; (6) annual Recyclables characterization, (7) Partnering and Subcontracting, (8) Contingency Plans and (9) Reporting Requirements.

Further details on these specifics are in Appendix I, “Proposed Detailed Specifications.” DSNY’s requirements for Payment Structures are detailed in Appendix II. Discussion of Performance-Based Payment Structures is discussed in RFP Section III.E. below.

III.B. 1. Facilities

The Contractor must have at least two Acceptance Facilities at which it receives Recyclables deliveries from DSNY daily; and at least one Processing Facility, at which it prepares Recyclables for Marketing. DSNY will be delivering commingled Recyclables collected at curbside to Acceptance Facilities. Consequently, Processing Facilities must be able to process loads in the state delivered to Acceptance facilities. Thus, Processing Facilities must have primary Processing capability.

Acceptance Facilities must be Controlled by the Contractor, and may not be Subcontracted. Primary Processing Facilities must be Controlled by the Contractor, either directly or through a reliable Major Subcontractor with the capacity to handle daily, weekly and monthly tonnages such that the Acceptance Facilities are guaranteed to be able to reliably operate. The Contractor must demonstrate that Primary Processing Facilities will not experience backlogs, bottlenecks, or operational failures that impede the Acceptance Facilities’ ability to accept the minimum tonnages specified in Section II.F.2 of this RFP.

The basic requirements for Acceptance Facilities are (1) minimum capacity, as specified in RFP Section II.F.2, and (2) the presence of at least one certified weigh scale. Furthermore, at least two of the Contractor’s Acceptance Facilities must be located within New York City limits. The basic requirements for each Processing Facility are (1) primary Processing capability and (2) tonnage and throughput capacity to guarantee reliable and uninterrupted operation of Acceptance Facilities, as above. In addition, the Contractor must secure all authorizations, licenses, permits and registrations required by Law or otherwise necessary for the lawful operation of each Acceptance Facility and Processing Facility.

The Contractor may additionally enter into agreements with a Subcontractor that is a secondary Processing or remanufacturing facility; or other buyer/user of Recyclables having undergone primary Processing – provided the Contractor Controls or contracts with a Major Subcontractor for the Processing Facilities for primary Processing as described above.

III.B. 2. Delivery and Acceptance

NOTE: APPENDIX I OUTLINES PROPOSED DETAILED SPECIFICATIONS FOR DELIVERY AND ACCEPTANCE OF RECYCLABLES. THE REST OF THIS SECTION ADDRESSES AND HIGHLIGHTS THE SUBSTANCE OF THESE PROVISIONS FOR THE PURPOSE OF DESCRIBING SPECIFICS OF CONTRACTOR APPROACH.

Delivery of Recyclables to the Acceptance Facilities will be regulated around a set of daily, weekly and monthly amounts. The Contractor will be guaranteed a minimum tonnage for each Facility on a daily and monthly basis. The Contractor will guarantee, in turn, to accept up to a maximum tonnage on a daily and weekly basis at each Facility. These arrangements limit risk to both parties.

The City's obligation to deliver specified amounts shall be subject to availability of MP and MGP in New York City and to any unavoidable delay due to Uncontrollable Circumstance (as defined in the Contract.)

III.B.2. a. Guaranteed Monthly Delivery Amount

The Contractor should anticipate the monthly tonnages of MP and MGP, respectively, that it will require DSNY to guarantee to deliver to each Acceptance Facility.

III.B.2. b. Guaranteed Daily Delivery Amount

This is the amount that at a minimum, will be delivered on any day on which DSNY delivers Recyclables to the Contractor. This amount must be equal to 1/24th the Guaranteed Monthly Delivery Amount.

III.B.2. c. Maximum Daily Delivery Amount

This is the maximum amount of Recyclables that an Acceptance Facility will accept on a given day. This amount must equal 3,000 US Tons.

III.B.2. d. Maximum Weekly Delivery Amount

This is the maximum amount of Recyclables that an Acceptance Facility will accept in a given week. This amount must equal 18,000 US Tons.

The Contract will contain provisions that allow for the rejection of DSNY deliveries that are in excess of the Maximum Daily or Weekly Delivery Amount. However, the Contractor will have the option of choosing to accept deliveries exceeding these amounts, provided the excess deliveries are within the permitted capacity of the Acceptance Facility.

The Contractor will not be permitted to reject deliveries to any Acceptance Facility that are within the bounds of the Maximum Daily or Weekly Delivery Amount, except in cases specified in the Contract (see Appendix I, Section 3).

III.B.2. e. Condition of Deliveries

It is important to note that DSNY will make no representation or warranty regarding condition or quality of Recyclables or their composition, except that DSNY will not pre-sort or cull Recyclables, or remove any materials at curbside or other collection point.

The Contractor may, however, reject the delivery if it is apparent that it does not contain Recyclables (i.e., it is from a refuse, or other non-DSNY allocated recycling collection route.) This may be determined through visual inspection, subject to confirmation with a DSNY representative according to a set procedure spelled out in the Contract.

Further details on this topic are in Section 3 of Appendix I, “Proposed Detailed Specifications.”

III.B.2. f. Hours of Operation

The Contractor should be prepared to keep the Acceptance Facility open for delivery of Recyclables twenty-four hours per day on each and every Workday, although DSNY work schedules may allow for keeping the facility open for a shorter period each Workday. DSNY will work with the Contractor to optimize facility scheduling for both parties, but retains the option of requiring 24/6 operations when necessary.

DSNY may also ask the Contractor to remain open on Sundays and/or City Holidays under: (1) non-emergency circumstances or (2) following Weather Emergency or other emergencies, on a limited basis. Further details on this topic are in Section 3 of Appendix I, “Proposed Detailed Specifications.”

III.B.2. g. Delivery and Acceptance Procedures

The Contract will also contain detailed provisions relating to weighing trucks in and out (scale and computer requirements, weigh procedures); generation of delivery receipts; hours of Acceptance Facility operation; and procedures that guarantee prompt unloading of DSNY vehicles.

Further details on this topic are in Sections 3, 4 and 5 of Appendix I, “Proposed Detailed Specifications.”

III.B. 3. Processing

Processing of DSNY-delivered Recyclables (which is by definition primary Processing) will take place at one or more Processing Facility(ies), which may be coterminous with, adjacent to, or separate from the Acceptance Facilities. Processing will involve the separation of metal, plastic, glass and/or other Recyclables from Residue.

DSNY does not specify Processing technology to be used by the Contractor at such facilities. However, Proposers are strongly encouraged to consider proposing technologies that are (1) newer than; (2) more efficient than; (3) more cost-effective than; and/or (4) different from the somewhat “traditional” technologies that have been in use to process NYC MGP since 1995 and earlier by previous Contractors with DSNY. Technologies with attributes (1-4) above will be referred to collectively as Alternative Processing Technologies. At the same time, Proposers should not hesitate to propose traditional technologies that remain efficient and cost-effective in the industry today.

Traditional technologies have included magnetic separators for ferrous metals, eddy current separators for aluminum, trommel screens of various sizes for positive and negative sorts of cullet and Residue, and manual positive and negative sorting of plastics. Under DSNY's prior MGP Processing contracts, such technologies have often operated in cramped quarters, under conditions that do not minimize dust. It should be noted that this occurred because the short terms of previous MGP contracts did not provide an incentive to invest in upgrading or replacing such technologies.

Alternative Technologies include, but are by no means limited to, optical systems for glass and plastics separation, blowers, floatation sorting technologies, and newer-generation trommels and screens (shaker screens, Star® screens). They also encompass upgraded facility space, such as larger tipping areas; increased capacity to store processed materials; and mechanisms to ensure cleanliness. Finally, Alternative Technologies encompass improved software and operational procedures, such as weigh-in/weigh out routines, and on-site queuing of vehicles waiting to tip.

DSNY encourages Contractors to research, test, develop, investigate, or otherwise consider Alternative Processing Technologies that make the most of innovation in the industry. This encouragement also includes technologies geared to work with "nontraditional" markets (i.e., mixed resin plastics for plastic lumber), provided the Contractor has a proven, reliable plan to process and market such material.

III.B. 4. Marketing

The Contractor will be required to market all processed metal, plastic, Beverage Cartons, and/or glass making up the Recyclables that DSNY delivers. If no reasonable market exists for one or more of the Recyclables, the Contractor may store them appropriately until a market is available, consistent with all applicable Laws. When markets are lacking, the Contractor may also opt to put Recyclables to beneficial use for zero or negative prices. However, such practices must be minimized and justified with a good faith effort at positive price Marketing and the Processing necessary to garner positive prices.

The Contractor will be explicitly prohibited from sending Recyclables to be incinerated, disposed of in a landfill, or otherwise dumped. As part of the Contract's reporting requirements (discussed in Appendix I), the Contractor will be expected to obtain representations from each Entity to which it markets Recyclables that such materials shall not be incinerated, disposed of in a landfill, or otherwise dumped.

III.B. 5. Residue Disposal

Back-End Residue is material left over after primary Processing that cannot be marketed or otherwise put to beneficial use. In the case of commingled metal, glass, plastic, and Beverage Cartons Processing, it typically includes organics, non-designated plastic resins, heavily contaminated items, and other materials such as ceramics, leather, rubber, wood, and small amounts of paper.

The Contractor shall make all reasonable and good faith efforts to minimize Residue by applying the best available Processing technology to the Recyclables delivered by DSNY. What Back-End Residue remains must be handled and disposed of in accordance with all applicable Laws.

At the same time, DSNY understands the limited marketability of a portion of the MGP mix, and encourages Proposers to Propose new and alternative beneficial reuses for this material.

III.B. 6. Delivery Loads Characterization

It is in the interest of both DSNY and the Contractor to have good knowledge of the composition of Recyclables being delivered. Proposals should include plans for annual characterization of Recyclables loads by independent consultants or other impartial observers, conducted in such a way as to yield reliable, unbiased, statistically-significant results about the material composition of deliveries. Appendix IV contains recommendations for such studies.

III.B. 7. Partnering/Subcontracting

DSNY will not consider Proposals in which a Subcontractor Controls one or more Acceptance Facility(ies). However, Contractors may work with Major Subcontractors in regard to Processing Facilities, provided the Major Subcontractor show sufficient tonnage and throughput capacity that backlogs, bottlenecks, or operational failures can be guaranteed not to impede the Acceptance Facilities' ability to accept agreed-upon tonnages daily, weekly, and monthly.

Contractors may also enter into collaborative arrangements with firms involved in secondary Processing and Marketing of Recyclables, as well as those engaged in reuse, remanufacturing, value added manufacturing, and brokering. The role, relationship, and financial/legal background of each collaborating firm (Subcontractor) must be submitted in accordance with the Proposal instructions in RFP Section IV.

If DSNY wishes to award a Contract to a Proposer but does not approve of a proposed Subcontractor, the Proposer may be given a reasonable opportunity to find a different Subcontractor that DSNY will approve. If the Proposer does not obtain a substitute Subcontractor that DSNY finds acceptable, DSNY may reject the Proposal.

III.B. 8. Contingency Plans

Proposals must include full contingency plans for the Acceptance, Processing and Marketing of Recyclables, according to the Guaranteed Daily Delivery amount and requirements to market all non-Residue materials that are processed, and dispose of Residue in accordance with all Laws. Such contingency plans will apply in the event of any and all crises, emergencies, and unexpected circumstances that prevent any aspect of the Acceptance, Processing, and Marketing of Recyclables agreed to under the Contract, with the exception of Uncontrollable Circumstances as defined in Contract provisions.

III.B. 9. Reporting

Proposals should address the Contractor's approach to Reporting. The Contractor(s) will be required to submit a Monthly Report to DSNY for each Billing Period, on or before the 10th calendar day of the succeeding month. The Monthly Report will contain the following information:

- III.B.9. a. A statement identifying the period covered by the Monthly Report, including the dates, number of days, and number of Workdays in the period;
- III.B.9. b. Listed in sequential order by Delivery Receipt serial number, the date and time of the arrival and departure of each delivery in that Billing Period, specifying the quantity (by weight in US Tons) of MP or MGP for each delivery, the identification numbers of Authorized Vehicles delivering the material, and the identifying code of the garage from which the Authorized Vehicle originated;
- III.B.9. c. To the extent practicable, the quantities (in US Tons) of Processed Recyclables marketed, itemized as to the type of product, in that month; the end-uses to which the Processed Recyclables are to be put, and the names and addresses of the purchasers or transferees of the Processed Recyclables;
- III.B.9. d. To the extent practicable, the amount, if any, of Processed Recyclables that are remanufactured into an intermediate or finished product by the Contractor;
- III.B.9. e. To the extent practicable, the amount, if any, of Front-End Residue and Back-End Residue, each by composition, weight, and, if applicable, disposal location.

In addition, the Contractor will furnish DSNY with a copy of each Delivery Receipt for all deliveries covered by the Monthly Report. DSNY will use reasonable efforts to keep the proprietary content of the Monthly Reports confidential, subject to applicable Law, including, without limitation, freedom of information law. Along with the Monthly Report, the Contractor shall also deliver an electronic copy of the data collected by the Weigh Scale Computer.

III.B.9. f. Organizational Structure

The Proposer must submit a layout of the organizational structure for each Entity (including Contractor and all Subcontractors) who will perform work under the Contract, including a staffing table with names, titles, and contact information for supervisory personnel

assigned to Acceptance or Processing Facilities, as well as any applicable home, satellite, or back offices.

III. C. Agency Assumptions Regarding Payments

The Price Proposals responding to this RFP should include an explanation of the Payment Structures by which the Contractor will enter into an agreement with DSNY for Acceptance, Processing and Marketing of MP on a Revenue Basis, and MGP on an Expense or Revenue Basis. Proposers may also opt to specify payment structures for the Acceptance, Processing and Marketing of MGP plus Paper, in separate streams, on a Revenue Basis; and may include supplementary Price Proposals for additional materials if they choose.

By “Payment Structures” DSNY means price estimates, formulas, procedures, calculation methods, assumptions, justifications, and other necessary information pertinent to monetary exchanges or accruals of credit or debit balances between the Contractor and DSNY for the Acceptance, Processing, and Marketing of Recyclables. Central to this will be a per US Ton Processing cost that the Contractor will propose, a method for sharing revenue from the sale of Processed Recyclables so as to offset DSNY’s costs of transporting and delivering collected Recyclables, and a method for assessing damages if one or the other parties fails to abide by Contract agreements. Essential as well in the case of MP will be a floor price (minimum payment) to be paid to DSNY for every ton delivered by DSNY and accepted by the Contractor.

Proposers are free to propose structures of their own choice and design provided they adhere to DSNY’s basic guidelines. These guidelines have been developed to explain payment mechanisms that have proven successful in prior DSNY Recycling Revenue and Expense Contracts. These guidelines are outlined in detail in Appendix II. Very generally, they include mechanisms to:

- cover costs to the Contractor for Processing and other associated expenses;
- ensure profit to the Contractor over the long term;
- enable DSNY to partially recoup some of the costs it incurs for transportation and delivery of collected Recyclables when markets are strong (through expense offsets or payments);
- account for the material composition of Recyclables deliveries;
- account and compensate for operational failures by DSNY or Contractor.

Proposers are required to formulate their Price Proposals in accordance with the guidelines in Appendix II. They may additionally propose alternate Payment Structures, provided they have already prepared a Price Proposal in accordance with Appendix II guidelines.

III. D. Transportation Factors

Proposers should be aware that in addition to Composite Price formulas and Processing Costs, the selection committee will be evaluating transportation costs from collection routes to Acceptance Facilities as part of its overall assessment of the most favorable Price Proposals.

III. E. Performance-Based Payment Structures

Performance-based payment structures help assure that the selected Proposer(s) will perform the work under the Contract(s) awarded from this RFP in a manner that is cost-effective for the Department, and most likely to achieve the Department's goals and objectives.

They generally involve structures that tie full or partial payment to pre-established quality criteria. Proposers are encouraged to include performance-based payment structures in their Proposals that will supplement and work with the basic payment structures outlined above.

One area in which performance-based payment structures might be particularly relevant is:

III.E. 1. Residue Minimization

Proposers are encouraged to devise innovative arrangements for Residue minimization, including the use of innovative Processing technologies, and/or the identification of new, unusual, and/or hitherto unexplored markets/beneficial end-uses for what would otherwise be termed Residue.

IV. FORMAT AND CONTENT OF THE PROPOSAL

Instructions: This Section describes the format and content requirements for submitting a Proposal in response to this RFP. Proposals should be prepared as two separate documents. The first is a Technical Proposal; the second is a Price Proposal. Proposers should submit both the Technical Proposal and the Price Proposal to the Department by the Proposal Due Date.

Proposers should provide all information required in the format below. The Proposal should be typed or printed on both sides of 8 1/2" x 11" recycled content paper. Pages should be paginated. The Proposal will be evaluated on the basis of its content, not length.

IV. A. Proposal Format

IV.A. 1. Proposal Cover Letter

The Technical Proposal should be accompanied by a letter of transmittal, to be addressed to Agency Chief Contracting Officer Ronald Blendermann, containing a brief summary of the key points of the Proposal. The letter must also include:

- (a) The name and address of the Proposer;

- (b) The name, title, address, and telephone number of an individual who is authorized to bind the Proposer to the Contract;
- (c) The name, title, address, and telephone number of an individual whom the Department may contact regarding questions and clarifications;
- (d) The name of the proposed Contractor representative;
- (e) The names and addresses of any Subcontractors;
- (f) Statement that all information submitted in support of the Proposal is accurate;
- (g) If applicable, acknowledgment of receipt of any addenda to the RFP, naming and stating the number of addenda received, using Attachment 3, "Acknowledgment of Addenda";
- (h) An identification of the responding firm's principal-in-charge, project manager, or other key personnel involved with the Proposal development;
- (i) A statement that the Proposal will remain in effect for 210 days after receipt by the Department;
- (j) The signature of the individual who is authorized to bind the prime Contractor contractually;
- (k) **A positive affirmation that for the MP Acceptance, Processing and Marketing scenario, the Cost Proposal is Revenue-Based, with payment proposed to the City for every US Ton delivered at the Acceptance facility, so as to offset DSNY's costs for transport and delivery.**

This affirmation should be included in the Proposal cover letter to accompany the Technical Proposal, and should not make reference to specific costs. DSNY will not consider Proposals without this affirmation.

IV.A. 2. Technical Proposal

IV.A.2. a. Experience

NOTE: This requirement applies to the Proposer as well as any and all Subcontractors.

(1) General Experience

The Technical Proposal shall include a brief summary of the Proposer's recent general experience in secondary materials Acceptance, Processing, and Marketing, as well as disposal of Back-End Residue, as evidence of the firm's strength and depth.

(2) Personnel Qualifications

The Technical Proposal shall include resumes of the key personnel, including site supervisors who would be involved in this Contract, their responsibilities, and their level of commitment to the project. Each resume should be concise, featuring relevant experience and skills. If resumes are submitted for personnel not currently employed by the Proposer, a statement must be provided from that person indicating willingness to accept employment if the Contract is awarded.

(3) References

Proposers should attach a listing of at least two relevant references, including the name of the reference Entity, a brief statement describing the relationship between the Proposer and the reference Entity, and the name, title, and telephone number of a contact person at the reference Entity.

IV.A.2. b. Organizational Capability/Financial Statement

The Proposal should demonstrate the Proposer's organizational (i.e., programmatic, technical, and managerial) capability to provide the work described in this RFP. In addition, Proposers should attach a chart showing where, or an explanation of how, the proposed services will fit into the Proposer's organization. Proposers should also attach a copy of their latest audit report or certified financial statement, or an explanation of why no report or statement is available.

IV.A.2. c. Proposed Approach

This section of the Proposal should be prepared to reflect the combined effort that the Proposer(s) (including Subcontractor(s)) plans to bring to bear on the task of Acceptance, Processing, and Marketing of Recyclables.

This Section should make reference to the topics, requirements, guidelines, goals, and expectations set forth in RFP Sections I - III above. The following basic structure should be used.

(1) Introduction

Overview of the Proposal and how it will address the goals of DSNY set out in this RFP.

(2) Identification of Participants

Identification of relationship(s) among Proposer(s) and Subcontractor(s) (if any), including the role of each in the Contract.

(3) Identification of Acceptance Facilities

This includes their location, proximity to major thoroughfares; physical description; square footage; daily/weekly/monthly/annual capacities; present use(s); permits secured; information pertaining to ownership of such facilities; barge, rail or other access to and from such facilities; features to minimize impacts on surrounding communities; and other relevant information.

(4) Identification of Processing Facility(ies)

For primary Processing Facilities, this should include their location; physical description; square footage; daily/weekly/monthly/annual capacity; present use(s); permits secured; information pertaining to ownership of such facilities; barge, rail or other access to and from such facilities; features to minimize impacts on surrounding communities; and other relevant information – with the exception of technological and operational information, which should be included in response to (7) below. Proposers should also identify facilities dedicated to secondary Processing, reuse, or remanufacturing, if any, and describe how they will fit into the overall plan for Processing. They should also submit facility plans and traffic flow diagrams.

(5) Guaranteed Monthly Delivery Amount

Proposers should state the monthly tonnages of MP and MGP, respectively, that they will require DSNY to guarantee to deliver, as discussed in RFP Section III.B.2, for each Acceptance Facility.

(6) Guaranteed Daily Delivery Amount

Proposers should state the daily tonnages of MP and MGP, respectively, that they will require DSNY to guarantee to deliver, as discussed in RFP Section III.B.2, for each Acceptance Facility.

(7) Processing Operations and Technology

The Proposer should discuss in detail the methods, machines, procedures, techniques, devices, and any other operational or technological aspects of how Processing of NYC Recyclables will be brought about. Proposers are strongly cautioned against formulating Proposals using experimental technology, or technology specific to pre-sorted or exceptionally

clean streams of Recyclables, such as commercial or New York State Returnable Container Act (“Bottle Bill”) material.

(8) Residue Minimization and Disposition

The Proposer should address Residue as a problem and discuss, in detail (1) how it will be minimized through Processing, and (2) how it will be disposed of.

(9) Marketing Approach

Proposals should include an overview of secondary materials markets and relevant issues for NYC’s Recyclables. It should discuss the Proposer’s knowledge, resources, and capabilities regarding Marketing, and its plans to maximize the market value of recycled commodities managed under the Contract.

(10) Training and Safety

Proposers should attach general outlines for training personnel and ensuring worker safety in all aspects of Acceptance, Processing, Marketing, Residue disposal and, if applicable, manufacturing.

(11) Annual Recyclables Characterization

Proposers should discuss their approach to annual characterization of Recyclables loads by independent consultants or other impartial observers, conducted in such a way as to yield reliable, unbiased, statistically significant results about the material composition of deliveries.

Proposers should consult Appendix IV, “Composition Estimates for Recyclables” for a discussion of methods and issues pertaining to this task.

(12) Reporting

Proposers should outline their approach to monthly reporting, including format, method, degree of computerization, and quality-assurance procedures.

(13) Contingency Plans

Proposers should explain how they will deal with crises that interfere with operations at Acceptance Facilities not caused by Weather Emergencies, acts of God, or DSNY actions.

IV.A.2. d. Acceptance Facility Tonnage Summary

Proposers should also summarize tonnage data, including proposed facility capacity and annual/monthly/weekly/daily amounts, using the Acceptance Facility Tonnage Summary worksheet in Attachment 2.

IV.A. 3. Price Proposal

DSNY will only consider payment provisions that conform to the guidelines and requirements set out in Appendix II, “Pricing and Payment Guidelines.”

If a Proposer’s firm is placed on a short list of applicants, its Price Proposal will be opened and reviewed. The Price Proposal should be based on guidelines set forth in Appendix II, and shall include:

for Acceptance, Processing and Marketing of Materials on a Revenue Basis:

- (1) Processing Cost per US Ton, expressed as a negative number,
- (2) Floor and Ceiling prices, both positive, for each US Ton,
- (3) Market Price Averaging Basis, including
 - (a) rolling average period over which to calculate prices
 - (b) proposed publication of record for commodity pricing
 - (c) week in each month from which to take commodity prices from publication (1st, 2nd, 3rd, 4th)
- (4) Composite Index specifying breakdown of Recyclable material categories and Residue.

for Acceptance, Processing and Marketing of Materials on an Expense Basis:

- (1) Processing Cost per US Ton, expressed as a negative number, not to go below -\$50 per ton, and
- (2) Proposal for offsets of Processing Cost.

The Price Proposals should follow the format of the Price Proposal Forms (Attachment I). In addition, the Proposer should include details of any performance-based payment structures proposed, per RFP Section III.E and instructions below. Proposers may submit alternative Proposals for payment structures as well, provided the other requirements for Price Proposals have been met.

IV.A.3. b. Performance-Based Payment Structures

Performance-based payment structures tie payment, in whole or in part, to specific outcome measures, financial incentives and/or disincentives, and/or liquidated damages. Proposers are encouraged to list and describe performance-based payment structures that will optimize success-based payments for both the Department and Contractors.

The Department’s assumptions regarding performance-based payment structures (discussed in RFP Section III.E.) represent what the Department believes to be most likely to achieve its goals and objectives. However, Proposers are encouraged to propose other measures, incentives, and disincentives which they believe will most likely achieve the Department’s goals and objectives in a cost-effective manner. Proposers may also propose more than one approach. While the Proposer’s proposed performance-based payment components may not be scored by

the Department's Evaluation Committee, they will be considered by the Department in awarding the Contract and structuring its payments.

IV.A.3. c. Acknowledgment of Addenda

Proposers must acknowledge the receipt of any addenda to this RFP which may have been issued by the Department prior to the Proposal deadline, using the "Acknowledgment of Addenda" form provided, Attachment 3.

IV.A.3. d. Performance Security

As security for the Contractor's performance of its agreement with the Department, the Department reserves the right to require that the Contractor shall furnish an irrevocable Letter of Credit in an amount equal to \$150,000 issued by a solvent bank or trust duly licensed to do business in the State of New York, with an office in New York City, which shall be payable to The City of New York Department of Sanitation, and renewable annually for the duration of the time the Contract is Revenue Based.

At such time as the Contract becomes Expense Based, this Letter of Credit requirement amount will be reduced within thirty (30) days to \$50,000.

The Department will have the right to draw down on the Letter of Credit for any failure of the Contractor to meet the terms and conditions of its Agreement with the Department.

Proposers should use the Sample Letter of Credit (Attachment 7) as a model.

IV.A. 4. Proposal Packages

IV.A.4. a. Technical Proposal Package Contents (“Checklist”)

The Technical Proposal Package should contain the following materials. (Note: Proposers should utilize this section as a "checklist" to assure completeness prior to submitting their Proposal to the Department).

(1) A sealed envelope labeled "Technical Proposal," containing one original set and ten (10) duplicate sets of the documents listed below in the following order:

- ___ Letter of transmittal
- ___ Statement of Qualifications and Interest
- ___ Understanding of the Project
- ___ Proposed Approach
- ___ Experience with Projects of Similar Purpose and Scope
- ___ General Experience
- ___ Personnel Qualifications – including resumes and/or description of qualifications for key staff positions
- ___ References for Proposer and (if applicable) each Proposed Subcontractor
- ___ Organizational Chart
- ___ Audit Report or Certified Financial Statement or a statement as to why no report or statement is available
- ___ Respondent’s Additional Comments and Proposals
- ___ Acceptance Facility Tonnage Summary (Attachment 2)
- ___ Completed Acknowledgment of Addenda (Attachment 3)
- ___ Completed and notarized Proposer’s Affirmation of Non-Debt (Attachment 4)

(2) Proposal Bond

Proposers should submit a Proposal Bond substantially in the form as supplied by the Department (see Attachment 9) from a surety duly licensed to do business in the State of New York, with an office in New York City, in an amount equal to fifty thousand dollars (\$50,000) The Proposal Bond or other form of security for each unsuccessful Proposer will be returned within thirty (30) days of the Department’s award of the Contract. The Proposal Bond of the selected Proposer will not be returned until a Letter of Credit in a form acceptable to the Department, is received.

The Proposal Bond should be submitted in a separate sealed envelope *inside* the envelope containing the Technical Proposal. Make sure a complete return address appears on both the inner Proposal Bond envelope and the Technical Proposal Envelope.

Outer Envelope Instructions:

Both the Technical Proposal and the Proposal Bond shall be submitted in an 8½" x 11" format, with larger or longer foldouts utilized as necessary. The cover of each shall clearly state the project title and the respondent's name and return address. The Technical Proposal should be enclosed in a sealed outer envelope. This outer envelope should have a label showing:

The Proposer's name and address, the Title and PIN # of this RFP, and the name and telephone number of the Proposer's Contact Person.

The name, title, and address of the Agency Chief Contracting Officer:

Assistant Commissioner Ronald Blendermann
Agency Chief Contracting Officer
City of New York Department of Sanitation
51 Chambers Street, Room 801
New York, NY 10013

IV.A.4. b. Price Proposal Content

Price Proposals should be submitted in a sealed envelope containing one original set and ten (10) duplicate sets of the Price Proposal (see "Price Proposal Form," Attachment 1).

The Price Proposal shall be submitted in an 8½" x 11" format, with foldouts from this basic size utilized as necessary. The cover shall clearly state the project title and the respondent's name and return address. The Price Proposal should be enclosed in a sealed outer envelope. This outer envelope should have labels showing:

The Proposer's name and address, the Title and PIN # of this RFP, and the name and telephone number of the Proposer's Contact Person, and the words "Price Proposal"

The name, title, and address of the Agency Chief Contracting Officer:

Assistant Commissioner Ronald Blendermann
Agency Chief Contracting Officer
City of New York Department of Sanitation
51 Chambers Street, Room 801
New York, NY 10013

V. EVALUATING THE PROPOSAL

V. A. Evaluation Procedures

Proposals will be evaluated according to the following process:

V. B. Initial Determination of Responsiveness

All Proposals accepted by the Department will be reviewed to determine whether they are responsive or non-responsive to the requisites of this RFP. Any Proposal that is determined by the Department to be non-responsive will be rejected.

V.B. 1. Preliminary Evaluation

The Department's Evaluation Committee will evaluate and rate all remaining Proposals based on the Evaluation Criteria outlined below. Based on the resulting technical scores, a short list of viable Proposals will be established. Proposals not included on the short list of technically viable Proposals will not be considered further.

V.B. 2. Oral Interviews

Proposers whose Proposals are included on the short list will be required to make an oral presentation in support of their written demonstration of experience and expertise in the Acceptance, Processing, and Marketing of Recyclables. Proposers will be expected to discuss their overall strategy for this undertaking as a whole, and respond to the goals set out in this RFP. The oral presentation should be based on the Proposer's "Technical Proposal", but need not completely conform to this document. Proposers may expand, add, or change original ideas at their discretion. However, Proposers must subsequently confirm all oral clarifications to their Proposal in writing. An oral presentation is **mandatory** to be further considered for a Contract.

Proposers will be requested to inform DSNY in advance of the number of persons expected to attend (see Attachment 5 "Oral Presentation Response Form"). Attendees must include the principal individuals who would be involved in this Contract.

V.B. 3. Post-Oral Evaluation

After the oral presentations are completed, the Evaluation Committee members will be given the option to amend their initial technical scores up or down based on the information provided at the presentations. If warranted, a revised short-list technically viable Proposals will be established. Proposals not included in the revised short list of technically viable Proposals will not be considered further.

NOTE:

Although discussions may be conducted with Proposers submitting acceptable Proposals, the Department reserves the right to award contracts on the basis of initial Proposals received, without discussions; therefore, the Proposer's initial Proposal should contain its best programmatic, technical, and price terms.

There is no set minimum or maximum number of Proposers who may make the first and second short lists. There is also no pre-determined point value necessary in order to make the short lists. The number of Proposers who make the short lists will depend on the quantity and quality of Proposals received. Each short list will end where there is a clear break in points.

V. C. Criteria for Evaluation

The following are criteria that the Evaluation Committee will use, weighted as indicated, to score the Technical Proposal. Selection will be based on a one hundred (100) point system (see Attachment 6, "Sample Rating Sheet").

V.C. 1. Preliminary and Follow-Up Evaluations

- V.C.1. a. Demonstrated Quantity and Quality of Successful Relevant Experience: 50 points
- V.C.1. b. Demonstrated Organizational Capacity: 10 points
- V.C.1. c. Quality of Proposed Approach: 40 points

V. D. Basis for Contract Award

A Contract will be awarded to the responsible Proposer(s) whose Proposal(s) is/are determined to be the most advantageous to DSNY, taking into consideration the price and such other factors or criteria which are set forth in this RFP. Contract award shall be subject to the timely completion of Contract negotiations between the Department and the selected Contractor.

VI. GENERAL INFORMATION FOR PROPOSERS

A. Complaints. The New York City Comptroller is charged with the audit of contracts in New York City. Any Proposer who believes that there has been unfairness, favoritism or impropriety in the Proposal process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, Room 835, New York, NY 10007; the telephone number is (212) 669-3000. In addition, the New York City Department of Investigation should be informed of such complaints at its Investigations Division, 80 Maiden Lane, New York, NY 10038; the telephone number is (212) 825-5959.

B. Applicable Laws. This Request for Proposals and the resulting Contract award(s), if any, unless otherwise stated, are subject to all applicable provisions of New York State Law, the New York City Administrative Code, New York City Charter, and New York City Procurement Policy Board (PPB) Rules. A copy of the PPB Rules may be obtained by contacting the PPB at (212) 788-7820.

C. General Contract Provisions. Contracts shall be subject to New York City's General Contract Provisions, in substantially the format that they appear in "Appendix A – General Provisions Governing Contracts for Consultants, Professional and Technical Services" or, if the Agency utilizes other than the formal Appendix A, in substantially the form that they appear in the Agency's general contract provisions. A copy of the applicable document is available through the Authorized Agency Contact Person.

D. Contract Award. Contract award is subject to each of the following applicable conditions and any others that may apply: New York City Fair Share Criteria; New York City MacBride Principles Law; submission by the Proposer of the requisite New York City Department of Business Services/Division of Labor Services Employment Report and certification by that office; submission by the Proposer of the requisite VENDEX Questionnaires/Affidavits of No Change and review of the information contained therein by the New York City Department of Investigation; all other required oversight approvals; applicable provisions of federal, state, and local laws and executive orders requiring affirmative action and equal employment opportunity; and Section 6-108.1 of the New York City Administrative Code relating to the Local Based Enterprises program and its implementation rules.

E. Proposer Appeal Rights. Pursuant to New York City's Procurement Policy Board Rules, Proposers have the right to appeal Agency non-responsiveness determinations and Agency non-responsibility determinations and to protest an Agency's determination regarding the solicitation or award of a Contract.

F. Multi-Year Contracts. Multi-year contracts are subject to modification or cancellation if adequate funds are not appropriated to the Agency to support continuation of performance in any City fiscal year succeeding the first fiscal year and/or if the Contractor's performance is not satisfactory. The Agency will notify the Contractor as soon as is practicable that the funds are, or are not, available for the continuation of the multi-year Contract for each succeeding City fiscal year. In the event of cancellation, the Contractor will be reimbursed for those costs, if any, which are so provided for in the Contract.

G. Prompt Payment Policy. Pursuant to the New York City's Procurement Policy Board Rules, it is the policy of the City to process Contract payments efficiently and expeditiously.

H. Prices Irrevocable. Prices proposed by the Proposer shall be irrevocable until Contract award, unless the Proposal is withdrawn. Proposals may only be withdrawn by submitting a written request to the Agency prior to Contract award but after the expiration of 210 days after the opening of Proposals. This shall not limit the discretion of the Agency to request Proposers to revise proposed prices through the submission of best and final offers and/or the conduct of negotiations.

I. Confidential, Proprietary Information or Trade Secrets. Proposers should give specific attention to the identification of those portions of their Proposals that they deem to be confidential, proprietary information or trade secrets and provide any justification of why such materials, upon request, should not be disclosed by the City. Such information must be easily separable from the non-confidential sections of the Proposal. All information not so identified may be disclosed by the City.

J. RFP Postponement/Cancellation. The Agency reserves the right to postpone or cancel this RFP, in whole or in part, and to reject all Proposals.

K. Proposer Costs. Proposers will not be reimbursed for any costs incurred to prepare Proposals.

L. Charter Section 312(a) Certification.

The Agency has determined that the contract(s) to be awarded through this Request for Proposals will not directly result in the displacement of any New York City employee.

(Agency Chief Contracting Officer)

Date

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CERTIFICATION

LOCAL LAW 35

AGENCY: Department of Sanitation BUREAU: Waste Prevention, Reuse, and Recycling

PIN # 82703BR00071

DESCRIPTION OF SERVICE Acceptance, Processing and Marketing of NYC Recyclables

CONDITIONS OF LOCAL LAW 35 MUST MEET ALL OF THE FOLLOWING CRITERIA:

- Solicitation for new or renewal contract issued on or after October 17, 1994;
- Contract is for provision of technical, consultant, or personal services (including human/client services) valued at more than \$100,000.00

* * * * *

The Agency has determined that the award of this contract

_____ will _____ will not

directly result in the “displacement” of any city employee.

“Displacement” is defined by Local Law 35 to mean “any employment action that results in a reduction in the number of funded positions, including but not limited to, those resulting from the layoff; demotion; bumping; involuntary transfer to a new class, title or location; time based reductions in customary hours of work, wages, or benefits of any City employee.”

By:

Bureau Contracting Officer
(Signature/Date)

Agency Head
(Signature/Date)

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Appendix I

Proposed Detailed Specifications

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Appendix I - Proposed Detailed Specifications
RFP to Accept, Process and Market NYC Recyclables

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Appendix I - Proposed Detailed Specifications
RFP to Accept, Process and Market NYC Recyclables

The following document presents detailed specifications concerning the Acceptance, Processing, and Marketing of Recyclables. DSNY considers these specifications non-negotiable in substance, but acknowledges that they may be modified in final form subject to negotiation among the parties.

1. GENERAL PROVISIONS

- 1.1 When used in these detailed specifications, capitalized words have the meanings given them in the “Definitions” Section of the RFP.
- 1.2 When used in these detailed specifications, the word “**Section**” means a section of these specifications unless the context of its use clearly indicates that the word means a section or article of another document.
- 1.3 When used in these specifications, all references to “**parties**” mean the parties to this Contract including DSNY and the Contractor(s).
- 1.4 The term “**Acceptance Facility**” is used in the singular in these detailed specifications. A Contractor must have two or more Acceptance Facilities that are part of the Contract. These detailed specifications and their requirements apply individually and separately to each and every Acceptance Facility that is made part of the Contract. If the Contract is terminated as to one Acceptance Facility, the detailed specifications continue to apply to each and every Acceptance Facility that remains part of the Contract.
- 1.5 No right or remedy of the non-defaulting party is intended to be exclusive of any other right or remedy. Every right and remedy shall, to the extent permitted by Law, be cumulative and not exclusive, and may be exercised from time to time and as often and at the time and in the order as the non-defaulting party chooses. The exercise of any one right or remedy shall not be construed as an election or a waiver of any other right or remedy.
- 1.6 The parties agree that the failure of DSNY to impose damages for any given specific violation of the Contract shall not be a waiver of any provision of the Contract, nor shall it be a waiver of DSNY’s right to impose damages as to other or future violations of the same or a different kind, or a waiver of any other remedy available to DSNY at Law or in equity.
- 1.7 When a party is required to perform an action, others, including but not limited to that party’s employees, Subcontractors, agents, and representatives, may perform that action on behalf of that party, and the effect will be the same as if the party itself had performed it.

2. TERM AND TERMINATION

2.1 Term of the Contract

The Contract shall become effective on the Commencement Date, and, unless earlier terminated in accordance with its terms, will continue for twenty (20) years.

The Contract shall commence under the Contract Terms agreed upon for the Acceptance, Processing and Marketing of MP as collected under DSNY's Recycling Program. At such time as the City commences collection of MGP, the Contract Terms for MP will be superseded by those in the same Contract pertaining to MGP.

All rights, obligations and liabilities of the parties shall commence on the Commencement Date. On the Termination Date of the Contract, all rights and obligations of the parties shall terminate except for those rights and obligations that accrued prior to that date or those that survive by their express terms.

2.1.1 Beginning of the Initial Term

Performance under the Contract shall begin at 12:01 AM on the Delivery Date after the requirements of Section 2.1.2 have been fulfilled, and the City shall have no obligations under the Contract until that time.

2.1.2 Contractor Requirements Before the Initiation of the Contract

A. Documentation

The Contractor shall deliver to DSNY all documentation required in accordance with Section 2.1.2 in form and substance satisfactory to DSNY within 30 calendar days after the date of the Notice of Award.

B. Receipt and Delivery Date Specification

Upon receiving all of the documentation in form and substance satisfactory to DSNY, DSNY shall deliver to the Contractor a written notice acknowledging receipt of all the documentation and setting forth the date which the parties agree will be the Delivery Date.

C. Required Documents

All obligations of the City are conditioned upon the Contractor obtaining and delivering the following documents to DSNY as required in Section 2.1.2.

Appendix I - Proposed Detailed Specifications
RFP to Accept, Process and Market NYC Recyclables

(1) Authorizations, Licenses, Permits and Registrations

All authorizations, licenses, permits and registrations required by Law or otherwise necessary for the Lawful operation of each Acceptance Facility and Processing Facility.

(2) Control of the Acceptance Facility and Processing Facility

Documentation satisfactory to DSNY evidencing Control of the Acceptance Facility and the Control of or Subcontracting relationship with the Processing Facility for the Term of the Contract

(3) Insurance Certificates

Certification of insurance coverage for the Contractor and any Subcontractor(s), as required by the Insurance and Security Schedule, Appendix VII.

(4) Weigh Scale Certificate and Sealing

A certificate for each Weigh Scale at each Acceptance Facility as described in Section 4.2.

D. Letter of Credit

Letter of Credit as set forth in Section IV.A.3.d. of the RFP, and Section 8.9 of these provisions, conforming in substance to the sample in Attachment 7, "Sample Letter of Credit."

E. Opinion of Counsel

An opinion of counsel in form and substance satisfactory to the City opining that:

- (1) the Contractor is duly organized and validly existing under the Laws of the State of its incorporation, and is duly qualified to transact business in and in good standing in the State of New York, and
- (2) the Agreement has been duly authorized, executed and delivered by the Contractor.

F. Officer's Certificate

A certificate signed by an authorized officer of the Contractor, stating that all other documentation required by this Section has been delivered to DSNY and that each of the Contractor's representations and warranties set forth in Section 7 is true and correct as of the date of the certificate.

2.2 Termination of the Contract

- 2.2.1 The Contract may be terminated by the non-defaulting party in accordance with the provisions of Section 6.3.
- 2.2.2 At such time as the Contract is Operating on a Revenue Basis, DSNY reserves the right to terminate the Contract upon 60 months' written notice to the Contractor if a major change occurs in the New York City's Solid Waste Management Plan (SWMP) regarding the handling of MSW and Recyclables in New York City, and such change is fully approved and adopted by the City Council, Mayor, and NYSDEC.
- 2.2.3 At such time as the Contract is operating on an Expense Basis, DSNY reserves the right to terminate the Contract upon 60 months' written notice to the Contractor when there is a lack of City funding to continue operations, precipitated by a severe fiscal crisis, and as agreed to and adopted by the Mayor and City Council.

DSNY understands that any company contracting with the City will be subject to more risk if and when the Contract goes Expense, and will be prepared to address this fact during Contract negotiations in the form of a compensation provision linked to the early termination, to be mutually agreed upon by both parties.

3. DELIVERY AND ACCEPTANCE OF RECYCLABLES

**NOTE: THROUGHOUT THESE PROVISIONS, THE
TERM "RECYCLABLES" SHALL BE USED FOR MP
OR MGP RECYCLABLES, UNLESS OTHERWISE
NOTED.**

3.1 Delivery and Acceptance

3.1.1 Delivery of Recyclables by the City

Subject to Uncontrollable Circumstances, the City shall deliver MP Recyclables to the Contractor in accordance with the Contract, commencing on the Delivery Date. At such time as the City commences collection of MGP, the City shall thenceforth deliver MGP Recyclables to the Contractor in accordance with the Contract.

DSNY will provide the Contractor with a minimum of 90 days prior notice when converting from MP to MGP.

3.1.2 Monthly, Weekly and Daily Amounts

Delivery and Acceptance Amounts specify tonnages that the Contractor must accept and DSNY must deliver, respectively, on a monthly, weekly and daily basis.

A. Guaranteed Monthly Delivery Amount

Beginning on the Delivery Date and subject to any Uncontrollable Circumstance, in every calendar month the City shall deliver no less than the Guaranteed Monthly Delivery Amount of Recyclables to each Acceptance Facility.

B. Guaranteed Daily Delivery Amount

Beginning on the Delivery Date and subject to any Uncontrollable Circumstance, on any workday the City shall deliver no less than the Guaranteed Daily Delivery Amount of Recyclables to each Acceptance Facility.

C. Maximum Daily Delivery Amount

On any Workday that DSNY elects to deliver Recyclables to the Acceptance Facility, the Contractor shall not be required to accept from the City an amount of Recyclables in excess of the Maximum Daily Delivery Amount at the Acceptance Facility. The Maximum Daily Delivery Amount must equal 3,000 US Tons.

D. Maximum Weekly Delivery Amount

In any calendar week, the Contractor shall not be required to accept from the City an amount of Recyclables in excess of the Maximum Weekly Delivery Amount at the Acceptance Facility. The Maximum Weekly Delivery Amount must equal 18,000 US Tons.

E. Deliveries Exceeding Maximum Daily or Weekly Delivery Amounts

The Contractor may reject deliveries to any Acceptance Facility that are in excess of the Maximum Daily Delivery Amount on any Workday, or in excess of the Maximum Weekly Delivery Amount in any calendar week.

At its option the Contractor may accept deliveries exceeding these amounts, provided the excess deliveries are within the permitted capacity of the Acceptance Facility.

F. Wrongful Rejection of Loads

- (1) In such periods in which the Contract is operating on a Revenue Basis, for the purposes of calculating the amount of Recyclables that the City has delivered to the Acceptance Facility, any amounts of Recyclables that the Contractor wrongfully rejects in accordance with Section 3.2.8 will be counted as delivered to the Contractor by the City.
- (2) This provision shall not apply in periods in which the Contract is operating on an Expense Basis.
- (3) Liquidated Damages for wrongful rejections shall be applied in both Revenue and Expense Basis conditions, per Section 5.4.1.B

3.1.3 Authorized Deliverers and Mode of Delivery Transportation

Deliveries of Recyclables on behalf of the City may be made only by City employees or by Authorized Deliverers. The Contractor shall not accept any delivery allegedly being made on behalf of the City by any party who is not a City employee or an Authorized Deliverer.

3.1.4 Condition of Recyclables

- A. Deliveries of Recyclables by the City and Authorized Deliverers shall be loose or bagged, and shall be made to the Acceptance Facility by Authorized Vehicles.
- B. The City makes no representation or warranty regarding condition or quality of Recyclables or their composition, except that the City shall not pre-sort or cull Recyclables.

3.1.5 Title to all Recyclables delivered by the City, and risk of loss, passes to the Contractor upon the entry of any Authorized Vehicle containing Recyclables onto a Weigh Scale at the Acceptance Facility. If a Weigh Scale Malfunction occurs at the Acceptance Facility, or the applicable Weigh Scale is inaccessible, title to, and risk of loss of, the Recyclables contained in any Authorized Vehicle shall pass to the Contractor upon entry into the Acceptance Facility.

3.2 Delivery and Acceptance Procedures

3.2.1 Acceptance Facility Requirements

- A. The Contractor shall equip the Acceptance Facility to receive all Authorized Vehicles.
- B. Tipping must take place indoors, with at least 25 feet of clearance.
- C. The Contractor shall provide the Acceptance Facility with one or more Weigh Scales and one or more Weigh Scale Computers so that every Weigh Scale is electronically linked to a Weigh Scale Computer.

NOTE: The Contractor may, at his/her discretion, equip the Acceptance Facility with an additional Weigh Scale designated for weighing non-DSNY deliveries, for the purposes of routing commercial or other non-DSNY deliveries through the facility separately from DSNY deliveries. In such cases, the queuing or other activities of non-DSNY vehicles, loads, and/or personnel must not interfere in any way with the Delivery and Acceptance of DSNY Recyclables.

3.2.2 Hours of Operation

The Contractor shall be prepared to keep the Acceptance Facility open for delivery of Recyclables twenty-four hours per day on each and every Workday, although DSNY work schedules may allow for keeping the facility open for a shorter period each Workday. DSNY will work with the Contractor to optimize facility scheduling for both parties, but retains the option of requiring 24/6 operations when necessary.

Workdays shall be defined as days Monday through Saturday each week, excluding Holidays that fall on regular Workdays as specified in the "Definitions" in the RFP, except in cases where DSNY asks the Contractor to remain open under (1) non-emergency circumstances or: (2) following Weather Emergencies, on a limited basis.

A. Sundays/Holidays Under Non-Emergency Circumstances

DSNY may request that the Contractor remain open on any Sunday or City Holiday. If this occurs, DSNY will charge the Contractor \$0.00 per US Ton for all MP deliveries made on that day, under the MP provisions of the Contract. If the MGP provisions of the Contract are in place on an Expense Basis, DSNY will pay the Contractor an additional premium of \$5.00 per US Ton for all MGP deliveries made that day.

Furthermore, if DSNY requests a Contractor to remain open on a Sunday or City Holiday, it will also guarantee a minimum number of deliveries and Tons each day. If DSNY fails to

deliver the minimum, it will pay a penalty per vehicle that fails to arrive at the facility during the Sunday or City Holiday, and/or per US Ton not delivered. The minimum number of deliveries and Tons, as well as the penalties for failure to achieve this minimum, will be finalized during Contract negotiations. If the MP provisions are in place and the Contract is operating on a Revenue Basis, this amount will be deducted from the next monthly invoice payable by the Contractor to DSNY. If the MGP provisions are in place and the Contract is operating as an Expense Contract, this amount will be added to the next monthly invoice payable by DSNY to the Contractor.

B. Sundays and City Holidays Following Weather Emergencies

However, in the case of a Weather Emergency, DSNY will be permitted to ask the Contractor to remain open for up to six Sundays and/or City Holidays per year following such an Emergency without any of the following being applied: (1) conditions for per US Ton cost reduction/payment increase, (2) guaranteed Tons and numbers of vehicles, and/or (3) penalties for failure to achieve these guarantees described above.

3.2.3 Prompt Unloading

The Contractor shall permit any Authorized Vehicle delivering Recyclables to the Acceptance Facility to unload the Recyclables within a maximum of five minutes upon arrival. Whenever more than one Authorized Vehicle is waiting to unload, the Contractor may alternatively permit the unloading of waiting Authorized Vehicles at a minimum rate of one Authorized Vehicle per five minutes. The Contractor shall not permit any other vehicle to unload prior to an Authorized Vehicle if the Authorized Vehicle has arrived at the Acceptance Facility prior to the other vehicle, unless the Contractor maintains a separate scale and routing system for non-DSNY deliveries.

3.2.4 Weighing of Loads

The Contractor must weigh all incoming and outgoing Authorized Vehicles that transport Recyclables to the Acceptance Facility as provided for in Section 3.2.4, 4.1.6, or 4.4.2, record the weight prior to unloading the Recyclables and after unloading the Recyclables, and report the weight to DSNY in accordance with Section 3.2.5 or 3.2.6.

3.2.5 Delivery Receipts

- A. The Weigh Scale Computer shall record all of the information requested by the DSNY Delivery Receipt, and shall print it directly on this Receipt. Prior to the departure of the Authorized Vehicle delivering the Recyclables, the Contractor shall obtain the signatures of the Authorized Vehicle driver and a Contractor's representative on the Delivery Receipt, and shall provide the

Authorized Vehicle driver with the an original signed copy and one additional copy of the Delivery Receipt. In addition, the Contractor shall append to the applicable Monthly Report an additional signed copy of each Delivery Receipt.

- B. The Contractor shall issue the Delivery Receipts in strict numerical sequence and, in the Monthly Report, shall account for each Delivery Receipt form in the range of Delivery Receipt numbers spanned by the Monthly Report. The Contractor shall clearly mark all voided or damaged receipts in that range as such and submit them with the Monthly Report.
- C. No Delivery Receipt shall be complete unless the Delivery Receipt includes:
 - (1) all Delivery Information with respect to the delivery, printed by the Weigh Scale Computer, and
 - (2) the signatures of the Authorized Vehicle driver delivering the Recyclables and the Contractor's representative, each of which shall be obtained by the Contractor.

3.2.6 Delivery Receipts If Weigh Scale Malfunctions

- A. In the event of a Weigh Scale Malfunction, a Delivery Receipt must be completed by hand if necessary, and must provide the following information to the extent available:
 - (1) Contractor name, street address, city, state zip code, phone number;
 - (2) vehicle number, district, date delivered, time in, time out;
 - (3) laden weight in pounds, unladen weight in pounds, net weight in pounds, Weigh Scale number;
 - (4) the net weight in US Tons under the correct material type in the "material delivered" portion of the Delivery Receipt; and
 - (5) the boxes for the Contractor's representative and the Authorized Vehicle driver must be completed.

3.2.7 Voided Loads

If for any reason (including inadvertent delivery of non-Recyclables) an Authorized Vehicle passes over the Weigh Scale without off-loading its contents, the Contractor must ensure that the load is voided. The Contractor is responsible for providing Delivery Receipts in accordance with Section 3.2.5 for voided loads. If a load is reflected in Contractor records as voided, but is shown by DSNY records to have been delivered, the parties agree the weight of the load will be estimated as provided in Section 4.4.2 and that this amount will be counted towards the Guaranteed Monthly Delivery Amount for the Billing Period.

3.2.8 No Rejection of Loads

Except as expressly provided for in this Section, the Contractor may not reject any delivery of Recyclables to the Acceptance Facility by an Authorized Vehicle.

- A. The Contractor's representative may make a visual inspection through the viewing door of any Authorized Vehicle to determine whether it contains Recyclables. If it appears to the Contractor's representative that the Authorized Vehicle was misdirected to the Acceptance Facility from other than a Recyclables collection route, the Contractor's representative shall contact a DSNY supervisor (at the emergency operations phone number). The DSNY supervisor shall go to the Acceptance Facility, inspect the Authorized Vehicle, and determine whether the Authorized Vehicle is from other than a Recyclables collection route.
- B. If DSNY supervisor determines that the Authorized Vehicle is from a Recyclables collection route, and the Contractor's representative agrees, the Contractor's representative shall permit the Authorized Vehicle to proceed to the tipping area of the Acceptance Facility. If, however, the Contractor's representative disagrees with the DSNY supervisor, the delivery will be rejected and the Authorized Vehicle will leave the Acceptance Facility without unloading the shipment. If DSNY subsequently shows, based on garage records kept on a regular basis, that the shipment contained Recyclables collected from a Recyclables collection route, the rejection shall constitute a wrongful rejection, in which event the Contractor shall pay to DSNY charges calculated in accordance with Sections 5.4.1.B of the Agreement.
- C. If any of the conditions described below are present following the arrival of an Authorized Vehicle at the Acceptance Facility, DSNY may choose to divert the Recyclables to another Acceptance Facility, and the Contractor will be liable to DSNY for Liquidated

Damages and for the difference between DSNY's cost of delivering the Recyclables to the Contractor's Acceptance Facility and all costs related to delivery of the Recyclables to an alternative Acceptance Facility, including, but not limited to, the difference in Processing Costs and DSNY's additional personnel costs:

- (1) the Acceptance Facility is closed at the time of arrival of an Authorized Vehicle;
- (2) the Contractor refuses to permit an arriving Authorized Vehicle to unload any portion of its Recyclables at the Acceptance Facility, except as provided for in Sections 3.5 or 3.6.
- (3) DSNY receives a request from the Contractor that a delivery be diverted to another Acceptance Facility;
- (4) a delay in accepting the Recyclables or excessive queuing of Authorized Vehicles occurs; or
- (5) the Contractor allows other customers that arrive after an Authorized Vehicle to unload before the Authorized Vehicle is allowed to unload (except in cases where the Contractor maintains a separate scale and routing system for non-DSNY deliveries).

- D. Recyclables that cannot be delivered due to one of the reasons in Section 3.2.8.C above or due to the Contractor's closure of the Acceptance Facility on any Workday (except as provided for in Section 3.6 or due to Uncontrollable Circumstances) shall be considered wrongfully rejected, and the Contractor shall accept the measurement or reasonable estimate by DSNY in accordance with Section 4.4.2 of the weight of the Recyclables delivered as the Official Delivery Record.
- E. The amount of Recyclables calculated in US Tons under Section 3.2.8.D above shall be counted towards fulfilling the City's Guaranteed Daily Delivery Amount and the Guaranteed Monthly Delivery Amount.

3.3 Preparation of Recyclables; Marketing of Processed Recyclables

3.3.1 Processing

Appendix I - Proposed Detailed Specifications
RFP to Accept, Process and Market NYC Recyclables

The Contractor shall process all Recyclables delivered by the City to the Contractor. Processed Recyclables shall be separated from Residue, and all Processed Recyclables shall be Marketed. The Contractor shall make all reasonable efforts to minimize Residue.

A. Provision for Temporary Lack of Markets

If no reasonable market exists for the Processed Recyclables, the Contractor may store the Processed Recyclables appropriately until a market is available, consistent with all applicable Laws.

B. Prohibition on Disposal

The Contractor shall not permit Processed Recyclables to be incinerated, disposed of in a landfill, or otherwise dumped.

C. Representations

The Contractor:

- (1) shall obtain representations from each Entity to which it provides Processed Recyclables that the Processed Recyclables shall not be incinerated, disposed of in a landfill, or otherwise dumped;
- (2) shall so certify with respect to compliance with Section 3.3 on the Marketing report segment of each Monthly Report required pursuant to Section 5.1.1 and
- (3) shall handle and dispose of Residue in accordance with all applicable Laws.

3.4 Operational and Safety Requirements

3.4.1 In addition to all requirements of Law and the Contract, the Contractor shall do the following at the Acceptance Facility:

A. Travel Conditions

Maintain safe travel conditions on all Acceptance Facility roads and rights of way on which Authorized Vehicles may be expected to travel. Conditions on all Acceptance Facility roads and rights of way at a minimum shall include, but not be limited to:

- (1) adequately paved surfaces;

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- (2) suitable lighting of the roads and rights of way at all times; and
- (3) immediate removal and clearance of the roads and rights of way of all hazards, including but limited to, ice, snow, oil, dirt, and standing water.

B. Personnel

Provide sufficient personnel to direct each and every Authorized Vehicle entering the Acceptance Facility. Such personnel shall assist Authorized Vehicle drivers in safe backing and turning maneuvers and shall direct and control traffic to ensure that Authorized Vehicles may safely enter and exit the Acceptance Facility.

C. Signage

Post and maintain suitable traffic control signs, including but not limited to, stop, yield, automatic traffic signals, and speed limit signs.

D. Lighting

Provide full illumination of work areas indoors, and at night, outdoors as well.

E. Safety

Provide sufficient space for Authorized Vehicles to queue safely, expeditiously, and without obstructing traffic.

F. Clearance

Authorized Vehicles must have 25 feet clearance indoors.

G. Unauthorized use of Vehicles

Take responsibility for ensuring that the Contractor, its employees, agents, Subcontractors, or representatives, do not operate Authorized Vehicles or any other DSNY equipment during the Term of the Contract.

H. Telephone

At all times make available to all DSNY personnel at the Acceptance Facility a non-pay telephone for business-related use.

3.4.2 Unauthorized Operation of Vehicle Controls

Under no circumstances shall any employee, agent or Subcontractor of the Contractor handle or operate any controls on any Authorized Vehicle, unless an emergency requires such handling or operation.

3.4.3 Inspection

Representatives of the City shall have the right to visit and inspect the Acceptance Facility and Processing Facility at any time during business hours without prior notice, to observe the delivery, unloading and Processing of Recyclables, and to determine compliance with Sections 3.4.1 and 3.4.2. At all times, DSNY representatives shall be permitted to take photographs and videos of the Acceptance Facility and Processing Facility.

3.5 Emergency Acceptance Facility Closure or Scale Malfunction

The Contractor shall provide immediate Emergency Notice to DSNY of closure of the Acceptance Facility, any inability to accept Recyclables for more than thirty (30) minutes, and of any Weigh Scale Malfunction. An Emergency Notice shall be given by telephone and in writing to parties specified in the Contract, and shall include the following information:

- (1) the occurrence of an emergency;
- (2) the nature of the emergency;
- (3) the expected length of time that the emergency will impact the Acceptance Facility; and
- (4) the date and time when the impact of the emergency will cease.

3.6 Planned One-day Acceptance Facility Closure

3.6.1 At one of the minimum two required Acceptance Facilities in NYC, the Contractor has the right, on not less than 24 hours notice, to not accept Recyclables on any one day which otherwise would be a Workday, on no more than three occasions per Facility in any one Contract Year, but not for two consecutive days and not during a Weather Emergency (which will last until DSNY notifies the Contractor that the Weather Emergency is over). Any such closure day shall not be a Workday for purposes of the Contract, but such a day will not reduce the Maximum Weekly Delivery Amount that the Contractor has guaranteed to accept.

- A. In such cases, the Contractor will be required to keep the other Facility, for which closure has not been planned, open for DSNY during this entire day. The open Facility must be of sufficient

redundant capacity to allow for tipping to continue uninterrupted while the first Facility is closed.

- B. The Contractor shall provide telephone and written closure notices in accordance with procedures to be specified in the Contract.
- C. The Contractor shall exercise due diligence in its maintenance practices to minimize the need for Acceptance Facility closures pursuant to this Section.

3.7 Impact of Uncontrollable Circumstances, Emergency Closure and Planned One-day Closures

3.7.1 During any month in which an Uncontrollable Circumstance has impacted the delivery of Recyclables, the City shall not be required to meet the Guaranteed Monthly Delivery Amount.

3.8 Deliveries on City Holidays and Sundays; Weather Emergencies

3.8.1 Whenever DSNY shall determine, in its sole discretion, that a Weather Emergency exists, DSNY will notify the Contractor by telephone of the event, and all deliveries of Recyclables may cease until DSNY notifies the Contractor that the Weather Emergency has terminated.

3.8.2 After Weather Emergencies have been declared the City may deliver, and the Contractor shall accept, Recyclables on Workdays and on up to six (6) City Holidays and Sundays per year, as determined by the Department, until:

- A. thirty calendar days after the cessation of the Weather Emergency;
or
- B. an earlier date specified in a notice from DSNY to the Contractor.

3.9 Substitution of Acceptance Facilities

During the Term of the Contract, DSNY may, in its sole discretion, approve in writing the substitution of a different Acceptance Facility for any of the Acceptance Facilities identified in the Contract, if DSNY in its sole discretion determines: (1) that the proposed substitute Acceptance Facility is satisfactory; (2) that the proposed substitute Acceptance Facility meets all the requirements of the Contract; and (3) that the Processing Cost remains the same as it would have been at the original Acceptance Facility.

4. WEIGH SCALES

4.1 Weighing of Recyclables

4.1.1 The Weigh Scale Computer shall be capable of electronically recording the respective incoming and outgoing weights of all Authorized Vehicles and shall calculate and print the weight of Recyclables carried by Authorized Vehicles on Delivery Receipts in accordance with Section 4.1.4 below. The Weigh Scale Computer shall be:

- A. capable of accurately transmitting the data collected to DSNY within one hour of its collection;
- B. capable of printing data with respect to each delivery of Recyclables on a Delivery Receipt; and
- C. capable of storing and generating the data required for the Monthly Report. The parties agree that the data provided by the Weigh Scale Computer shall be the official record of the weight of Recyclables so weighed.

4.1.2 Throughout the Term of the Contract and any Contract renewals, the Contractor shall calibrate each Weigh Scale from time to time, but no less than once every 30 calendar days, and provide the records of the calibration to DSNY within five business days of receipt by the Contractor. Each Weigh Scale shall be duly certified and sealed in accordance with Section 4.2.

4.1.3 The Weigh Scale Computer shall assign a sequential load number to each Authorized Vehicle which enters the Acceptance Facility and permanently associate that load number with the electronic record of the delivery that shall include the weight in US Tons of Recyclables delivered.

4.1.4 The Weigh Scale Computer shall print Delivery Information on the Delivery Receipt for that load and shall transmit such information to DSNY electronically, via a mutually acceptable portable computer storage medium. For each Billing Period, the Contractor shall copy all of that Billing Period's electronic records for all deliveries of Recyclables received from DSNY from the Weigh Scale Computer. The Contractor shall submit that copy to DSNY as an integral part of the Contractor's Monthly Report.

4.1.5 The Weigh Scale Computer records of Recyclables deliveries shall be the Official Delivery Record. If there is a conflict between the computerized record and the paper Delivery Receipt given to the Authorized Vehicle driver, the Weigh Scale Computer record shall take precedence, unless the Weigh Scale has malfunctioned and the Delivery Receipt is the only record of a delivery, or DSNY notifies the Contractor that it does not accept the accuracy and validity of the Weigh Scale Computer records.

4.1.6 Tare Weights

- A. At the election of the Contractor, tare weights will be established and used for Authorized Vehicles making deliveries to the Acceptance Facility. If so, each Authorized Vehicle, including its component parts, shall be measured and registered at each Acceptance Facility to establish its tare weight prior to making deliveries to the Acceptance Facility.
- B. An Authorized Vehicle shall be weighed upon entering the Acceptance Facility and the net weight recorded on the Delivery Receipt shall then be calculated by subtracting the tare weight established for the Authorized Vehicle.
- C. DSNY may, in its sole discretion, periodically require Authorized Vehicles to be weighed after tipping upon departing the Acceptance Facility, in which event the actual weight so determined shall be used in calculating the weight of the load.

4.2 Certification of Weigh Scales

4.2.1 At all times during the Term of the Contract, each Weigh Scale shall meet all pertinent standards and specifications with respect to weights and measures, as amended from time to time by the jurisdiction in which it is located. The Weigh Scale must be duly certified at no cost to DSNY by the relevant local governmental authority having jurisdiction over the Acceptance Facility:

4.2.2

- A. **Within New York State.** Each Weigh Scale located within New York State must meet all pertinent standards and specifications of Article 16 of the New York State Agriculture and Markets Law, as amended, with respect to weights and measures.
- B. **Within New York City.** No less often than once every 12 calendar months, each Weigh Scale within the City must be certified by the New York City Department of Consumer Affairs, and the resulting documentation provided to DSNY within five business days of receipt by the owner or operator of the Acceptance Facility. The Contractor is solely responsible for obtaining, or requiring the owner or operator of the Acceptance Facility to obtain, the Department of Consumer Affairs certification and seal.

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4.2.3 The Contractor must calibrate each Weigh Scale no less than once every 30 calendar days, and provide the records of the calibration to DSNY. DSNY may, at its sole option, accept the certification of an individual or firm holding a valid Dealer/Repair Used Weighing and Measuring Devices license issued by the New York City Department of Consumer Affairs or the certification of a firm or individual similarly licensed by a governmental authority in a jurisdiction other than the City, in lieu of certification by a governmental authority. The following conditions must be met:

- A. the Contractor must have an agreement with the licensed individual or firm providing for the monthly calibration and provide DSNY with a copy of the agreement, and the licensed firm or individual must provide monthly reports to DSNY;
- B. the licensed individual or firm must follow the guidelines of the National Institute of Standards and Technology, Handbook #44, as amended from time to time, issued by the US Department of Commerce in making the certification; and
- C. the certification must be performed at the Contractor's sole cost and expense.

4.2.4 Prior to each expiration date of a Weigh Scale's certification during the Term of the Contract, the Contractor shall provide DSNY with documentation indicating renewal of that certification.

4.3 Weigh Scale Observation and Testing

At any time, and without prior notice, DSNY may observe the weighing of Recyclables and test the accuracy, the precision of the Weigh Scale and the Weigh Scale Computer at any Acceptance Facility. DSNY may authorize an individual to do the observation and testing, and assign the individual to any Acceptance Facility for that purpose.

4.4 Weigh Scale Malfunction

4.4.1 The Contractor shall immediately give Emergency Notice to the Office of Operations Control at the Bureau of Waste Disposal, and to the Bureau of Waste Prevention, Reuse and Recycling, both at DSNY, if the Weigh Scale or Weigh Scale Computer has a Weigh Scale Malfunction, including, but not limited to:

- A. failure of the Weigh Scale or the Weigh Scale Computer to operate to specifications;

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- B. failure to assign a sequential number to each load delivered by DSNY;
 - C. failure to provide a complete and legible Delivery Receipt; or
 - D. failure to calibrate the Weigh Scale as required by Law, rule or regulation, or to have updated required certifications for the Weigh Scale.
- 4.4.2 During any Weigh Scale Malfunction, the Contractor shall accept as official record the measurement or reasonable estimate by DSNY of the weight of the Recyclables delivered. At its sole option, DSNY may use a weight derived from the daily average of all previous Recyclables delivered to the Acceptance Facility by Authorized Vehicles during a six Workday one week period, or such other reasonable period of time as DSNY shall determine in which Recyclables were delivered to the Acceptance Facility.
- 4.4.3 For each calendar day in which a Weigh Scale Malfunction occurs, the Contractor must telefax, by 12:00 noon of the following Workday, to DSNY's Bureau of Waste Prevention, Reuse and Recycling a complete list of all Delivery Receipts completed for Authorized Vehicles delivering Recyclables during the Weigh Scale Malfunction.
- 4.4.4 If a Weigh Scale Malfunction occurs, and continues for a period of one (1) hour or longer, DSNY may, at its sole option:
- A. require that a DSNY supervisor be stationed at the Acceptance Facility with the Weigh Scale to observe Authorized Vehicle deliveries of Recyclables during the remaining period of the Weigh Scale Malfunction; and/or
 - B. deliver the Recyclables to another Acceptance Facility, either the Contractor's second Acceptance Facility as specified in the Contract, or any other such Facility. The Contractor will be liable for the difference between DSNY's cost of delivering such Recyclables to the intended Acceptance Facility and any costs related to delivering the Recyclables to an alternative Acceptance Facility; and/or
 - C. impose Liquidated Damages in accordance with Section 5.4.1(E).
- 4.4.5 Upon the cessation of a Weigh Scale Malfunction, the Contractor shall immediately notify DSNY's Bureau of Waste Prevention, Reuse and Recycling of the cessation of the Weigh Scale Malfunction by fax transmission to a fax number to be specified in the Contract.

5. REPORTING, PAYMENT, AND PENALTIES

5.1 Record Keeping and Reports

5.1.1 Monthly Reports

For every Billing Period throughout the Term of the Contract, the Contractor shall prepare a Monthly Report. The Monthly Report for each Billing Period shall be delivered to the City on or before the 10th calendar day of the succeeding month. The Monthly Report shall contain the following information presented in a format to be provided by the Department prior to the Commencement date:

- A. A statement identifying the period covered by the Monthly Report, including the dates, number of calendar days, and number of Workdays in the period;
- B. listed in sequential order by Delivery Receipt serial number, the date and time of the arrival and departure of each delivery in that Billing Period, specifying the quantity (by weight in US Tons) of Recyclables for each delivery, the identification numbers of Authorized Vehicles delivering the Recyclables, the identifying code of the garage from which the Authorized Vehicle originated, and the total weight of Recyclables delivered in the Billing Period, classified by type of Recyclables;
- C. to the extent practicable, and if applicable, the quantities (by weight in US Tons) of Processed Recyclables, itemized as to the type of product, manufactured in that month by the Contractor from Recyclables delivered under the Contract;
- D. the amount of Processed Recyclables Marketed by the Contractor in that Billing Period, the end-uses to which the Processed Recyclables are to be put, and the names and addresses of the purchasers or transferees of the Processed Recyclables;
- E. the information required to be maintained pursuant to Section 5.1.2; and
- F. any other information required under the Contract.

5.1.2 The Contractor shall furnish to the City, along with the Monthly Report, the designated copy of each Delivery Receipt for all deliveries covered by the Monthly Report. The City will use reasonable efforts to keep the Monthly Reports confidential, subject to applicable

Law, including, without limitation, freedom of information Law. The Contractor shall also deliver to DSNY, along with the Monthly Report, a copy of the data collected by the Weigh Scale Computer with respect to each delivery of Recyclables for the period covered by the Monthly Report, the copy to be delivered on computer disk, by modem, or via email, the format of which may be designated or changed from time to time by DSNY. DSNY shall not approve a Monthly Report unless the Monthly Report has been accompanied by all attachments and information required under the Contract and the Monthly Report has been completed by the Contractor to DSNY's satisfaction. Failure of the Contractor to provide the required Monthly Report in a manner reasonably acceptable to DSNY may subject the Contractor to Liquidated Damages pursuant to 5.4.1(F) and shall constitute a breach of the Contract as set forth in Section 6.1.1.

5.1.3 Retention of Delivery and Marketing Information

Daily throughout the Term of the Contract the Contractor shall measure and record legible records as required by Section 5.1 with respect to:

- A. Delivery Information, by Authorized Vehicle load, as required by Section 5.1 and
- B. Processed Recyclables in Contractor possession, Processed Recyclables transferred to Market, and Front-End Residue and Back-End Residue, each by composition weight, and, if applicable, disposal location.

5.1.4 The Contractor shall maintain the records required by Section 5.1 for a period of six years following the Termination Date of the Contract, or until the resolution of any claim related to the Contract, whichever comes later.

5.2 Billing and Payments

5.2.1 Invoicing for Purchase Amount

- A. For Revenue Basis Arrangements

Within 20 calendar days after the end of each Billing Period, the City shall provide the Contractor with an invoice itemizing the Purchase Amount for that Billing Period. The amounts due on that invoice shall have accrued on a daily basis as Recyclables are delivered in accordance with the provisions of the Contract. The invoice will itemize:

- (1) the Purchase Amount

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- (2) the quantity (by weight) of Recyclables delivered by the City during the Billing Period; and
- (3) the Purchase Price applicable to the Billing Period.

B. For Expense Basis arrangements

Within 20 calendar days after the end of each Billing Period, the Contractor shall submit, simultaneously with the Monthly Report required pursuant to Section 5.1, an itemized invoice to DSNY for the preceding Billing Period. The amounts due on that invoice shall have accrued on a daily basis as Recyclables are delivered in accordance with the provisions of the Contract. The invoice will itemize:

- (1) DSNY's Monthly Payment;
- (2) Processing Cost applicable during the Billing Period;
- (3) Offset (if any) for the Billing Period; and
- (4) the quantity (by weight) of Recyclables delivered by the City during the Billing Period;

5.2.2 Invoice for Total Other Charges

A. On Revenue or Expense Bases

Within 20 calendar days after the end of each Billing Period during the Term of the Contract, the Department will furnish to the Contractor a second, separate invoice itemizing the amount due and payable to the City for the Total Other Charges, including Liquidated Damages pursuant to Section 5.4. The invoice will provide a description of and state the reasons for any of the charges, and will provide calculations for the amount of any of the charges.

5.2.3 Payments

- A. All amounts due to DSNY pursuant to the Contract shall be payable by the Contractor within 15 calendar days from the date the invoice is delivered to the Contractor. If the invoice is sent by a delivery service that provides receipts, the date of delivery will be the date on the receipt. If the invoice is sent by US mail, the date of delivery will be five calendar days after the invoice is mailed. All payments due under the Contract shall be made by good check, drawn on a bank which is a member of the New York Clearinghouse Association, payable to the order of the City of New York Department of Sanitation. Interest on the outstanding balance of any and all amounts that are late shall accrue as provided for in Section 5.2.5(B).

- B. All amounts due the Contractor pursuant to the Contract shall be payable by DSNY within 15 calendar days from the date the invoice is delivered to the Contractor. If the invoice is sent by US mail, the date of delivery will be five calendar days after the invoice is mailed. All payments due under the Contract shall be made by good check, drawn on a bank which is a member of the New York Clearinghouse Association, payable to the order of the Contractor. Interest on the outstanding balance of any and all amounts that are late shall accrue as provided for in Section 5.2.5(B).

5.2.4 Invoice Adjustments

- A. At any time within 15 calendar days of the date of delivery of an invoice, the Contractor may object to any statement contained in an invoice by sending written notice to the City specifying in detail the grounds of the objection. Unless an error in calculations is obvious on the face of the document without reference to any other document or state of facts, the Contractor shall pay the amount due as stated in the invoice within the 15 calendar day period.
- B. After receipt of a notice of objection to an invoice, the City shall afford the Contractor an opportunity to review the records upon which the invoice was based, at a reasonable time to be agreed upon by the parties. If the Contractor demonstrates to the City's reasonable satisfaction that an invoice contained any incorrect information, the invoice will be corrected.

If the invoice contained incorrect information that resulted in an overpayment to DSNY by the Contractor, the overpayment will be credited against the Contractor's subsequent invoice. If the incorrect information resulted in an underpayment to DSNY, the amount of the underpayment will be invoiced on the subsequent invoice.

- C. If the Contractor fails to submit written notice of any objection to an invoice within 15 calendar days after the date of delivery of any invoice to the Contractor, the invoice shall be considered accepted by the Contractor as an accurate account of the total amount due for the Billing Period covered by the invoice.

5.2.5 Late Payments

- A. If at any time the Contractor fails to make any payment when due under Section 5.2.3, the City may stop making deliveries of Recyclables without any liability of the City to the Contractor. The amounts of Recyclables that the City is required to deliver shall be reduced proportionately until two business days after the late payment is made, but the amounts that would have been delivered during the suspension (calculated according the formula in Section 4.4.2) will, when the Contract is operating on a Revenue Basis, count towards the Guaranteed Monthly Delivery Amount. When the Contract is operating on an Expense Basis, these amounts shall not be counted towards the Guaranteed Monthly Delivery Amount.

- B. Interest on the outstanding balance of any and all late payment amounts shall accrue at the US Federal Reserve Prime Rate + 2%, compounded daily, until the full amount has been paid.

5.3 Updating the Floor Price, the Ceiling Price, and the Processing Cost for Inflation; Updating the Recyclables Categories; Reallocation of Delivery Amounts

5.3.1 Inflation Factor Updates

- A. Beginning on the third anniversary of the Commencement Date, the Floor Price, the Ceiling Price, the Processing Cost, and the amounts specified for Liquidated Damages shall be adjusted annually by an Inflation Adjustment (Section 5.4.1 below and Appendix VI).

- B. The first Inflation Adjustment shall be based upon the Consumer Price Index for the thirty-fifth and twenty-third months of the Contract. Subsequent adjustments shall be based upon the Consumer Price Indices for two months and fourteen months prior to the month in which the Inflation Adjustment is to be applied.

C. The following formulas shall be used:

First Inflation Adjustment	=	the Consumer Price Index for the 35th month of the Contract <div style="text-align: center;">÷</div> the Consumer Price Index for the 23rd month of the Contract.
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Subsequent Inflation Adjustments	=	the Consumer Price Index for two months prior to the month in which the amount is being adjusted <div style="text-align: center;">÷</div>
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		the Consumer Price for 14 months prior to the month in which the amount is being adjusted.
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5.3.2 Recyclables Categories

- A. Depending on the Payment Structures proposed in the Price Proposal, DSNY and the Contractor may agree on a composition breakdown for MP and/or MGP specifying the relative percentages of each. This will be the basis for calculation of a composite index price, as detailed in Appendix II “Pricing and Payment Guidelines.”

- B. At any time after the first Contract Year, but no more frequently than once every 12 calendar months, DSNY may elect to designate an independent consulting firm to conduct a Recyclables Characterization Study. The study will be based on a representative sample of DSNY’s trucks from Recyclables collection routes. The results of the study will be verified by an independent, bonded auditing firm. In any Contract Year in which DSNY does not elect to have a Recyclables Characterization Study conducted, the Contractor may, at its option and its sole cost and expense, have a characterization study performed, no more frequently than once per year, by an independent consulting firm approved by DSNY in accordance with procedures approved by DSNY.

Further discussion of waste characterization methods and requirements can be found in Appendix IV, “Composition Estimates for Recyclables.”

- C. The results of any Recyclables Characterization Study may be used as the basis for negotiation of a new composition breakdown.

5.3.3 If the published source agreed upon by DSNY and the Contractor as reference for monthly commodity prices revises its categories for recyclable metals, plastics, glass containers, and Beverage Cartons, DSNY shall provide the Contractor with notice as to such revision and shall indicate in such notice the current equivalent category for each type of recovered material.

- A. If this published source ceases to be published or is otherwise unavailable for a given month, then DSNY shall choose a reasonable alternative publication, notify the Contractor of DSNY’s selection, utilize such publication for determining such prices, and the alternative shall be substituted.

5.3.4 Reallocation of Delivery Amounts

If, in the sole judgment of DSNY, a substantial change occurs in the amount of materials collected in one or more sanitation districts, or if sanitation districts are reorganized and the number of sanitation districts or their borders change, DSNY may reallocate the amounts of Recyclables to be delivered to the Companies to which it has awarded contracts.

5.4 Liquidated Damages and Other Charges

The invoice for the Total Other Charges for each Billing Period will include amounts payable to the City for specified operational failures under the Contract. The parties agree that these amounts constitute Liquidated Damages and are not intended as a penalty, but an acknowledgment by the parties that actual damages for each violation are difficult or impossible to ascertain. Proposed dollar amounts for Liquidated Damages (LDs) 1- 5 are, subject to negotiation, are in Appendix VI, "Proposed Liquidated Damages Amounts Schedule"

5.4.1 The Liquidated Damages assessed are as follows:

- A. **Failure to Unload Promptly.** The City may impose Liquidated Damages of Amount #1 for each minute an Authorized Vehicle waits to unload Recyclables beyond the applicable period permissible under Section 3.2.3. If the wait beyond such permissible period exceeds 30 minutes, DSNY, in its sole discretion, may declare such a wait a failure to accept Recyclables in violation of Section 3.2.8 in which event the Liquidated Damages set forth in Section 5.4.1(B) shall apply.
- B. **Failure to Accept Recyclables.** The City may impose Liquidated Damages of LD Amount #2 for Recyclables that:
 - (1) the Contractor fails to accept as provided for in Section 3.2.8;
 - (2) remain unloaded for more than 30 minutes beyond the permissible periods set forth in Section 3.2.3, or
 - (3) cannot be delivered due to the Contractor's closure of the Acceptance Facility for any period not authorized under the Contract.
- C. The amount of LD Amount #2 provided for in Section 5.4.1(B) may, at DSNY's sole discretion, be increased to LD Amount #3 for each breach set forth in Sections 5.4.1(B) if the Contractor has failed to provide DSNY with immediate notice that Recyclables are to be rejected by the Acceptance Facility or the Contractor is unable to

accept any Recyclables DSNY attempts to deliver. For purposes of the preceding sentence, the Contractor will be considered to have provide immediate notice to DSNY if Emergency Notice is provided.

D. **Failure to Provide Delivery Receipts.** The City may impose Liquidated Damages of LD Amount #4 for each and every failure to provide complete Delivery Receipts in the manner required by Sections 3.2.5 and 3.2.6.

E. **Violations Related to Weigh Scale Malfunctions.**

(1) The City may impose Liquidated Damages of LD Amount #4:

each time an Authorized Vehicle must be weighed by DSNY, or its weight must be estimated;

each time the Contractor fails to provide DSNY with immediate notification of a Weigh Scale Malfunction as required by Section 4.4.1; or

each day that the Contractor fails to bring a Weigh Scale into compliance with the requirements set forth in Section 4.2, within five calendar days after providing notification to DSNY that a Weigh Scale is malfunctioning.

(2) If a Weigh Scale Malfunction occurs, and continues for a period of 24 hours or longer, DSNY may impose Liquidated Damages in the amount of LD Amount #2 per hour for each and every hour that the malfunction continues, beginning with the 25th hour.

F. **Failure to Provide Reports or Keep Required Books and Records.** The City may impose Liquidated Damages of LD Amount #5 for each and every violation of Section 5.1 with respect to maintaining records, submitting records or reports, or providing requested information required, and for each and every failure to provide the City's representatives with access to inspect and audit the books and records of the Contractor pursuant to Section 5.1.

5.4.2 If either of the following events occur, the City has no obligation to deliver Recyclables to the Contractor until 10 calendar days after the Contractor provides written notice to the City that the Contractor will resume regular Acceptance of Recyclables in accordance with the terms of the Contract.

- A. The Contractor notifies DSNY in accordance with Section 3.5 that it will not accept Recyclables for any period specified; or
- B. For a period of two or more consecutive Workdays, the Contractor fails to accept deliveries of Recyclables made by the City in accordance with the terms of the Contract for any reason other than an Uncontrollable Circumstance.

5.4.3 During periods in which the City is not obligated to deliver Recyclables under Section 5.4.2, the Contractor shall be considered to have failed to accept Recyclables. Liquidated Damages for failure to accept Recyclables in accordance with Section 3.2.8 shall accrue, whether or not the City delivers, or attempts to make deliveries of Recyclables, unless the Contractor's inability to accept Recyclables is due to an Uncontrollable Circumstance.

6. DEFAULT AND REMEDIES

6.1 Default by the Contractor

6.1.1 Each of the following shall constitute a default on the part of the Contractor:

- A. The Company does not deliver to DSNY the documentation required to be delivered pursuant to Section 2.1.2, such documentation to be satisfactory in form and substance to DSNY;
- B. The Contractor fails to make any payment owed to the City or to provide Monthly Reports under the Contract within 30 calendar days after written notice from the City that the payment is due; or
- C. An employee, agent or Subcontractor of the Contractor is found handling or operating the controls or driving an Authorized Vehicle, except in circumstances of an emergency requiring such handling or operation;
- D. Any representation or warranty by the Contractor contained in the Contract is materially false or incomplete when made or updated or, as to continuing representations and warranties required, ceases to be materially correct and complete;

- E. The Contractor fails to notify DSNY of any change in the representations and warranties required by Section 7.2 or that any of the documents that were provided under Section 2.1.2 cease to be correct, valid, or effective; or
 - F. The Contractor fails to remedy any violations of this Section 6.1.1 as provided for in Section 6.1.2.
- 6.1.2 The City will give notice of the default to the Contractor, and the Contractor must cure the default within five calendar days, unless the City, at its sole option, provides a longer time period. If the remedy requires work to be performed which cannot, by its nature, reasonably be performed in five calendar days, the Contractor must commence the remedial work within the five-day cure period and diligently perform the remedy work to completion within a time agreed to by the City.
- 6.2 Default by the City

The repeated and persistent failure of the City to deliver Recyclables in the amounts required under the Contract shall constitute a default on the part of the City, unless the failure is reasonably determined by the City to be due to an Uncontrollable Circumstance.
- 6.3 Non-exclusive Remedies for Breach
 - 6.3.1 Upon a default on the part of one party, the other party may exercise any right, power, or remedy permitted to it by Law or in equity, under the Contract, or under any insurance policy, bond, guaranty, Letter of Credit, or other security provided by the Contractor to the City pursuant to the terms of the Contract.
 - 6.3.2 The non-defaulting party may:
 - A. partially or completely suspend performance of its obligations under the Contract until such time as the defaulting party has cured the default;
 - B. terminate the Contract by giving notice of termination to the party in default at least 30 calendar days prior to the date of termination specified in the notice; or
 - C. exercise its option to declare the other party in default under Section 6.3 for any uncured act of default for which it earlier elected to partially or completely suspend performance.

- 6.3.3 In the event of a complete or partial suspension of the Contract by the City under Section 6.3.2, the amount of Recyclables which the City is obliged to deliver under the Contract shall be reduced in proportion to the impact of the suspension, as determined by DSNY, and DSNY shall have no liability to the Contractor.
- 6.3.4 In the event of a partial or complete suspension of the Contract by the Contractor under Section 6.3.2, the amount of Recyclables which the Contractor is obliged to accept under the Contract shall be reduced in proportion to the impact of the suspension, as determined by DSNY, and DSNY shall have no liability to the Contractor.
- 6.3.5 In all events, the City's liability to the Contractor is limited to the value of the Guaranteed Monthly Delivery Amount that the Contractor can demonstrate conclusively that it did not receive from the City.

7. REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of the City

- 7.1.1 As a material inducement to the Contractor to enter into and perform the Contract, the City represents and warrants to the Contractor the following:

- A. **Existence and Powers** The City is a municipal corporation validly existing under the Constitution and Laws of the State of New York, with full legal rights, power and authority to enter into and perform its obligations under the Contract.
- B. **Authorization; No Conflict** The City has duly authorized the City's execution and performance of the Contract by all necessary municipal action.

7.2 Representations and Warranties of the Contractor

- 7.2.1 As a material inducement to the City to enter into and perform the Contract, the Contractor represents and warrants to the City the following:

- A. **Litigation** There are no actions, suits or other proceedings, at Law or in equity, before any court or administrative agency or arbitrator, which are pending or, to the Contractor's knowledge threatened, of which an adverse outcome may have an adverse effect on the Contractor's ability to perform any of its obligations arising under the Contract.

- B. **Rights to Use Technology, the Acceptance Facility Sites and the Acceptance Facilities** The Contractor has, and at all times during the Term of the Contract will have:
- (1) all rights, licenses, patents, copyrights and other approvals related to the processes and technology necessary for the performance of the Contractor's obligations under the Contract and the transactions contemplated under the Contract; and
 - (2) full right to use the Acceptance Facilities for the purposes contemplated by the Contract.
- C. **Doing Business** The Contractor is, and at all times during the Term of the Contract will be, and any other entity performing any of the Contractor's obligations under the Contract, is, or will be at the time it performs any obligation, authorized to do business and to perform its obligations in the United States and in the State and the City of New York.
- D. **No Default** The Contractor is not in default in any material respect in the payment or performance of any of its obligations or in the performance of the Contract or any other agreement between the Contractor and the City. The Contractor is not in default under any order, award or decree of any court, arbitrator, or governmental authority binding upon or negatively affecting the Contractor or any of its assets.
- E. **No Burdensome Agreements** The Contractor is not and, to the best of the Contractor's knowledge, any Affiliate is not, a party to any agreement, instrument or undertaking, or subject to any other restriction, which materially adversely affects the Contractor's ability to perform its obligations under the Contract.
- F. **Recyclables to be Recycled** The Contractor shall use its best efforts to minimize Residue and to cause to be Recycled all Processed Recyclables derived from the Recyclables delivered by the City to the Contractor under the Contract, and shall so certify in its Monthly Report. For any Processed Recyclables that are sold or transferred by the Contractor, the Contractor shall obtain from the purchaser or transferee of the Processed Recyclables a written representation that the purchaser or transferee will Recycle the Processed Recyclables.

- G. **Authorizations, Licenses, Permits and Registrations** The Contractor has obtained all authorizations, licenses, permits and registrations required under all applicable Laws for the consummation of the transactions contemplated under the Contract and the performance of its obligations under the Contract.
- H. **Weigh Scale Calibration** The Contractor has calibrated each Weigh Scale, and will do so throughout the Term of the Contract and any Contract renewals no less than once every 30 calendar days, and provide the records of the calibration to DSNY.
- I. **Hazardous Substances**
- (1) The Contractor shall comply with all applicable Laws relating to the release of any Hazardous Substances on, in, under or about the Acceptance Facility and the Acceptance Facility Site and shall report the presence of any Hazardous Substances and dispose of them in accordance with all applicable Laws. Hazardous Substances present in or on any Acceptance Facility, Processing Facility or Acceptance Facility Site shall be considered to have been delivered by a party other than the City unless proven otherwise by clear and convincing evidence to the contrary.
 - (2) The Contractor covenants that no Hazardous Substances shall be present, disposed, spilled or otherwise released on, in, under or about the Acceptance Facility, Processing Facility, or Acceptance Facility Site, except in the manner or to the extent permitted under any applicable Law.

7.2.2 On an ongoing basis, the Contractor shall inform DSNY of any change in the representations made in Section 7.2.1.

8. MISCELLANEOUS

8.1 Authorizations, Licenses, Permits and Registrations

The Contractor shall obtain and maintain in full force and effect during the Term of the Contract all authorizations, licenses, permits and registrations, that are necessary to perform its obligations under the Contract.

8.2 Insurance

- 8.2.1 Within 45 days of award, but prior to the commencement of work, and thereafter throughout the Term of the Contract, the Contractor shall obtain and maintain insurance policies covering \$15 million in combined general and excess liability, \$3 million in auto, \$1 million for Employers' Liability, and the statutory amount for workers' compensation. Details on Insurance Requirements are set forth in Appendix VII, "Insurance and Security Requirements".
- 8.2.2 The Contractor shall also require any Subcontractor hereunder to procure and maintain the insurance prescribed in Section 8.2.1 during the entire period of its performance.
- 8.3 Relationship of the Parties
- 8.3.1 The City shall not have, through the Contract or otherwise:
- A. any title to or ownership interest in the Acceptance Facility or
 - B. physical possession of or control over the Acceptance Facility.
- 8.4 Maintenance of Records
- 8.4.1 Supplementing the requirements of Section 5.1 of these detailed specifications, the Contractor shall maintain accurate, readily auditable records and accounts, in accordance with generally accepted accounting principles, and supporting documentation of:
- A. all of its receipts and expenditures in connection with the performance of its obligations under the Contract to accept, process and market NYC Recyclables; and
 - B. all financial accounts (including invoices and receipts for transactions and expenditures) in connection with the Contract relating to the Acceptance and disposition of Recyclables and the Contractor's performance of its obligations under the Contract with respect to the Processing and Marketing of the Recyclables.
- 8.4.2 The City shall have the right, upon demand at any time, to conduct independent sampling and analysis of the information required to be maintained or provided pursuant to Section 5.1, and, immediately upon receiving the demand, the Contractor shall make the requested information available to any representatives of the City, including but not limited to City, New York State, and federal auditors as follows:

- A. The Contractor shall make the records and all other documents relating to the matters described in Section 5.1 available for inspection, copying, and audit at the relevant Acceptance Facility by the City or an independent third party auditor designated by the City, upon reasonable notice. All records, accounts, and other documents shall be maintained for a period of six calendar years after Termination Date of the Contract.

8.4.3 The provisions of Section 8.4 shall survive the Termination Date of the Contract for the later of the six-year period designated in Section 5.1.4 or the resolution of any claim related to the Contract, whichever comes later.

8.5 Notices

8.5.1 Notices to the City

- A. Notices to the City shall be sent to:

New York City Department of Sanitation
44 Beaver Street, 6th Floor
New York, New York 10004
Attention: Director, Bureau of Waste Prevention, Reuse, and Recycling

with a copy addressed to:

New York City Department of Sanitation
51 Chambers Street, Room 801
New York, New York 10007
Attention: Agency Chief Contracting Officer

- B. Notice of any change in the Contractor's authorizations, licenses, permits and/or registrations, as well as notice upon renewal of such items, shall be sent to:

New York City Department of Sanitation
44 Beaver Street, 6th Floor
New York, New York 10004
Attention: Director, Bureau of Waste Prevention, Reuse, and Recycling

with a copy addressed to:

New York City Department of Sanitation
51 Chambers Street, Room 801
New York, New York 10007
Attention: Agency Chief Contracting Officer

- C. Notice of an accident resulting in personal injury or property damage shall be sent to:

Department of Sanitation
Bureau of Legal Affairs
125 Worth Street, Room 710
New York, NY 10013
Attention: Deputy Commissioner for Legal Affairs

- D. The Contractor must send Emergency Notice as provided for in Section 3.5

8.5.2 Notices to the Contractor

All notices to the Contractor shall be sent as provided for in the Agreement to the addresses and the facsimile number provided in the Contractor's proposal, or as they may change from time to time upon the Contractor's written notice to DSNY of such change.

8.6 Assignment by the Contractor

- 8.6.1 The Contractor shall be prohibited from any assignment of the Contract without DSNY's written permission, to which the Commissioner shall not unreasonably withhold his/her consent, provided that:

- A. the Assignee has control of the Acceptance Facility(ies);
- B. the Assignee meets all standards with respect to responsibility and fitness set forth in the City rules and regulations regarding vendor responsibility;
- C. the Assignee timely submits to the City a Business Entity Questionnaire pursuant to the Vendor Information Exchange System (VENDEX) and obtains clearance from the City;
- D. the Assignee has, in the City's reasonable judgment, sufficient financial capability, experience and management skills to perform the Contractor's obligations under the Contract and
- E. the New York City Department of Investigation does not make any recommendation to DSNY against allowing the Assignment.

8.6.2 If the assignment of the Contract under Section 8.6 has the effect of changing the location of one or both of the Acceptance Facilities, the Processing Cost shall not change, but DSNY may, in its sole discretion:

- A. continue to deliver the same amounts Recyclables to the new Acceptance Facility(ies) as it did to the prior Acceptance Facility(ies);
- B. terminate the Contract as to the prior Acceptance Facility(ies); or
- C. change the amount of Recyclables to be delivered to the new Acceptance Facility(ies).

8.7 Approval of Subcontractor(s)

8.7.1 The Contractor shall be prohibited from entering into any new Subcontracts for services under the Contract without DSNY's written permission, to which the Commissioner shall not unreasonably withhold his/her consent, provided that:

- A. the Subcontractor meets all standards with respect to responsibility and fitness set forth in the City rules and regulations regarding vendor responsibility;
- B. the Subcontractor timely submits to the City a Business Entity Questionnaire pursuant to the Vendor Information Exchange System (VENDEX) and obtains clearance from the City;
- C. the Subcontractors has, in the City's reasonable judgment, sufficient financial capability, experience and management skills to perform the tasks for which it is subcontracted; and
- D. the New York City Department of Investigation does not make any recommendation to DSNY against allowing the Subcontractor to be added.

8.8 Assignment by the City

The City expressly reserves the right to assign the Contract in whole or in part without the Contractor's consent to any Entity having authority to accept the assignment as a successor in function to DSNY, in whole or in part.

8.9 Payment Security

Appendix I - Proposed Detailed Specifications
RFP to Accept, Process and Market NYC Recyclables

- 8.9.1 Upon request by DSNY, the Contractor shall provide to the City a Letter of Credit conforming in substance to the Sample in Attachment 7, and according to amounts specified in RFP Section 1.F. "Important Information for Proposers," which shall provide that it shall not expire or be terminated until thirty calendar days after the Termination Date, should the Termination Date occur during the term of the Letter of Credit.
- 8.9.2 If the Contractor defaults in making any payments to the City when the same become due and payable or fails to perform any of its other obligations under the Contract, including, without limitation, the failure to accept Recyclables in accordance with the terms of the Contract, the City may draw down from the Letter of Credit in whole or in part and apply the proceeds to any amounts past due or coming due and interest accrued on those amounts, or to any other costs resulting from the Contractor's default under the Contract. The parties expressly agree that a draw down on the Letter of Credit, even if it is for payment of Liquidated Damages, does not in and of itself constitute a form of Liquidated Damages nor is such a draw down intended to be Liquidated Damages or to be the City's sole or exclusive remedy for the Contractor's default.
- 8.9.3 The Letter of Credit shall be renewed or replaced no later than thirty calendar days prior to the expiration date of the Letter of Credit. Any failure to so renew or replace the Letter of Credit shall give the City the right to draw down the Letter of Credit in full. If the Letter of Credit is drawn upon, the Contractor shall, within 10 calendar days, amend the Letter of Credit so as to increase its amount by the amount drawn down. If the Letter of Credit is drawn down in its entirety, the Contractor shall, within 10 consecutive calendar days, deliver to the City a replacement Letter of Credit in the full amount required under the Contract.
- 8.9.4 Each amended, replacement, and substitute Letter of Credit shall be in the same form as the original Letter of Credit and be issued by a solvent bank or trust duly licensed to do business in the State of New York, with an office in New York City.
- 8.9.5 The Letter of Credit shall be an initial amount up to \$150,000, renewable annually so long as the Contract operates on a Revenue Basis. Should the Contract move to an Expense Basis, the Letter of Credit shall be renewed in the amount of \$50,000.

Appendix II

Pricing and Payment Guidelines

Appendix II - Pricing and Payment Guidelines
RFP to Accept, Process and Market NYC Recyclables

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Price Proposal Guidelines

The following is a discussion of how DSNY expects to structure Revenue and Expense Based approaches under the Contract, plus instructions for preparing a Price Proposal for each basis.

Proposers must use the Revenue Basis guidelines to prepare portions of their Proposals for the Acceptance, Processing and Marketing of MP under Scenario One. They should use the Expense Basis guidelines for portions of their Proposals relating to Acceptance, Processing and Marketing of MGP under Scenario Two – unless they are proposing services for Scenario Two on a Revenue Basis, in which case they should use the Revenue Basis guidelines. Proposers should follow the directions in these guidelines to prepare two, separate Price Proposals to accompany the Technical Proposal in response to this RFP, using the for provided in Attachment 1, “Price Proposal Forms”.

Additional scenarios concerning MGP plus Paper Acceptance, Processing, and Marketing; and scenarios involving other materials, should generally follow these guidelines, as applicable. However, Proposers may use their own formats for such additional Price Proposals.

Furthermore, any Proposer may propose a supplementary or alternative Payment Structure of its own for Scenarios One and Two in a separate, additional section of the Price Proposal, provided the Proposer has already prepared a Price Proposal that conforms to the guidelines herein.

I. Revenue Basis Guidelines

A. Processing Cost

Proposers should estimate a fully burdened Processing Cost, in US dollars per US Ton, expressed as a negative number. The Processing Cost is the mathematical sum of three components: (1) the cost of Processing the Recyclables delivered by DSNY into marketable form, including, but not limited to, transportation from the Acceptance Facility to the Processing Facility and the removal of Residue; (2) overhead; and (3) profit.

The use of accurate numbers in calculating the Processing Cost will help to ensure that the Contract's price stabilizing mechanisms work as designed.

Formula:

(Processing Cost)	=	(Cost of acceptance, processing and marketing DSNY Recyclables	+	overhead	+	profit)
<i>note: Parentheses indicate that Processing Cost must be expressed as a NEGATIVE number</i>						

Proposers should enter the proposed Processing Cost, expressed as a negative number, on the Price Proposal Form in Attachment 1.

B. Composite Index

Because of the great price volatility in metals and plastics markets, as well as the great difference in per Ton prices that different recycled materials can command at any given time, DSNY requires the use of a “Composite Index” to set parameters for material composition. This index will estimate the relative amounts of different materials in an average “Ton” of delivered Recyclables.

The relative proportions for materials listed in the index is to be finalized in negotiations between DSNY and the Contractor. However, DSNY requires that the index consist of six material categories listed at right, and recommends the use of the composition percentages, also listed at right, although Proposers may present alternative percentages for consideration. For a thorough discussion of various waste composition estimates that have contributed to the development of this index, see Appendix IV .

Proposed MP Composite Index	
used steel/bimetal	54.26%
aluminum cans/foil	2.10%
mixed HDPE	16.80%
natural HDPE	4.14%
mixed PET	7.69%
residue	15%
TOTAL	100%

Proposers should enter a proposed Composite Index on the Price Proposal Form in Attachment 1.

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C. Composite Index Price

When the Composite Index is applied to a rolling average of published market prices for recycled material commodities, it enables the calculation of a single, per Ton price for DSNY Recyclables. This price simultaneously reflects what is being delivered by DSNY, and what the market has been doing recently. Using a three-month rolling average, rather than a single monthly market price, has proven useful to smooth the effect of transitory price fluctuations in past contracts.

In the example below, multiplying the three-month rolling average of recycled material commodities prices by the Composite Index yields an average value per US Ton, which becomes a base for calculation of transactions between the Contractor and DSNY. This average value per US Ton is called the “Composite Index Price”. This price is calculated monthly by DSNY. It is based on prices published in an agreed-upon week of each month, taken from a publication similarly agreed upon.

Example: Calculation of Composite Index Price for May 200X, during MP Phase One. During the months of March, April and May of 200X, prices for the following commodities are published in the second week issue of an agreed-upon publication, and their three month rolling averages are calculated:

	\$/US Ton	\$/US Ton	\$/US Ton	\$/US Ton
				<u>3 month</u>
				<u>rolling</u>
<u>Recycled Materials Prices</u>	<u>April 200X</u>	<u>May 200X</u>	<u>June 200X</u>	<u>average</u>
Mixed/processed	-	-	-	-
Used steel/bimetal cans	\$ 56.00	\$ 60.00	\$ 56.00	\$ 57.33
Aluminum Cans/foil	\$ 1,070.00	\$ 999.00	\$ 900.00	\$ 989.67
Mixed HDPE	\$ 260.00	\$ 220.00	\$ 220.00	\$ 233.33
Natural HDPE	\$ 290.00	\$ 280.00	\$ 260.00	\$ 276.67
Mixed PET	\$ 140.00	\$ 100.00	\$ 50.00	\$ 96.67

The year 200X is used for explanatory purposes only; data do not reflect actual prices for any one year.

The averages are then weighted by the Composite Index. For this month, the Composite Index Price per US Ton would be \$110.03.

		\$/US Ton	\$/US Ton
		<u>3 month</u>	<u>Composite</u>
		<u>rolling</u>	<u>Index Price</u>
<u>Recyclables Composite Index</u>		<u>average</u>	
Used steel/bimetal cans	54.26%	57.33	31.11
Aluminum Cans/foil	2.10%	989.67	20.82
Mixed HDPE	16.80%	233.33	39.20
Natural HDPE	4.14%	276.67	11.47
Mixed PET	7.69%	96.67	7.44
<u>RESIDUE</u>	15.00%	0.00	<u>0.00</u>
TOTAL			\$ 110.03

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Formula:

Composite Index Price	=	three-month rolling average of recycled material commodities prices as published in agreed-upon source of record	x	Composition Index
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Proposers should enter the proposed averaging basis, including time periods and publication of choice, in the Price Proposal Form in Attachment 1.

D. Base Price

The Base Price is indicative of the average value of a Ton of DSNY Recyclables at any given time, net the costs to process these Recyclables. It is calculated simply as the difference between the Composite Index Price and the Processing Cost.

Formula:

Base Price	=	Composite Index Price	-	Processing Cost
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DSNY will calculate the Base Price monthly.

E. Floor or Ceiling Price Adjustments to the Base Price

Proposers should propose a Floor and Ceiling Price. The Floor Price and the Ceiling Price are per-Ton prices and constitute boundaries outside of which the Base Price will never be allowed to range. If the Base Price is less than the Floor Price or greater than the Ceiling Price, the Base Price will need to be adjusted up or down, respectively. The adjusted price will be then called the Adjusted Base Price.

DSNY requires that the Floor Price be positive, i.e. greater than zero. It is expected that proposed Floor Prices will be competitive with Bid prices submitted in response to the DSNY's recent Bid solicitation for Acceptance, Processing and Marketing of Commingled Metal and Plastic (PIN #82703BR00051), in which the most favorable bid received was \$5.10 per US Ton payment to the Department.

Proposers should enter the proposed Floor and Ceiling Prices in the Price Proposal Form in Attachment 1. These both must be positive numbers.

F. DSNY Credit and Contractor Setoff Calculations

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DSNY will maintain a set of running balances for itself and the Contractor, as follows:

1. Rationale

If it is necessary to adjust the Base Price as above, there is still the matter of the discrepancy that month between the actual Base Price (which reflects what is in reality happening in the market less costs to the Contractor) and the Adjusted Base Price.

When the Base Price is increased from a negative, zero, or very small positive amount up to the Floor Price (during periods of weakness in the recycled materials markets) (“Adjusted Up Towards Floor”), the Contractor is in effect forced to bear extra costs. Conversely, when the Base Price is decreased from a high amount down to the Ceiling Price (“Adjusted Down Towards Ceiling”), the Contractor solely benefits from market strength, and DSNY foregoes additional revenues that it might otherwise claim.

In order to compensate both the Contractor and DSNY for these periodic revenue incursions, and yet maintain the relative stability of monthly payments (from the Contractor) and revenues (to DSNY), there is an additional mechanism that has proved useful in previous contracts – namely “running balances” kept on the books for each party. The Contractor’s running balance is called the “Contractor setoff balance,” and is added to when the Base Price is Adjusted Up. The Department’s running balance is called the “DSNY Credit Balance”, and is added to when the Base Price is Adjusted Down. DSNY maintains the records of both setoff and Credit balances, and calculates monthly additions, subtractions, and other adjustments thereto.

2. The Contractor setoff for Adjustment Up Towards Floor

A “Contractor setoff” is made each month in which the Base Price is less than the Floor Price, and the Adjusted Base Price has been increased, as described in Section IV herein. It is calculated as follows:

Contractor setoff for Adjustment Up to Floor	=	[Floor Price	-	Base Price]	x	the number of US Tons of Recyclables delivered in the Billing Period
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A Contractor setoff calculated above will be added to the “Contractor setoff balance” in the Billing Period in which it accrues.

3. The DSNY Credit for Adjustment Down Towards Ceiling

A “DSNY Credit” is made each month in which the Base Price is greater than the Ceiling Price, and the Base Price has been Adjusted Down. It is calculated as follows.

DSNY Credit for Adjustment Down to Ceiling	=	[Base Price	-	Ceiling Price]	x	the number of US Tons of Recyclables delivered in the Billing Period
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The DSNY Credit calculated above shall be added to the “DSNY Credit Balance” in the Billing Period in which it accrues.

4. The Contractor Setoff for DSNY’s Failure to Deliver Recyclables

This type of Contractor setoff occurs when DSNY fails to deliver the minimum monthly amount agreed upon in the Contract, thereby offsetting the impact of foregone revenue that the Contractor experiences.

Unless due to an Uncontrollable Circumstance or a negligent or intentional act or omission by the Contractor, DSNY’s failure to deliver the Guaranteed Monthly Delivery Amount to the Contractor in any Billing Period will result in a Contractor setoff for delivery failure. This type of setoff is subject to review, and based upon conditions governing disputes and documentation agreed upon between the parties.

The delivery failure setoff is calculated as follows:

Contractor setoff for delivery failure	=	Guaranteed Monthly delivery Amount	▼	[the number of US Tons of Recyclables actually delivered by DSNY in the Billing Period	x	the Base Price for the Billing Period, prior to adjustments up to Floor or down to Ceiling]
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Unlike the Contractor setoff for Adjustments Up to Floor, the delivery failure setoff is not necessarily immediately added to the Contractor setoff balance. If applicable, it is first applied to another aspect of monthly payment: “Total Other Charges” that the Contractor must pay to DSNY. The definition of “Total Other Charges” is detailed in Section G. below.

If the Contractor Incurs any “Total Other Charges” in the Billing Period in which the delivery failure setoff accrues, the setoff amount is first applied to the Total Other Charges as follows:

Total Other Charges in a Billing Period after adjustment under this Section	=	Total Other Charges in the Billing Period prior to adjustment under this Section	▼	x	[delivery failure setoff for the Billing Period] the number of US Tons delivered by DSNY in the current Billing Period]
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Only after this takes place is any remaining balance added to the Contractor setoff balance in that same Billing Period.

G. Total Other Charges

In addition to the Contractor setoffs and DSNY Credit described above, there is another category of monthly adjustments payable to DSNY by the Contractor in cases of specified operational failures under the Contract. The parties will agree that these amounts constitute liquidated damages and are not intended as a penalty, but an acknowledgment by the parties that actual damages for each operational failure are difficult or impossible to ascertain.

The nature of these specified operational failures, are outlined in Appendix I, “Proposed Detailed Specifications” The dollar amounts assigned to them as Liquidated Damages, are subject to negotiation between the parties. DSNY’s minimum dollar amounts are presented in Appendix VI “Proposed Liquidated Amounts Schedule”.

H. Running Balances

The DSNY Credit Balance and the Contractor setoff balance will each be kept as a separate, running balance from month to month during the term of the Contract. Each month that a DSNY Credit or Contractor setoff accrues, it will added to the respective running balance of DSNY or the Contractor.

1. Further Adjustments to the Base Price to Reflect Market Conditions

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Over and above those listed above, DSNY Credits and Contractor setoffs may additionally accrue when two, distinct, conditions apply simultaneously.

- a. Floor Price < Base Price < Ceiling Price

The first condition is when the original, unadjusted Base Price falls between the Floor and Ceiling Prices. In other words, after calculating the Composite Index Price and subtracting the Processing Price as above, the resulting Base Price is less than the ceiling and more than the floor.

- b. The DSNY Credit Balance < or > The Contractor setoff balance

The second condition occurs when either DSNY or the Contractor has a running balance that is greater or less than the other. Another way of expressing this condition is that the DSNY Credit Balance ▼ the Contractor setoff balance.

When, and only when, both conditions apply, the two balances will be reconciled by adjusting the Base Price in favor of the party with the lower running balance.

2. Base Price Adjustment Towards Ceiling

As a consequence, in any Billing Period when the DSNY Credit Balance exceeds the Contractor setoff balance, and the Base Price in the Billing Period is less than the Ceiling Price, the Base Price in the Billing Period will be increased, but never to more than the Ceiling Price, by the lesser of the amounts calculated by the two following formulas:

Option i. Base Price Adjustment Towards ceiling	=	DSNY Credit Balance ▼ Contractor setoff balance
		÷
		Number of US Tons of Recyclables Delivered in the Billing Period

OR

Option ii. Base Price Adjustment Towards ceiling	=	Ceiling Price ▼ Base Price
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3. Base Price Adjustments Towards Floor

Similarly, in any Billing Period when the Contractor setoff balance exceeds the DSNY Credit Balance, and the Base Price in the Billing Period is more than the Floor Price, the Base Price in the Billing Period will be decreased, but never to less than the Floor Price, by the lesser of the two adjustments shown below:

Option i. Base Price Adjustment towards floor	=	Contractor setoff balance	▼	DSNY Credit Balance
		÷		
		Number of US Tons of Recyclables Delivered in the Billing Period		

OR

Option ii. Base Price Adjustment Towards floor	=	Base Price	▼	Floor Price
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4. Adjusted Base Price

In each instance (Towards Ceiling or Towards Floor), the Base Price will be adjusted by the lesser applicable Base Price Adjustment amount. The result will be called the “Adjusted Base Price.”

Adjusted Base Price (in instance of adjustment Towards ceiling)	=	Base Price	+	least of Base Price Adjustment Towards ceiling Options i. or ii
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Adjusted Base Price (in instance of adjustment Towards floor)	=	Base Price	-	least of Base Price Adjustment Towards floor Options i. or ii
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Note that “Adjusted Base Price” is the same term that applies when the Base Price falls outside the Floor or Ceiling Price, and must be Adjusted Up to Floor or Adjusted Down to Ceiling, respectively. In this case, however, the inequality between DSNY and Contractor

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running balances, combined with a situation in which the Base Price originally fell between the Floor and Ceiling and did not require earlier adjustment, warrants adjustment at this point.

For the purposes of subsequent calculations, all of these forms of the “Adjusted Base Price” are treated the same.

I. Purchase Amount

Each month, DSNY will calculate the Purchase Amount. The Purchase Amount is simply the product of the Adjusted Base Price and the monthly tonnage delivered to the Contractor.

Purchase Amount	=	Adjusted Base Price	x	Number of US Tons of Recyclables delivered in the Billing Period
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The Purchase Amount is payable monthly to DSNY by the Contractor per the payment conditions outlined in the Proposed Detailed Specifications, in Appendix I, as long as the Contract is functioning on a Revenue Basis.

J. Changing the DSNY Credit Balance and the Contractor setoff balance upon Payment

A further reconciliation of running balances in response to adjustments to the Base Price is done after the Purchase Amount is paid to DSNY by the Contractor each month.

1. DSNY Debit

If DSNY benefitted from the adjustment of the Base Price Towards Ceiling, a corresponding Debit to DSNY’s Credit Balance will ensue.

This Debit will be equal to the Base Price Adjustment Towards Ceiling that was applied to the Base Price that month, multiplied by the delivered Tonnage, as follows:

DSNY Debit	=	Base Price Adjustment Towards Ceiling	x	number of US Tons of Recyclables Delivered in the Billing Period
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The DSNY debit will be subtracted from the DSNY Credit Balance in the Billing Period in which the payment is received.

2. Contractor Debit

Similarly, if the Contractor benefitted from the adjustment of the Base Price Towards Floor, a corresponding Debit to the Contractor’s setoff balance will ensue.

Appendix II - Pricing and Payment Guidelines
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This Debit will be equal to the Base Price Adjustment Towards Floor that was actually applied to the Base Price that month, multiplied by the actual delivered tonnage, as follows:

Contractor setoff debit	=	Base Price Adjustment Towards Floor	x	number of US Tons of Recyclables delivered in the Billing Period
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The Contractor setoff debit will be subtracted from the Contractor setoff balance in the Billing Period in which the payment was received.

K. Periodic Credit and setoff Reconciliations

At such time as (1) glass recycling resumes and the arrangement for MP processing is subsumed by an arrangement for MGP processing on an Expense Basis, or (2) the Contract ends, the following additional reconciliations will be put into effect:

1. Contractor Payments to DSNY for DSNY Credit Balances

If the Contract under MP provisions ends as such, then for each and every period in which the Base Price exceeded the Ceiling Price for a period of twelve consecutive months, the Contractor shall pay DSNY the amount of the DSNY Credit Balance less the Contractor setoff balance, if any, within fifteen calendar days after the last day of the twelve month period.

All payments required under this Section shall be made in accordance with the payment conditions outlined in the Proposed Detailed Specifications, in Appendix I. These provisions shall survive the expiration or termination of the Contract.

2. Zeroing of Balances in Case of Expense Provisions Subsuming Revenue Provisions in the Contract, Due to NYC Recycling Program Changes

Should the Contract move from a Revenue to Expense Basis due to the resumption of MGP collection, both the Contractor's setoff balance and the DSNY Credit Balance shall be reduced to zero. In such a case, the Contractor will not be required to pay any outstanding DSNY Credit Balance.

3. No DSNY Payments to Contractor for Contractor setoff balances

The parties agree that the Contractor may recover the amount of Contractor setoffs only by way of setoff as provided for in this Contract. DSNY shall not pay the Contractor setoff balance to the Contractor at any time, including at the end of the Contract period, or in such case that the Contract moves from a Revenue to Expense Basis due to the resumption of MGP collection.

II. Expense Basis Guidelines

A. Processing Cost

Proposers should estimate a fully burdened Processing Cost for each Acceptance Facility, in US dollars per US Ton, expressed as a negative number, which must go no lower than -\$50.00 per US Ton.¹ The Processing Cost is the mathematical sum of three components: (1) the cost of Processing the Recyclables delivered by DSNY into marketable form, including, but not limited to, transportation from the Acceptance Facility to the Processing Facility and the removal of Residue; (2) overhead; and (3) profit.

The use of accurate numbers in calculating the Processing Cost will help to ensure that the Contract's stabilizing mechanisms work as designed.

Formula:

(Processing Cost)	=	(cost of Acceptance, Processing and Marketing DSNY Recyclables	+	overhead	+	profit)
<i>note: Parentheses indicate that Processing Cost must be expressed as a NEGATIVE number</i>						

As a result of the Contract length, DSNY expects to pay the Contractor significantly less than it was paying to Processors in FY 2002 (an average of \$60.00 per US Ton), subject to annual adjustment for inflation after the third year of the Contract. Consequently, the Processing Cost must not exceed \$50.00 (i.e. when expressed as a negative number, must be no lower than -\$50.00). In this regard, DSNY expects proposed Processing Costs to be competitive with those received in response to the Department's Bid Solicitation to Accept, Process, and Market Recovered Metal and Plastic, PIN #82703BR00051.

B. Revenue Sharing Offset

Proposers should propose a revenue sharing offset to diminish the Processing Cost when markets are doing well. This offset may vary monthly or on some other schedule, but must be no less than zero.

Methods for minimizing the impact of market fluctuations on the formulation of the Purchase Price are left to the discretion of the Proposer. They may include the use of:

¹. In other words, the absolute value of the processing cost must be less than or equal to \$50.

Appendix II - Pricing and Payment Guidelines
RFP to Accept, Process and Market NYC Recyclables

1. a Composite Index
2. rolling averages
3. Floor and Ceiling Prices
4. setoff and Credit Balances

III. Previous Composite Index

For reference, the MGP Composite Index used in prior MGP contracts is listed at right. However, Proposers are not required to use this or any other index in proposing a revenue sharing offset.

Figure 3

Composite Index Used Under Prior MGP Contracts	
steel cans	17.28%
aluminum cans	0.67%
amber glass	2.00%
green glass	5.00%
clear glass	10.00%
mixed cullet	40.93%
mixed HDPE	5%
natural HDPE	1.32%
mixed PET	2.45%
residue	15.00%
Total	100.00%

IV. DSNY's Monthly Payment

In each Billing Period, the Contractor will calculate DSNY's payment for the Contractor's acceptance of Tonnages of Recovered MGP delivered to the Contractor's Acceptance Facility, as follows:

Formula:

DSNY's Monthly Payment	=	[Processing Cost	+	offset for revenue sharing, if applicable for that month]	X	number of US Tons of Recovered MGP delivered by DSNY and accepted at Acceptance Facility
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DOS will make invoice adjustments, if any, as noted in Article 5 of Appendix I, "Proposed Detailed Specifications."

All payments required under this Section shall be made in accordance with the payment conditions outlined in the Proposed Detailed Specifications, in Appendix I. These conditions shall survive the expiration or termination of the Contract.

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Appendix III

Historical Tonnage Data

This Appendix presents the following information:

- tons per day of paper and MGP collected citywide, calculated on an average monthly basis, between December 1997 and December 2002.
- information relevant to estimating of tonnages that will be collected upon reintroduction of plastics (MP) and then glass (MGP).

This information is presented to give proposers an idea of tonnages and their variation over time. The “Rough Estimates Based on Historical Tonnage Data” are not statements or guarantees of tonnages to be delivered, nor should they be interpreted beyond a near-term (less than four year) timeframe, due to continuous changes in the waste stream that take place.

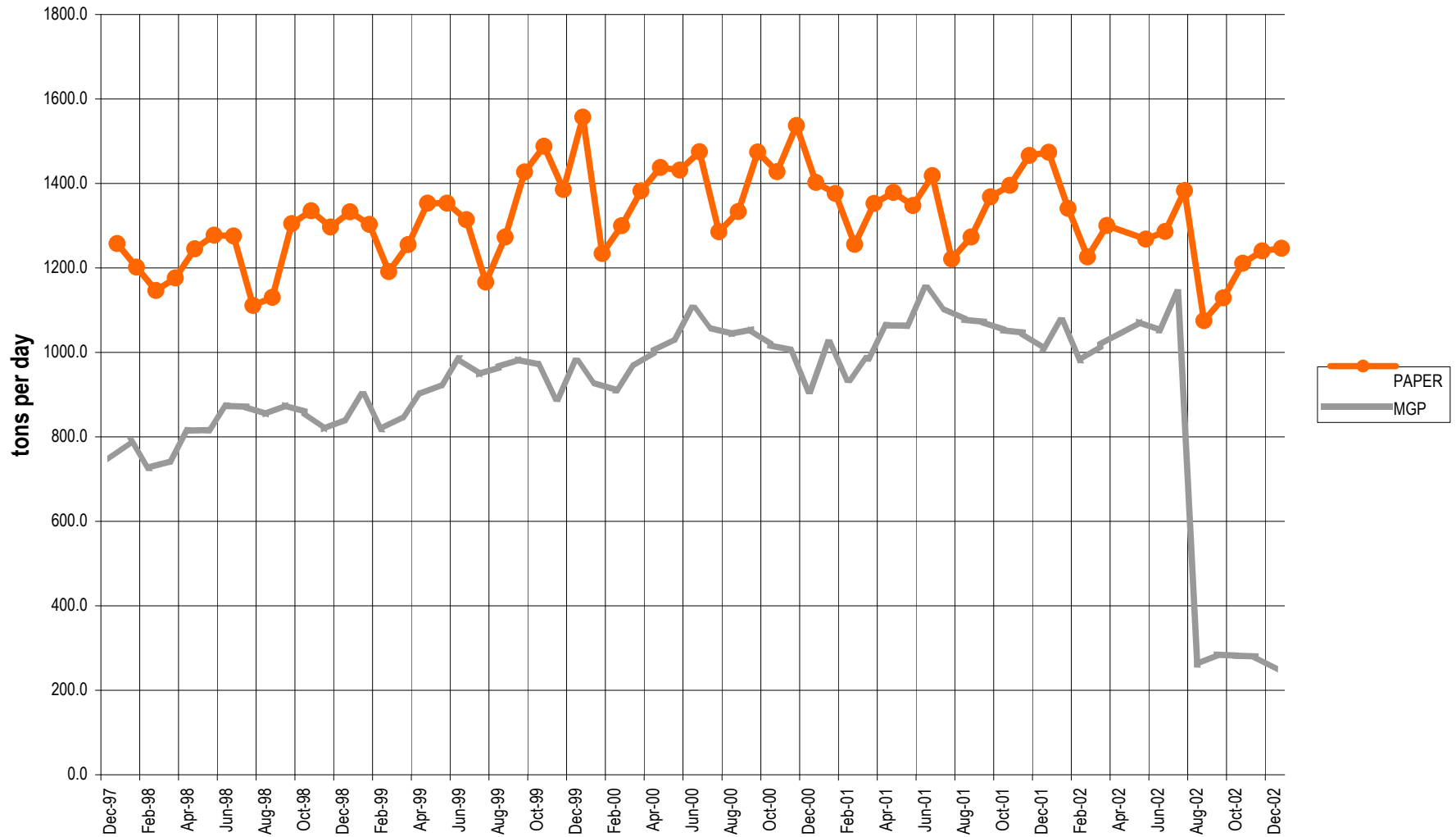
The Rough Estimates are based on extrapolation of historical data before and after suspension of glass and plastics recycling in July 2002, combined with current knowledge about MGP composition. A general level of 15% contamination is maintained throughout. See Appendix IV “Recyclables Composition Estimates” for further information on composition.

All data is derived from “Residential Recycling Diversion Reports” issued monthly by the Bureau of Planning and Budget, New York City Department of Sanitation.

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Appendix III - Anticipated Tonnages

Tons per day of paper and MGP collected, Dec 1997 to Dec 2002



Appendix III - Anticipated Tonnages

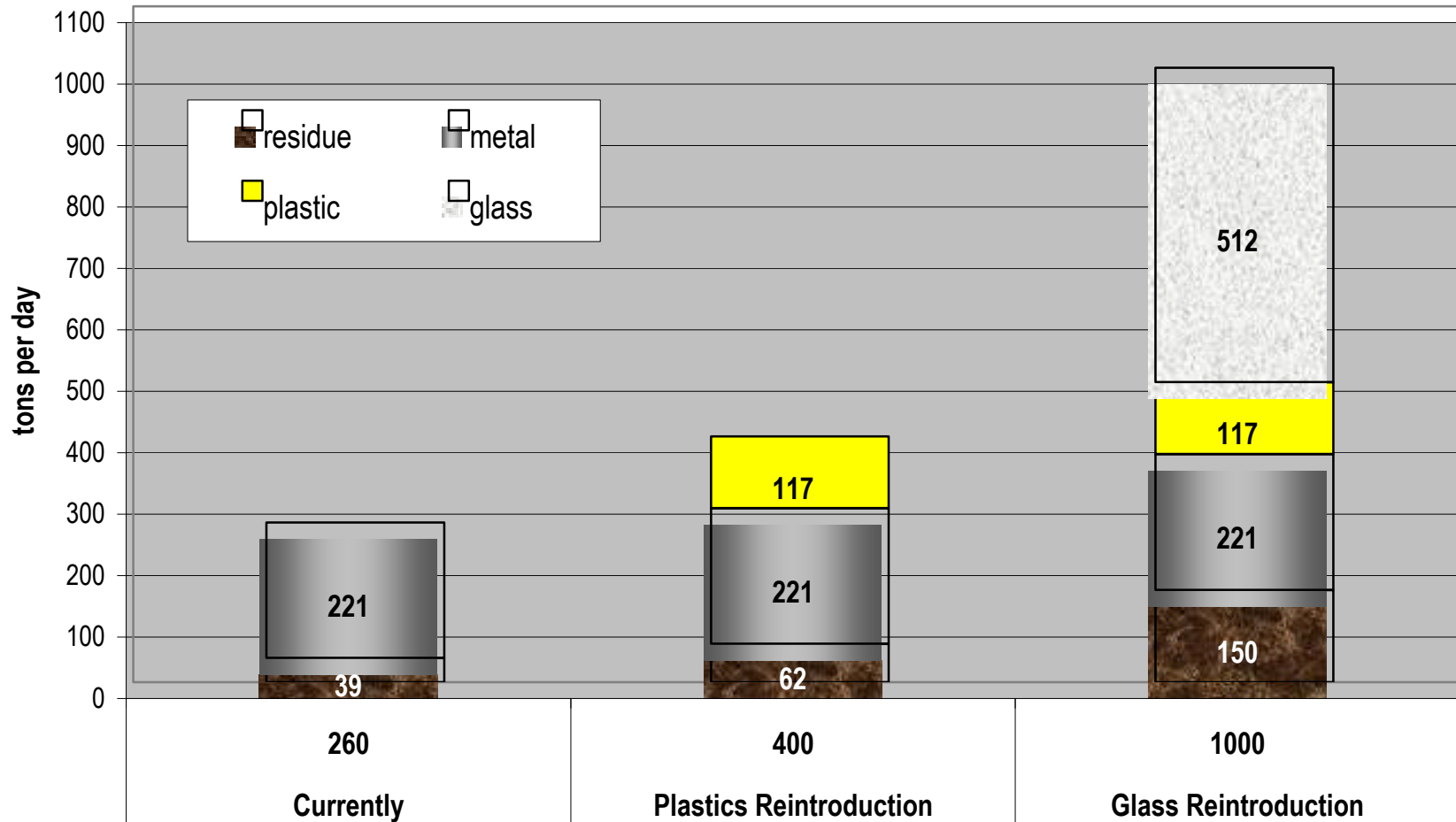
Historical Tonnage Data 1997 through 2002

		Average US Tons per day, each month		Average US Tons per day, for year		Difference from Year Average	
		PAPER	MGP	PAPER	MGP	PAPER	MGP
Dec-97	1997 DEC	1228.1	747.7	N/A	N/A	N/A	N/A
Jan-98	1998 JAN	1172.0	789.2	1206.5	823.3	34.5	34.1
Feb-98	1998 FEB	1117.0	726.9	1206.5	823.3	89.5	96.4
Mar-98	1998 MAR	1146.8	742.2	1206.5	823.3	59.7	81.1
Apr-98	1998 APR	1215.4	815.2	1206.5	823.3	-8.9	8.1
May-98	1998 MAY	1247.9	816.1	1206.5	823.3	-41.4	7.2
Jun-98	1998 JUN	1245.7	873.1	1206.5	823.3	-39.2	-49.8
Jul-98	1998 JUL	1081.1	871.3	1206.5	823.3	125.4	-48.0
Aug-98	1998 AUG	1100.8	853.6	1206.5	823.3	105.7	-30.3
Sep-98	1998 SEP	1275.3	875.1	1206.5	823.3	-68.8	-51.8
Oct-98	1998 OCT	1305.8	858.8	1206.5	823.3	-99.3	-35.5
Nov-98	1998 NOV	1267.3	818.0	1206.5	823.3	-60.8	5.3
Dec-98	1998 DEC	1303.3	840.3	1206.5	823.3	-96.8	-17.0
Jan-99	1999 JAN	1273.2	900.2	1309.3	926.2	36.1	26.0
Feb-99	1999 FEB	1161.8	818.6	1309.3	926.2	147.5	107.6
Mar-99	1999 MAR	1225.5	848.0	1309.3	926.2	83.8	78.2
Apr-99	1999 APR	1323.9	901.5	1309.3	926.2	-14.6	24.7
May-99	1999 MAY	1323.9	923.9	1309.3	926.2	-14.6	2.3
Jun-99	1999 JUN	1284.5	985.4	1309.3	926.2	24.8	-59.2
Jul-99	1999 JUL	1136.4	947.9	1309.3	926.2	172.9	-21.7
Aug-99	1999 AUG	1243.2	965.5	1309.3	926.2	66.1	-39.3
Sep-99	1999 SEP	1397.5	983.1	1309.3	926.2	-88.2	-56.9
Oct-99	1999 OCT	1458.1	971.2	1309.3	926.2	-148.8	-45.0
Nov-99	1999 NOV	1356.0	890.8	1309.3	926.2	-46.7	35.4
Dec-99	1999 DEC	1527.6	978.7	1309.3	926.2	-218.3	-52.5
Jan-00	2000 JAN	1204.4	927.9	1363.8	1002.6	159.4	74.7
Feb-00	2000 FEB	1270.0	910.8	1363.8	1002.6	93.8	91.8
Mar-00	2000 MAR	1353.0	967.3	1363.8	1002.6	10.8	35.3
Apr-00	2000 APR	1408.1	1002.5	1363.8	1002.6	-44.3	0.1
May-00	2000 MAY	1401.6	1031.9	1363.8	1002.6	-37.8	-29.3
Jun-00	2000 JUN	1445.5	1104.5	1363.8	1002.6	-81.7	-101.9
Jul-00	2000 JUL	1256.1	1057.6	1363.8	1002.6	107.7	-55.0
Aug-00	2000 AUG	1303.6	1043.2	1363.8	1002.6	60.2	-40.6
Sep-00	2000 SEP	1445.0	1054.5	1363.8	1002.6	-81.2	-51.9
Oct-00	2000 OCT	1398.2	1017.5	1363.8	1002.6	-34.4	-14.9
Nov-00	2000 NOV	1507.5	1005.8	1363.8	1002.6	-143.7	-3.2
Dec-00	2000 DEC	1372.7	908.1	1363.8	1002.6	-8.9	94.5
Jan-01	2001 JAN	1346.3	1022.7	1330.9	1048.8	-15.4	26.1
Feb-01	2001 FEB	1225.9	935.3	1330.9	1048.8	105.0	113.5
Mar-01	2001 MAR	1323.2	985.6	1330.9	1048.8	7.7	63.2
Apr-01	2001 APR	1349.2	1064.1	1330.9	1048.8	-18.3	-15.3
May-01	2001 MAY	1317.8	1063.1	1330.9	1048.8	13.1	-14.3
Jun-01	2001 JUN	1389.1	1151.9	1330.9	1048.8	-58.2	-103.1
Jul-01	2001 JUL	1191.0	1103.8	1330.9	1048.8	139.9	-55.0
Aug-01	2001 AUG	1243.3	1077.4	1330.9	1048.8	87.6	-28.6
Sep-01	2001 SEP	1338.3	1071.8	1330.9	1048.8	-7.4	-23.0
Oct-01	2001 OCT	1365.7	1052.9	1330.9	1048.8	-34.8	-4.1
Nov-01	2001 NOV	1436.8	1046.6	1330.9	1048.8	-105.9	2.2
Dec-01	2001 DEC	1443.9	1010.0	1330.9	1048.8	-113.0	38.8
Jan-02	2002 JAN	1311.0	1075.0	1216.3	699.8	-94.7	-375.2
Feb-02	2002 FEB	1196.1	981.5	1216.3	699.8	20.2	-281.7
Mar-02	2002 MAR	1270.8	1016.7	1216.3	699.8	-54.5	-316.9
May-02	2002 APR	1238.2	1072.9	1216.3	699.8	-21.9	-373.1
Jun-02	2002 MAY	1256.8	1053.1	1216.3	699.8	-40.5	-353.3
Jul-02	2002 JUN	1353.3	1141.5	1216.3	699.8	-137.0	-441.7
Aug-02	2002 JUL	1045.4	261.0	1216.3	699.8	170.9	438.8
Sep-02	2002 AUG	1099.3	284.6	1216.3	699.8	117.0	415.2
Oct-02	2002 SEP	1181.5	281.7	1216.3	699.8	34.8	418.1
Nov-02	2002 OCT	1210.7	279.9	1216.3	699.8	5.6	419.9
Dec-02	2002 NOV	1216.6	249.7	1216.3	699.8	-0.3	450.1

From Recycling Monthly Trend Reports - for Curbside and Containerized Combined

Appendix III - Anticipated Tonnages

Anticipated Tonnages Rough Estimates Based on Historical Tonnage Data



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Appendix IV

Composition Estimates for Recyclables

This Appendix addresses the topic of characterizing the relative composition of materials in deliveries of MGP Recyclables that DSNY has made or will make to Contractors, for the purposes of providing information about the present waste stream, and ensuring that future waste characterization activities will be maximally useful to both DSNY and the Contractor.

1. Current State of Information

To date there have been eight independent estimates of the relative composition of metal to glass to plastic to residue in collected MGP recyclables in New York City. These estimates, as well as one that was conducted for US residential MSW as a whole, are presented on the following pages.

DSNY is summarizing this information to give Proposers an idea of the range of variation in estimates of various alloys of metal, resins of plastic, glass colors, and contamination/residue in the MGP. This information is not meant to predict future compositions of MGP Recyclables, nor does it guarantee percentages of various materials in deliveries.

Each estimate has strengths and weaknesses that Proposers should be aware of:

- Prior Contractors: Under previous contracts, contractors were required to report tonnages of marketed materials and disposed residue in a “Monthly Marketing Report” to DSNY. These data have the advantage of being longitudinal, detailed, and directly measured. They have the drawback of being self-reported by Contractors, without benefit of verification from DSNY.
- “Low Diversion District” Study: In 1998, DSNY carried out a pilot study of the feasibility of mixed-waste processing in certain districts of the Bronx and Brooklyn with low diversion rates. This study included a waste characterization of refuse and recyclables, which were co-collected but had been separately bagged according to normal Recycling Program Rules. The full results of this study are presented in the report entitled “[Mixed Waste Processing in New York City: A Pilot Test Evaluation](#),” issued by DSNY in October 1999, and appended on CD as Exhibit IV.

These data have the advantage of having been directly measured under a sampling protocol that ensured statistical significance of results. They have the disadvantage of characterizing a distinct subset of the NYC population as a whole – residents of low-diversion districts.

- BWPRR Composition Breakdown: This breakdown, discussed in Appendix II, was the basis for calculating the composite index price under prior contracts. It is based on observations and experience with the MGP stream over the 12 years of the Recycling Program, but was not developed as a result of a formal waste characterization study.
- Franklin Associates’ Characterization of MSW in the United States, 1998 update: These data were taken from the report of the above name, which is issued periodically by the EPA. It should be noted that this characterization examines the total waste stream, not the recyclables stream alone. Thus, this source estimates the fraction of metal, glass, and plastic recyclables out of all waste, not out of delivered Recyclables. Furthermore, this

data is applicable to the US waste stream as a whole and not New York City specifically.

- Bureau of Planning and Budget Informal MGP Sort: These data are taken from the results of an informal, two-week sort of MGP collections conducted shortly before suspension of glass and plastic by DSNY's Bureau of Planning and Budget. The data have the advantage of being recent and reflect actual MGP deliveries that would have been made by DSNY. At the same time, there were methodological problems with sampling and sorting during the study (specifically overcounting of glass as residue, and sampling of very few truckloads) that may have compromised results.
- Citywide Waste Characterization Study: These data are taken from a year long, citywide characterization of residential MSW in New York City conducted in 1989. Like the Franklin Associates data, this characterization examines the total waste stream, not the recyclables stream alone. Thus it estimates the relative percentage of metal, glass and plastic in the total NYC waste stream. Although it is NYC-specific, it is also 12 years out of date and was conducted before the Recycling Program was implemented in NYC.

When comparing these estimates, Proposers should note the following:

a. Calculation Methods

The table on the following pages presents breakdowns of metal, glass, plastic and residue fractions out of 100% for a hypothetical MGP delivery. It should be noted that three of the estimates – the Low Diversion District Study, the Franklin Characterization of MSW in the US, and the 1989 Citywide Characterization Study – looked at the total waste stream, not the MGP stream separately. While their results show the ratio of metal to glass to plastic in MSW, they do not measure residue. Residue estimates are therefore not available. In those cases, a residue estimate of 15% has been used.

b. Variation

These estimates vary considerably in the relative percentages of metal, plastic, glass and residue components. Thus any one characterization of Recyclables, whether from these sources or others, should be viewed as approximate.

c. Favorability of BWPRR Breakdown

In light of this variation, it should be noted that the composition breakdown that BWPRR has used under prior MGP contracts most likely underestimates the relative percentages of valuable materials (ferrous, aluminum, and possibly HDPE and PET) and overstates the presence of low or zero value glass components. Thus use of this composition breakdown in formulating a composite index price is in Proposers' interests.

d. Residue

As discussed in Appendix V, “Statements on Contamination” there has been much discussion – at times uninformed by facts – about NYC’s residue rate. Given the variation in estimates and the various components counted or not counted as residue, it is fair to conclude from these data that a working assumption of 15% residue is reasonable. While one Vendor’s self-reported residue estimate is as high as 43%, another cites 17%. Since these vendors lacked technology to minimize residue, it is probable that they overestimated this category, particularly with regard to mixed cullet.

2. Guidelines for Future Characterizations

Waste characterization is a challenging endeavor that requires that certain basic conditions be established from the outset. When formulating plans for periodic characterization of Recyclables deliveries, Proposers should keep in mind the following:

1. Comparability of Categories

Because waste components may be classified in many different ways, it is important that category designations be done in such a way as to make results comparable to others. The following are material categories that DSNY considers optimal.

ferrous general	brown glass	general HDPE	rubber
ferrous cans (incl. bimetal)	green glass	mixed HDPE	leather
ferrous scrap	clear glass	natural HDPE	textile
aluminum general	mixed cullet	PET	ceramic/plate glass
aluminum cans	glass general	other plastic resins	lumber
aluminum foil			paper/board
nonferrous			mixed
			food

2. Sampling Protocol

Waste is usually characterized by taking samples of a standard weight from a series of randomly selected truckloads, and sorting each sample into component categories to be weighed. In such cases, it is essential that the truckloads be representative of the generation source being characterized, and that the number of samples be large enough to rule out random variation. Standard protocols for sampling procedure design and determining sufficient sample size exist in the engineering literature. Proposers are directed to the following sources for information:

ASTM Designation D 5231-92, “Standard Test Method for Determination of the Composition of Unprocessed Municipal Solid Waste”

ASTM Designation D5956-96, “Standard Guide for Sampling Strategies for Heterogeneous Waste”

ASTM Designation D4687-95, “Standard Guide for General Planning of Waste Sampling”

Liu, David H.F. and Liptak, Bela G. Hazardous Waste and Solid Waste (CRC Press: Boca Raton, FL, 2000)

Klee, Albert J. “New Approaches to the Estimation of Solid Waste Quantity and Composition,” *Journal of Environmental Engineering*, Volume 119, No. 2, March/April 1993, p. 248-261

Sfeir, Hala; Reinhart, Debra R; and McCauley-Bell, Pamela. “An Evaluation of Municipal Solid Waste Bias Sources,” *Journal of the American Air and Waste Management Association*, Volume 49, 1999, p. 1096-1102

Appendix IV Composition Estimates for Recyclables

PRIOR CONTRACTS FOR MGP ACCEPTANCE, PROCESSING, MARKETING					LOW DIVERSION DISTRICTS	BWPRR COMPOSITION BREAKDOWN	FRANKLIN CHARACTERIZATION OF MSW IN THE US	BUREAU OF PLANNING AND BUDGET INFORMAL MGP SORT	CITYWIDE WASTE COMPOSITION STUDY
Data Source	PROCESSOR 1	PROCESSOR 2	PROCESSOR 3	PROCESSOR 4					
Data Years	1998-2001				1998	1993 on	1998	2002	1989
Data Characterize:	MGP deliveries				recyclables in low diversion districts	MGP deliveries	all residential waste in US*	MGP Collections	all residential waste in NYC*
Data Benefits:	longitudinal, detailed				statistically significant	contract precedent	comprehensive	recent, targeted to MGP	comprehensive
Data Drawbacks:	self-reported				subset of waste stream	not based on a formal sort	not NYC	methodological problems with sampling and sorting	out of date, pre-recycling
PRIOR CONTRACTS FOR MGP ACCEPTANCE, PROCESSING, MARKETING					LOW DIVERSION DISTRICTS	BWPRR COMPOSITION BREAKDOWN	FRANKLIN CHARACTERIZATION OF MSW IN THE US	BUREAU OF PLANNING AND BUDGET INFORMAL MGP SORT	CITYWIDE WASTE COMPOSITION STUDY
Data Source	PROCESSOR 1	PROCESSOR 2	PROCESSOR 3	PROCESSOR 4					
MGP Composition									
ferrous	20.43%	30.42%	28.18%	22.87%	36.10%	17.28%	16.70%	17.22%	30.09%
aluminum	0.60%	0.41%	1.07%	0.96%	2.65%	0.67%	12.44%	2.39%	6.77%
other nonferrous	0.00%	0.00%	0.00%	0.00%	3.22%	0.00%	1.55%	0.00%	0.00%
METAL	21.03%	30.84%	29.25%	23.83%	41.98%	17.95%	30.69%	19.61%	36.86%
brown glass	0.00%	0.75%	0.00%	0.00%	0.00%	2.00%	0.00%	2.86%	6.77%
green glass	0.00%	2.04%	0.00%	0.00%	0.00%	5.00%	0.00%	7.56%	7.52%
clear glass	0.00%	3.26%	0.00%	4.42%	0.00%	10.00%	0.00%	16.13%	21.81%
mixed cullet	48.99%	13.24%	30.33%	49.03%	23.97%	40.93%	43.06%	8.15%	0.00%
GLASS	48.99%	19.29%	30.33%	53.46%	23.97%	57.93%	43.06%	34.70%	36.11%
HDPE	3.06%	4.94%	3.56%	3.91%	11.37%	6.67%	6.37%	8.18%	8.27%
PET	1.45%	2.41%	2.23%	1.93%	7.68%	2.45%	4.88%	5.57%	3.76%
HDPE/PET BOTTLES	4.50%	7.35%	5.80%	5.84%	19.05%	9.12%	11.25%	13.75%	12.04%
Total MGP	74.52%	57.47%	65.38%	83.12%	85.00%	85.00%	85.00%	68.05%	85.00%
Residue									
contaminated recyclables								3.24%	
residue	25.19%	41.86%	34.18%	16.69%		15.00%		22.01%	
non-designated plastics	0.28%	0.67%	0.44%	0.18%				9.93%	
TOTAL RESIDUE	25.48%	42.53%	34.62%	16.88%	15%	15.00%	15%	31.95%	15%
Designated MGP as percentage of all waste					8.97%		14%		11.30%

* note: characterizations of all waste have been standardized for comparisons with MGP characterizations

Appendix V

Statements on Contamination

The following statements are meant as background for Proposers' understanding of the issue of contamination in NYC Recyclables. Whenever possible, they reflect DSNY's measured data and/or comparative research on other municipalities.

Contamination vs. Residue:

Contamination refers to the commingling of non-designated waste items with recycling. These items are most frequently food residues or non-designated plastics. Broken container glass, while a zero-value component of MGP and a challenge for processing, is not considered a contaminant as it reflects proper recycling of designated items: jars and bottles.

Residue refers to non-recyclable matter that remains after recyclables processing, which must be disposed of. It is the result both of contamination and of normal processing methods that shred, grind, break or otherwise render recyclable material too fine and commingled with nonrecyclable matter to be marketable.

Contamination and Residue Rates in NYC Recyclables:

In New York City, estimates of the contamination and residue rate of residential MGP vary. During his annual budget report in 2002, the Mayor explained that in some cases 40% of MGP was winding up in landfills.¹ This amount reflected both residue from contamination, as well as significant amounts of mixed cullet that were used as alternative daily cover at landfill sites.

DSNY has maintained a 15% residue estimate in its MGP contracts, which reflects the contamination rate of recyclables with non-recyclables by residents. This rate should not be confused with the 40% high-end estimate of residue noted above.

Contributors to Contamination:

Extensive field observations on collection routes have shown that Sanitation workers rarely place black trash bags in recycling trucks. Instead, most contamination comes from residents' improperly including nondesignated items with recyclables. There are generally two motivations for so doing. "Innocent" contamination occurs when residents are mistaken about what is recyclable, and place nonrecyclables in recycling bins/bags in good faith. "Malicious" contamination occurs when residents (including passers-by) use recycling bins and bags as trash

1. "The Mayor's Budget Proposal", New York Times, 2/14/2002

receptacles as a matter of convenience.

There is some evidence that innocent contamination of MGP with non HDPE/PET plastic containers and disposable tableware, plate glass, and lightbulbs is occurring because of moderately high rates of incorrectly identifying certain non-recyclables as recyclable. This evidence is discussed in [“Recycling: What Do New Yorkers Think,”](#) appended in Exhibit II on the enclosed CD. However, because contamination consists of a wide range of materials, it is unlikely that the innocent form is the only source, and it is probable that malicious contamination contributes substantially to this problem.

Housing Density and Contamination:

It is a well-established fact that housing density and contamination are highly correlated. In the United States, New York City’s divergence from other cities in terms of housing density, population density, and population size mean that it is far more comparable to foreign mega-cities such as London, Tokyo, Hong Kong, and Berlin than it is to any other city in the US. Data on contamination rates in those cities is not published, but anecdotal evidence suggests that contamination rates in these localities are high (especially in zones with high-rise buildings and low to moderate income tenants.) Care should therefore be taken in extrapolating from data on contamination rates in other US (or North American) cities to New York City’s case.

The comparison of New York City to other American cities on a range of recycling-related issues is discussed in depth in [“New York City Recycling – In Context,”](#) appended on CD in Exhibit III.

Deterring Contamination:

Innocent contamination is typically addressed through public education; malicious contamination is addressed through enforcement. Cities that report success using either tactic use the practice of leaving contaminated recyclables at curbside (with a note, warning, or fine) to convey information and correction. For public health reasons, this practice is not feasible in New York City. There is little or no data on the efficacy of other forms of public education and/or enforcement on contamination, and there is no other basis to assume that either approach will significantly decrease contamination among NYC Recyclables.

Proposed Liquidated Damage Amounts Schedule

DSNY sets the following as minimum dollar amounts for each Liquidated Damage (LD) Amount mentioned in Section 5.4 of Appendix I, subject to the inflation adjustments discussed in Section 5.3.1 of that same Appendix. DSNY reserves the right to negotiate for higher amounts than these minimums.

LD Amount #1	\$5.00
LD Amount #2	\$100.00
LD Amount #3	\$150.00
LD Amount #4	\$300.00
LD Amount #5	\$500.00

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Appendix VII

Insurance and Security Requirements

ITEM	REQUIREMENTS	REFERENCE
Proposal Deposit	not required	
Proposal Security	A \$50,000.00 bond must be submitted with the Proposal as Proposal security, to be returned upon the selection of a winning Proposal	RFP Section I.F., "Important Information for Proposers" and RFP Section IV.A.4.a
Security for Company's Payment to the City	Letter of Credit as Required by Section IV.A.3.d. of the RFP	RFP Section IV.A.3.d; Appendix I, Section 8.9
Term of Completion	Initial Term 20 years, with one or more shorter-term options to renew.	RFP Section II.D; Appendix I, Section 2
Liquidated Damages	See Section 5.4 of Appendix I for specific provisions, and Appendix VI for proposed amounts	Appendix I, Section 5.4; Appendix VI
Subcontracting	A Major Subcontractor is one that Controls a Processing Facility. The name and all VENDEX information about a Major Subcontractor (if one will be used) must be submitted at such time as a VENDEX is submitted for the Proposer	RFP Section II.G.6

INSURANCE: If a box below is marked [X], the insurance coverage marked is required and must be provided. The City of New York and the Department of Sanitation must be named as additional insureds on all insurance policies. These requirements apply equally to the Contractor and Subcontractor(s). Subcontractor(s) must list the Contractor as additional insured, or vice-versa, on all insurance policies.

Insurance certificates, policies, endorsements and all other submissions must be sent to:

**Department of Sanitation
Agency Chief Contracting Officer
51 Chambers Street Room 806
New York, New York 10007
Attn: Insurance Section**

**Department of Sanitation
44 Beaver Street, 6th Floor
New York, New York 10004
Attn: Director, Bureau of Waste Prevention, Reuse and Recycling**

Insurance contracts are subject to approval by the City. See the RFP and Appendix I in Sections referenced below.

**Appendix VII - Insurance and Security Requirements
RFP to Accept, Process and Market NYC Recyclables**

REQUIREMENTS	REFERENCE
<p><input checked="" type="checkbox"/> Workers' Compensation: statutory</p> <p><input checked="" type="checkbox"/> Employers' Liability: \$1,000,000 each accident</p>	RFP Section I.F; Appendix I, Section 8.2
<p><input checked="" type="checkbox"/> Commercial General Liability and Broad Form Comprehensive General Liability (CGL) Insurance GC 0001 (ed. 10/93) or equivalent, with combined Single Limit-Bodily Injury and Property Damage.</p> <ul style="list-style-type: none"> • \$ 5,000,000 each occurrence • A total of \$15,000,000 aggregate CGL and Excess Liability Coverage (Umbrella Coverage), with aggregate CGL to be no less than \$5,000,000, and the balance divided between CGL and Excess at Contractor's discretion 	RFP Section I.F; Appendix I, Section 8.2
<p><input checked="" type="checkbox"/> Automobile Liability: CA 0001 [Ed. 06/92] covering Automobile Liability, Code 1 "Any Insurance" and Endorsements CA 2232 (Ed 4/92) and CA 0112 (Ed 6/91) or Equivalent, Combined Single Limit - Bodily Injury and Property Damage</p> <ul style="list-style-type: none"> • \$ 1,000,000 each occurrence • \$ 3,000,000 aggregate <p>If Automobile Liability, above, is checked, the following types of automobile coverage must be provided:</p> <p><input checked="" type="checkbox"/> comprehensive form <input checked="" type="checkbox"/> owned <input checked="" type="checkbox"/> hired <input checked="" type="checkbox"/> non-owned</p>	RFP Section I.F; Appendix I, Section 8.2

Proposers should submit (an) insurance certificate(s) conforming to the substance of the sample on the following page.

CERTIFICATE OF INSURANCE

(Front)

<p><u>Name and Address of Insured:</u></p> 	<p><u>For City Use Only:</u></p> <p>Date: _____</p> <p>Agency: _____</p> <p>Agency Code: _____</p> <p>Contract #: _____</p> <p>Accepted by: _____</p> <p>Title: _____</p>
<p><u>Additional Insured:</u></p> <p>N.Y.C./ <u>Department of Sanitation</u></p>	

The agent/broker authorized to do business in the State of New York, certifies that insurance of the kinds and types and for limits of liability herein stated, covering the work herein designated, has been procured by and furnished on behalf of the insured contractor and is in full force and effect for the periods listed below.

TYPE OF INSURANCE	POLICY NUMBER	EFFECTIVE DATE	EXPIRATION DATE	LIMITS OF LIABILITY (In Thousands)	LIMITS OF LIABILITY (In Thousands)
				Per Occurrence	Aggregate
A: Commercial General Liability () Per Occurrence () Claims Made					
B: Excess Liability					
C: Professional Liability					
D: Worker's Compensation				LIMITS AS REQUIRED BY LAW	LIMITS AS REQUIRED BY LAW
E. Employer's Liability					
F: Automobile Liability					
G: Builder's Risk				___ % of final contract amount	___ % of final contract amount
H: Railroad Protective Liability					
I: Marine Protection & Indemnity					
J: Jones Act				LIMITS AS REQUIRED BY LAW	LIMITS AS REQUIRED BY LAW
K: Longshore Harborworkers					
L: Other (Specify)					

LOCATION AND DESCRIPTION OF WORK:

These certificates described herein may not be cancelled without cancellation of a policy to which it is attached. Such cancellation may be issued by the company or the insured giving thirty (30) days notice in writing to New York City's Comptroller's Office & Contracting Agencies. No policy referred to herein shall be changed, cancelled or terminated for any reason including expiration of the policy or payment of the premiums unless 30 days written notice has been received by the contracting agency and the Comptroller's office.

Policy coverage MUST agree with coverage stated on this certificate. False statements of coverage are punishable under SECTION 2110 of the New York State Insurance Law. As indicated in the Standard Specifications of the contract, limits of coverage are NOT to be amended with deductible causes of any kind without prior written approval of the City of New York.

CERTIFICATE OF INSURANCE
(Back)

INSURANCE COMPANIES	ADDRESS
A:	
B:	
C:	
D:	
E:	
F:	
G:	
H:	
I:	
J:	
K:	

SAMPLE

Broker's Name: _____
Address: _____

License #: _____
Telephone #: _____
Contact Person: _____

Barge and MTS Specifications

DEPARTMENT BARGES

The general description of the Department of Sanitation barges is as follows:

A - Department of Sanitation Barges D.S. #73 to D.S. #105 Inclusive

1 -	Length Overall	- 150' - 0" Molded
2 -	Width	- 37' - 0" Molded
3 -	Height from keel to deck edge	- 12' -9" Molded
4 -	Dimensions of Hopper (approximate)	- 126' - 0" long x 14'-2" high X 30' - 2" average width
5 -	Volume of hopper (liquid capacity)	- Approximately 2,000 cubic yards
6 -	Approximate displacement weight of empty barge	- 525 short tons

B - Department of Sanitation Barges D.S. #106 to D.S. #150 Inclusive

1 -	Length Overall	- 150' - 0" Molded
2 -	Width	- 37' - 0" Molded
3 -	Height from keel to deck edge	- 12' -9" Molded
4 -	Dimensions of Hopper (approximate)	- 130' - 0" long x 15' - 4.5" high X 30' - 1.5" average width
5 -	Volume of hopper (liquid capacity)	- Approximately 2,250 cubic yards
6 -	Approximate displacement weight of empty barge	- 613 short tons

A drawing of barge type B is attached.

Further information concerning DSNY barges and Marine Transfer Stations is available upon request from:

Robert Lange, Director
Bureau of Waste Prevention, Reuse and Recycling
44 Beaver Street, 6th Floor, New York, NY 10004
(212) 837-8156/ rwlange.nycrecycles@verizon.net

Attachment 1
RFP to Accept, Process and Market NYC Recyclables

Price Proposal Form
REVENUE BASIS

Instructions: Provide information in unshaded boxes as specified in instructions at right. Proposers should use this form for Scenario One: MP, as well as for any other Scenarios proposed on a Revenue Basis.

Per Ton Costs		
Processing Cost		- \$ per US Ton, expressed as NEGATIVE
Floor Price		\$ per US Ton, expressed as POSITIVE, must be greater than or equal to zero
Ceiling Price		\$ per US Ton, expressed as POSITIVE
Market Price Averaging Basis		
rolling average period		indicate one or more months upon which to average market prices
publication of record		indicate proposed publication of record for recycled commodity pricing
frequency of record		indicate week in each month from which to take commodity prices from publication (1st, 2nd, 3rd, 4th)
Composite Index		
<u>Material</u>	<u>%</u>	Propose percent composition for each material, or indicate "per proposed DSNY MP Index" (see Appendix II)
used steel/bimetal		
aluminum cans/foil		
mixed HDPE		
natural HDPE		
mixed PET		
residue		
		Total must equal 100%

Attachment 1
RFP to Accept, Process and Market NYC Recyclables

Price Proposal Form
EXPENSE BASIS

Instructions: Provide information in unshaded boxes as specified in instructions at right. Proposers should use this form for Scenario Two: MGP if is proposed on an Expense Basis, as well as any other Scenarios proposed except Scenario One, which **must** be on a Revenue Basis.

Per Ton Costs		special instructions
Processing Cost		-\$ per US Ton, expressed as NEGATIVE. Must not exceed (go lower than) -\$50 per US Ton. ¹
Revenue Sharing Offset Proposal		in the space below or on a separate sheet, propose a basis upon which to calculate a per US ton offset of the processing cost.

¹. In other words, the absolute value of the Processing Cost must be less than or equal to \$50.

Acceptance Facility Tonnage Summary

Instructions: Complete a copy of this form for each proposed Acceptance Facility, completing unshaded boxes using instructions at right, as required in Sections II.F and III.C of the RFP.

Acceptance Facility Information		
Facility Name		
Facility Location		include block and lot number
Facility Square Footage		TOTAL
		tipping floor
		processing
		storage
		other (explain)
Permitted Capacity		
Daily Acceptance Capacity		for entire facility. Must be greater than or equal to 3,000 tpd
Daily Storage Capacity		for entire facility. Must be greater than or equal to 3,000 tpd
Weekly Acceptance Capacity		for entire facility. Must be greater than or equal to 18,000 tons per week
Weekly Storage Capacity		for entire facility. Must be greater than or equal to 18,000 tons per week
Proposed Delivery Amounts		
Guaranteed Monthly Delivery Amount		Specify the minimum tonnage that Proposer will require DSNY to deliver to acceptance facility each month.
Guaranteed Daily Delivery Amount		calculate guaranteed weekly delivery amount ÷ 24

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Acknowledgment of Addenda

Complete Part I or Part II, whichever is applicable.

Part I Listed below are the dates of issue for each addendum received in connection with this RFP:

Month, Day, Year

Addendum # 1 – Dated _____

Addendum # 2 – Dated _____

Addendum # 3 – Dated _____

Addendum # 4 – Dated _____

Addendum # 5 – Dated _____

Addendum # 6 – Dated _____

Addendum # 7 – Dated _____

Addendum # 8 – Dated _____

Addendum # 9 – Dated _____

Addendum # 10 – Dated _____

Part II _____ No addenda were received in connection with this RFP.

Name of Proposer (please print)

Signature

Date

Attachment 3
RFP to Accept, Process and Market NYC Recyclables

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AFFIRMATION OF NON-DEBT (TAX AFFIRMATION)

The undersigned proposer or bidder affirms and declares that said proposer or bidder is not in arrears to the City of New York upon debt, contract or taxes and is not a defaulter, as surety or otherwise, upon obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the proposer or bidder to receive public contracts except:

Full name of Proposer or Bidder _____

Address _____

City _____ State _____ Zip Code _____

CHECK ONE BOX AND INCLUDE THE APPROPRIATE NUMBER:

- A - Individual or Sole Proprietorship
SOCIAL SECURITY NUMBER _____
- B - Partnership, Joint Venture or other unincorporated organization
EMPLOYER IDENTIFICATION NUMBER _____
- C - Corporation
EMPLOYER IDENTIFICATION NUMBER _____

By: _____
Signature

Title

If a corporation place seal here.
Must be signed by an officer or duly authorized representative.

Under the Federal Privacy Act the furnishing of Social Security Numbers by bidders on City contracts is voluntary. Failure to provide a Social Security Number will not result in a bidder's disqualification. Social Security Numbers will be used to identify bidders, proposers or vendors to ensure their compliance with laws, to assist the City in enforcement of laws businesses which seek City contracts.

PIN: _____

Bidder's Initials _____

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ORAL PRESENTATION RESPONSE FORM

Instructions: Complete and return ONLY if contacted to make an oral presentation.

Name of Firm: _____

Contact Person: _____

Telephone Number: _____

Number of persons expected to attend: _____

List the Names and Titles of those attending*:

Date: _____ Time: _____

(To be completed by the Department of Sanitation)

Please return to: Robert Lange, Director
 Bureau of Waste Prevention, Reuse and Recycling
 44 Beaver Street, 6th Floor, New York, NY 10004
 Fax: 212-837-8162, email: rwlange.nyrecycles@verizon.net

* Note: Participants must include the principal individuals who would be assigned to this project.

Attachment 5
RFP to Accept, Process and Market NYC Recyclables

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SAMPLE RATING SHEET

Rater's Name _____
 Proposer _____
 Date _____

Preliminary Score _____
 Final Score _____

Criterion	Possible Points	Points Awarded	Remarks
<p>Demonstrated quantity and quality of successful relevant experience with regard to:</p> <ul style="list-style-type: none"> ▼materials recovery industry10 ▼marketing10 ▼shipping (rail, barge, truck)10 ▼high throughput facilities (i.e. greater than 500 tpd)10 ▼technology research and development10 	50		
<p>Demonstrated level of organizational capability in terms of:</p> <p>Financial resources and capability5</p> <p>Infrastructural resources and capability (Control of one or more processing facilities, facility siting in NYC, capacity to handle all/large portion of MGP stream)5</p>	10		
<p>Quality of Proposed Approach</p> <p>Overall compliance with the RFP and completeness of response, as well as clarity, understandability, and conformity to instructions.5</p> <p>Overall feasibility of proposed approach10</p> <p>Realistic plans to:</p> <ul style="list-style-type: none"> ▼maximize recycling and beneficial reuse of waste materials; while minimizing facility impacts on the surrounding community;5 ▼reduce outgoing traffic through barge or rail transport of recyclables; accept barge deliveries of DSNY Recyclables;5 ▼apply new processing technology or methods, especially in the area of automating previously manual tasks;5 ▼identify new markets for recyclables and maximize revenues;5 ▼promote economic development via recycling in New York City through siting of facilities or partnership with other parties.5 	40		

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SAMPLE LETTER OF CREDIT

Standby Letter of Credit No. _____
Date of Issue: _____

Issuing Bank:
Bank Name:
Bank Address

Applicant:
Name of Company (the “**Company**”)
Company Address
Attn:

Beneficiary:
New York City Department of Sanitation
Attn: BWPRR, Contracts Unit Manager
44 Beaver Street, 6th floor
New York, NY 10004

Amount/currency:
Up to \$ _____ USD

Date and Place of Expiration:
_____ at our Counters

Gentlemen:

We hereby issue this irrevocable Letter of Credit No. _____ in your favor, for the account of (Company name) for up to an aggregate amount of \$ _____ USD available by your draft(s) drawn on us at sight, accompanied by the following:

1. Beneficiary’s written statement on its letterhead purportedly signed by an authorized officer reading:

“a default in payment of compensation due to the City of New York Department of Sanitation (the ‘Department’) or other loss or liability to the Department or the City of New York under a contract entitled _____ , Contract Number PIN _____, between the Department and the Company.”
2. The original of this letter of credit and amendments(s), if any partial drawings are

Attachment 7
RFP to Accept, Process and Market NYC Recyclables

permitted.

The draft(s) must state: “drawn under _____ [bank name],
standby letter of credit No. _____, dated _____.”

The draft(s) and documents may be presented at our offices at _____
[Local NYC address], Attn: Trade Services Standby Unit.

We hereby agree with you that draft(s) drawn under and in compliance with the terms of
this letter of credit shall be duly honored upon due presentation to us.

This credit is subject to the uniform customs and practice for documentary credits (1993
revision), the International Chamber of Commerce, Publication No. 500.

Authorized Signature



THE CITY OF NEW YORK Department of Sanitation
RECYCLED MATERIAL DELIVERY RECEIPT DS 1637 (REV. 5/93)

F 00393

VENDOR'S NAME				VEHICLE NUMBER		LADEN WEIGHT (LBS)	
STREET ADDRESS				DISTRICT		UNLADEN WEIGHT (LBS)	
CITY		STATE	ZIP	PHONE NUMBER		DATE DELIVERED	
				TIME IN	TIME OUT	SCALE NO.	DOS
MATERIAL DELIVERED							
PROGRAM	NEWS-MAG.-COR	NEWS. MAG. COR. INT.	M.G.P.	M.G.P.-INT	COMMINGLED	MIXED WASTE	OTHER
	31	32	33	34	35	36	
CURBSIDE							
CONTAINERIZED							
AFF / INST.							
OTHER							
FOR SANITATION SUPERVISOR				VENDOR'S SIGNATURE		DRIVER'S SIGNATURE	
R/L	EZ	RORO	OTHER				
				SAN. SUPER. NAME (PRINT)		DATE	
DATE COLLECTED		SECTION					

WHITE - RECYCLING OFFICE
(To Operations with
Scale Weight Receipt)

YELLOW- BORO / DIST.
PINK & GOLD - VENDOR

**DIRECT ALL
CORRESPONDENCE
TO**

NYC Department of Sanitation
Bureau of Waste Prevention, Reuse and Recycling
44 Beaver Street, 5 Floor, New York, NY 10004 - (212) 837-8183

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PROPOSAL BOND FORM INSTRUCTIONS

To fulfill the Proposal security requirement, the form on the following pages must be used for the Proposal Bond from a surety. Any Proposal Bond must be executed and accompanied by:

- A. appropriate acknowledgment of the respective parties;
- B. appropriate duly certified copy of Power of Attorney or other representative of the Principal or Surety;
- C. a duly certified extract from By-laws or Resolution of Surety under which Power of Attorney or other certificate of authority of its agent, officer or representative was issued;
and
- D. a duly certified copy of the latest published financial statement of assets and liabilities of Surety.

Affix Acknowledgments and Justification of Sureties.

PROPOSAL BOND FORM INSTRUCTIONS

To fulfill the Proposal security requirement, the form on the following pages must be used for the Proposal Bond from a surety. Any Proposal Bond must be executed and accompanied by:

- A. appropriate acknowledgment of the respective parties;
- B. appropriate duly certified copy of Power of Attorney or other representative of the Principal or Surety;
- C. a duly certified extract from By-laws or Resolution of Surety under which Power of Attorney or other certificate of authority of its agent, officer or representative was issued;
and
- D. a duly certified copy of the latest published financial statement of assets and liabilities of Surety.

Affix Acknowledgments and Justification of Sureties.

Attachment 9
RFP to Accept, Process and Market NYC Recyclables

FORM OF PROPOSAL BOND

KNOWN ALL MEN BY THESE PRESENTS. that we, _____
_____ hereinafter referred to as the "PRINCIPAL", and
_____ hereinafter referred to as the
"SURETY" are held and firmly bound to the CITY OF NEW YORK, hereinafter referred to as
the "CITY", or to its successors and assigns, the penal sum of

(\$ _____) Dollars, lawful money of the United States, for the
payment of which said sum of money well and truly to be made, we, and each of us, bind
ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly
by these presents.

WHEREAS, the Principal is about to submit (or has submitted) to the City the accompanying
proposal, hereby made part hereof, to enter into a contract in writing for

NOW, THEREFORE the conditions of this obligation are such that if the Principal shall not
withdraw said Proposal without the consent of the City for a a period of two hundred and ten
(210) calendar days after the opening of proposals and, in the event of acceptance of the
Principal's Proposal by the City, if the Principal shall:

- A. Within ten (10) days after notification by the City, execute in triplicate and deliver to the
City all executed counterparts of the contract in the form set forth in the contract
Documents, in accordance with the proposal as accepted, and
- B. Furnish a performance bond and separate payment bond, as may be required by the City
for the faithful performance and proper fulfillment of such Contract, which bonds shall be
satisfactory in all respects, and
- C. In all respects perform the agreement created by the acceptance of said Proposal as
provided in the Instructions to Proposers, bound herewith and hereby made a part hereof,
or if the City shall reject the aforesaid Proposal, then this obligation shall be null and void;
otherwise to remain in full force and effect.

In the event that the Proposal of the Principal shall be accepted and the Contract be awarded to
him the Surety hereunder agrees, subject only to the payment by the Principal of the premium
therefore, if requested by the City, to write the aforementioned performance and payment bonds
in the Contract Documents.

Proposer's Initials _____

Attachment 9
RFP to Accept, Process and Market NYC Recyclables

It is expressly understood and agreed that the liability of the Surety for an and all claims hereunder shall in no event exceed the penal amount of this obligation as herein stated.

There shall be no liability under this bond if in the event of the acceptance of the Principal's Proposal by the City, either a performance bond or a payment bond, or both, shall not be required by the City on or before the 30th day after the date on which the City signs the Contract.

The Surety, for value received, hereby stipulates and agrees that the obligations of the Surety and its bond shall in now way be impaired or affected by any postponements of the date upon which the City will receive or open bids, or by any extending of the time within which the City may accept the Principal's Proposal, or by any waiver by the City of any of the requirements of the Information for Proposers; and the Surety hereby waives notice of any such postponements, extension, or waivers.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers the _____ day of _____, _____.

(Seal) _____ (L.S.)
Principal

By: _____

(Seal) _____
Surety

By: _____

(Seal) _____
Surety

By: _____

Proposer's Initials _____

ACKNOWLEDGMENT OF PRINCIPAL IF A CORPORATION

State of _____)

ss:

County of _____)

On this _____ day of _____, before me personally came _____, to me known, who, being by me duly sworn, did depose and say that he resides at _____ that he is the _____ of _____, the said corporation; that one of the seals affixed to said instrument is such seal; that it was so affixed by order of the directors of said corporation, and that he signed his name thereto by like order.

Subscribed to and sworn to before me this _____ day of _____, _____

Notary Public

ACKNOWLEDGMENT OF PRINCIPAL IF PARTNERSHIP OR A JOINT VENTURE

State of _____)

ss:

County of _____)

On this _____ day of _____, before me personally appeared _____, to me known and known to me to be one of the members of the partnership or joint venture _____ described as such and in and who executed the foregoing instrument and he acknowledged to me that he executed the same as and for the act and deed of said partnership or joint venture.

Subscribed to and sworn to before me this _____ day of _____, _____

Notary Public

ACKNOWLEDGMENT OF PRINCIPAL IF INDIVIDUAL

State of _____)

ss:

County of _____)

On this _____ day of _____, before me personally appeared _____, to me known and known to me to be the person described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Subscribed to and sworn to before me this _____ day of _____, _____

Notary Public

Proposer's Initials _____

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