



Request for Proposals
For
Disposition or Lease of Niagara Region owned Material
Recycling Facility (MRF) and Provision of Recycling
Processing Services

Request for Proposals No.: **2021-RFP-209**

Issued: **Thursday, December 2, 2021**

Submission Deadline: **Wednesday, February 2, 2022 at 2:00 PM local time**

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Additional Appendices Available on the Bidding System:

- APPENDIX A1 – Agreement of Purchase and Sale**
- APPENDIX A2 – Lease Agreement**
- APPENDIX A3 – Operations Contract**
- APPENDIX D – Pricing Workbook**
- APPENDIX E – Confidential Disclosure Agreement**
- APPENDIX F – Sample Letter of Credit**

PART 1 – INVITATION AND SUBMISSION INSTRUCTIONS

1.1 Invitation to Proponent

1.1.1 Invitation

With the finalization of Ontario’s Blue Box regulation (O. Reg. 391/21) on June 3, 2021 under the Resource Recovery and Circular Economy Act, 2016, this non-binding Request for Proposal (the “RFP”) is an invitation by The Regional Municipality of Niagara (“Niagara Region”) to prospective proponents to submit proposals to:

- (i) Either purchase or lease its **Material Recycling Facility (MRF) (the “Real Estate Transaction”)**; and
- (ii) Provide for the **Provisioning of Recycling Processing Services** (the “Deliverables”), as further described in Section A of the RFP Particulars (Appendix B).

Niagara Region is interested in exploring the viability of divesting of its MRF via a Real Estate Transaction, which would require a proponent to acquire the MRF (via a purchase or lease transaction) and be responsible for processing and marketing of the Niagara Region’s Collected Material, until Niagara Region transitions from the provincial Blue Box Program.

1.1.2 Overview

The Real Estate Transaction anticipated under this RFP would see a proponent purchase, or lease, Niagara Region’s Materials Recovery Facility (“MRF”) located at 5030 Montrose Rd, Niagara Falls, Ontario. Niagara Region currently contracts out the operation of the MRF to a third party contractor (the “Current MRF Operating Contract”). The Successful Proponent will not be responsible for assuming the Current MRF Operating Contract, which will expire on or before the close of the Real Estate Transaction and commencement of the Operations Contract with the Successful Proponent.

Niagara Region collects source-separated two stream recyclables from its residents and certain businesses such as those in Business Improvement Areas and other entities including schools which are (Collected Materials and other recyclable materials) which are processed at the Region’s MRF, which is located on approximately 18.663 acres of land. Additionally, the MRF receives and processes recyclable materials from Industrial, Commercial and Institutional (IC&I) customers and waste haulers.

The MRF itself is an approximately 100,000 square foot facility, comprised of approximately 90,000 square feet of processing areas and approximately 10,000 square feet of office space. There are also two outer buildings on the property, a fuel storage area, and a small-scale house with weigh scales.

In addition to the Real Estate Transaction component of this RFP, the Successful Proponent will be required to:

- (i) enter into an Operations Contract with Niagara Region for receiving, processing and marketing of Niagara Region’s Collected Materials; and

- (ii) assume Niagara Region's material processing contracts with the Regional Municipality of Waterloo and County of Haldimand ("the Municipalities") in accordance with the terms of this RFP.

1.1.3 Proponent must be Single Entity

The proponent must be a single legal entity that, if selected, intends to negotiate and enter into the contract(s) with Niagara Region. If the proposal is being submitted jointly by two (2) or more separate entities, the proposal must identify only one of those entities as the "proponent" who will be responsible for the completion of the Real Estate Transaction and performance of the Deliverables.

1.1.4 Bidding System Registration

All proponents must have a vendor account with Niagara Region's electronic bidding system at: <https://niagararegion.bidsandtenders.ca/Module/Tenders/en> and must be registered as a plan taker for this opportunity. This will enable the proponent to download the solicitation document, to ask questions, to receive addenda email notifications, download addenda, and submit their proposal electronically through the bidding system.

1.1.5 Covid 19

Niagara Region recognizes that this solicitation is being released during uncertain times with respect to the Covid-19 pandemic. Niagara Region seeks to maintain a competitive bidding environment by making clear how Niagara Region assesses each procurement Niagara Region issues based on criticality and nature of the project as well as by providing a clear delineation of responsibilities between proponents and Niagara Region with respect to maintaining the health and safety of a proponent's employees and subcontractors as well as residents who may be in the area where the work is being undertaken.

Niagara Region requires that Successful Proponent be responsible, at proponent's expense, for the health and safety of its employees and sub-contractors and to the extent retained for the a construction project where the proponent is retained to be a constructor pursuant to the *Occupational Health and Safety Act* ("OSHA") to carry out all responsibilities attributed to a constructor pursuant to OHSA. Niagara Region recognizes that the current Covid-19 pandemic and resulting government policies, decrees, by-laws and regulations at various levels (inclusive of Board of Health requirements) may affect the cost of safeguarding the health and safety of a contractors' employees and sub-contractors but considers it a known risk that must be accounted for by proponents when determining their bid price. Additional monies will not be paid by Niagara Region with respect to health and safety measures imposed upon the proponent during the term of their engagement by Niagara Region.

Niagara Region notes that as part of the Province of Ontario's exercise of its emergency powers, the Province has been restricting the operations of certain businesses and/or types of activities. The rules change over time as the Province of Ontario evaluates the status of the community's efforts to stem the spread of Covid 19.

Niagara Region and proponent, through proponent's submission, acknowledge and agree that each proponent must determine whether the proponent is able to bid on a particular project and further that because provincial and/or other binding governmental rules may change over time, whether the proponent, if successful, is able to continue to work on the project.

It is the proponent's responsibility to obtain all the information necessary to prepare a bid in response to this procurement and to determine proponent's ability to comply with Niagara Region's requirements while also complying with all current applicable laws. By submitting a bid, the proponent agrees that it is relying on its own investigations and evaluation and that of its own legal advisors and not upon statements or information provided by Niagara Region.

The proponent, if chosen to enter into a contract with Niagara Region, will have an ongoing obligation to ensure its compliance with all applicable laws including but not restricted to government regulations related to Covid 19.

1.2 Niagara Region's Procurement Bylaw

Niagara Region's procurement processes are governed by its Procurement By-Law No. 02-2016 ("Niagara Region's By-law"). It is the proponent's responsibility to become familiar with and comply with Niagara Region's By-law, which is available on line at:

<https://www.niagararegion.ca/government/bylaws/pdf/2016/Procurement-By-law-02-2016.pdf>

In the event of any inconsistency between the provisions of Niagara Region's By-law and the terms of this RFP, the terms of this RFP will prevail and will govern the RFP process.

1.3 RFP Contact

To contact Niagara Region in relation to this RFP, proponents must initiate the communication electronically through the bidding system. Niagara Region will not accept any proponent's communications by any other means, except as specifically stated in this RFP.

For the purposes of this procurement process, the "RFP Contact" will be:

Kristine Richardson, Senior Purchasing Agent, kristine.richardson@niagararegion.ca

Proponents should only contact the RFP Contact where specifically instructed to in this RFP. All other communication in relation to this RFP, up to and including the submission of the proposal, must be through the bidding system, as described above.

Proponents and their representatives are not permitted to contact any employees, officers, agents, elected or appointed officials, or other representatives of Niagara Region, other than the RFP Contact, concerning matters regarding this RFP. Failure to adhere to this rule may result in the disqualification of the proponent and the rejection of the proponent's proposal.

1.4 Accommodations for Proponents with Disabilities

In accordance with the *Ontario Human Rights Code*, *Ontarians with Disabilities Act, 2001* (ODA) and *Accessibility for Ontarians with Disabilities Act, 2005* (AODA), the Niagara Region will accommodate for a disability, ensuring full and equitable participation throughout the RFP process.

If a proponent requires this RFP in a different format to accommodate a disability, the proponent must contact the RFP Contact as soon as possible and in any event prior to the Submission Deadline. The RFP in the different format will be issued only to the requesting proponent and all addenda will be issued in such different format only to the requesting proponent.

1.5 Data Room

Niagara Region has established an electronic data room (the “Data Room”) at a secure FTP Site for:

- (a) the provision of various types of background information for the proponents’ review contained within the folder labeled “Background Information” (the “Background Information”);
- (b) the provision of various type of operational information for the proponents’ review, including the MRF’s Environmental Compliance Approvals and current list of Solicited Materials in the folder labeled “Operational” (the “Operational Information”)
- (c) the provision of various types of transaction information for the proponents’ review including the equipment/assets that form the basis of the Real Estate Transaction in the folder labeled Transactional (the “Transactional Information”) and
- (d) the distribution of any additional documentation identified via a posted Addenda.

The Data Room will be accessible to those proponents who sign the Confidential Disclosure Agreement set out at **Appendix E**. Each proponent is solely responsible to ensure that it completes and submits the Confidentiality Agreement to the RFP Contact as is further set out in Appendix B – RFP Particulars, B. Material Disclosures in order to arrange access to the Data Room **on or before the deadline set out in the RFP Timetable**. Niagara Region may add, delete or amend documents in the Data Room at any time and so each proponent is responsible for ensuring that it checks the Data Room frequently in order to keep itself informed of the most current Background Information.

Niagara Region does not represent or warrant the accuracy or completeness of any information made available to proponents in the Data Room as Background Information or of any other background or reference information or documents, which may be made available to proponents by or through Niagara Region. Proponents shall make such independent assessments as they consider necessary to verify and confirm the accuracy and completeness of all such information as any use of or reliance by proponents on any and all such information shall be at the proponents’ sole risk and without recourse against Niagara Region.

1.6. Completion Documents

The selected proponent will enter into direct contract negotiations to finalize agreements with Niagara Region for the:

- (i) completion of the Real Estate Transaction (the “Transaction Documents”); and
- (ii) provision of the Deliverables (the “Operations Contract” and together with the Transaction Documents, the “Completion Documents”), in accordance with the negotiation process as described in Part 2 of the RFP.

Further particulars in respect of the Completion Documents and their execution as identified in Appendix A and at Appendix B – RFP Particulars, B. Material Disclosures.

1.7 RFP Timetable

1.7.1 Key Dates

Issue Date of RFP	Thursday, December 2, 2021
Non-Mandatory Virtual Pre-Bid Meeting	Thursday, December 16, 2021 10:00 AM local time
Non-Mandatory Site Visit	Monday, January 10, 2022 10:00 AM local time
Non-Mandatory Additional Site Visit	Thursday, January 13, 2022
Deadline for Submission of Completed Confidential Disclosure Agreement	Friday, January 14, 2022 4:00 PM local time
Deadline for Questions	Friday, January 21, 2022 12:00 PM local time
Deadline for Issuing Addenda	Tuesday, January 25, 2022
Submission Deadline	Wednesday, February 2, 2022 2:00 PM local time
Rectification Period	5 business days
Anticipated Initial Ranking	February 2022
Notification to Top Ranked Proponent(s)	February 2022
CCM with Top Ranked Proponent(s)	March 2022
Deadline for Post-Closing Addenda	March 2022
Anticipated Deadline for Submission of Best and Final Offers (“BAFO”)	March 2022
Anticipated Final Ranking	March 2022
Initial Contract Negotiation Meeting	April 2022
Contract Negotiation Period	30 calendar days
Anticipated Selection for Award	May 2022
Anticipated Execution of Agreement	June 2022
Anticipated Contract Commencement Date	January 6, 2023

The RFP timetable is tentative only and may be changed by Niagara Region at any time. For greater clarity, business days means all days that Niagara Region is open for business.

1.7.2 Pre-Bid Meeting and Site Visits

Proponents are encouraged to attend the virtual pre-bid meeting and site visit to enhance the understanding of the amount and character of the work involved prior to submitting a proposal.

(a) Non-Mandatory Virtual Pre-Bid Meeting

A **non-mandatory** virtual pre-bid meeting will be held on **Thursday, December 16, 2021** commencing at **10:00 AM** local time.

The meeting will be hosted on ZOOM. The meeting login details are as follows:

<https://us06web.zoom.us/j/86771464943?pwd=VINleGxrTVRLeXl5YlpWejJRaTRBdz09>

Meeting ID: 867 7146 4943
Passcode: 338676

One tap mobile
+14388097799,,86771464943#,,,,*338676# Canada
+15873281099,,86771464943#,,,,*338676# Canada

Dial by your location
+1 438 809 7799 Canada
+1 587 328 1099 Canada
+1 647 374 4685 Canada
+1 647 558 0588 Canada
+1 778 907 2071 Canada
+1 204 272 7920 Canada

Find your local number: <https://us06web.zoom.us/j/91012020000>

Proponents may ask questions or seek clarifications at the Pre-Bid Meeting. Notwithstanding that Niagara Region may give oral answers at the Pre-Bid Meeting no statement, consent, waiver, acceptance, approval or anything else said or done at the Pre-Bid meeting by Niagara Region or any of its employees or representatives shall amend or waive any provision of the RFP Documents, or be binding on Niagara Region or be relied upon in any way by proponents, except when and only to the extent expressly confirmed in an Addendum to the RFP Documents issued in accordance with RFP Section 3.2.2.

(b) Non-Mandatory Site Visit

In addition to the virtual pre-bid meeting, proponents can register to attend the non-mandatory site visit. Proponents shall note that access to the site is restricted. As such, proponents are invited to attend an optional non-mandatory site visit where access to the site will be permitted. The non-mandatory site visit is scheduled as follows:

Date: Monday, January 10, 2022
Time: 10:00 AM local time
Site Location: 5030 Montrose Rd, Niagara Falls, Ontario
Meeting Location: Office at 4935 Kent Avenue, Niagara Falls, Ontario

Personal Protective Equipment is required including:

- Hard Hat
- Eye Protection
- Vest
- Work Boots
- Face Mask

The maximum number of attendees shall be ten (10).

Please note: Based on the number of potential attendees and the limitation of attendees the location, a further site visit may be scheduled. The date and time of this additional meeting will be communicated to the proponents through an addendum.

Attendance at the site visit is **non-mandatory**; however, proponents will be **required to register in advance** for a site visit appointment as outlined below and sign an attendance sheet upon arrival confirming their attendance at the site visit. Proponents are required to complete the mandatory COVID-19 screening as outlined below prior to being permitted entry to a site visit at a Regional facility. Proponents who are late or attend outside of their designated appointment time may not be permitted entry. No allowance will subsequently be made for any errors or omissions on the part of any proponent.

Proponents who wish to attend the proponent site visit must email the RFP Contact on or before Friday, January 7, 2022 at 3:00 pm local time. Upon registration, the proponent shall be provided with confirmation of the time slot for their site visit. If a proponent misses their time slot, the Niagara Region shall not be responsible for rescheduling, but does reserve the right to allow the proponent to attend a 2nd time slot provided that one has been scheduled based on the number of attendees who have registered.

In response to the COVID-19 pandemic Niagara Region has implemented procedures to screen all visitors including proponents prior to permitting entry to any Niagara Region facilities, including for purposes of site meetings. In order to ensure the safety of all staff and visitors, and consistent with guidelines issued by Public Health, everyone entering a Niagara Region facility will be asked to answer the COVID-19 related screening questions. If a prospective entrant indicates they are experiencing any symptoms, have travelled, have been in contact with someone who has tested positive, or otherwise answers the screening questions in a manner that suggests that they are at risk of COVID-19, they will not be permitted to enter Regional facilities and are encouraged to take a self-assessment (<https://covid-19.ontario.ca/self-assessment/>) or call the Novel Coronavirus COVID-19 Info Line at 1-888-505-6074.

All proponents are expected to respect the guidelines from Public Health; have appropriate policies and procedures in place with respect to COVID-19; and ensure that all personnel attending the site meeting are fit for duty and are not otherwise ill. For your convenience, Niagara Region provides an online self-screening tool that proponents can complete on their mobile device before attending the site (Click here to go to the tool). After completion, this online tool displays a verification message that proponents must show to Regional staff upon arrival in order to be permitted entry to the Regional facility. In the event that proponents are not able to complete the online screening tool prior to arrival, they will be required to complete the screening onsite prior to being permitted entry for the site meeting. Niagara Region reserves the right to amend the COVID-19 screening procedures based on the Regional facility and related health and safety considerations and guidelines that may be issued by Public Health from time to time.

In order to ensure compliance with physical distancing requirements and applicable Public Health guidelines in view of capacity and logistical constraints that may apply to certain Regional sites, **proponents are required to register a maximum of 2 representatives in advance for all site meetings.**

Proponents who have registered with the Procurement Contact will be permitted to attend the site on the scheduled date and at the scheduled time. Proponents who fail to register, are late or attend outside of their designated appointment time may not be permitted entry. Proponents will be allowed a maximum of one (1) hour to conduct the site visit and may not be on site outside of their designated appointment time. All personnel attending the site meeting are required to adhere to physical distancing requirements throughout the site meeting and respect Public Health guidelines.

In keeping with facilitating a fair, open and transparent process, Niagara Region reserves the right to proceed with the scheduled site meetings and schedule additional meetings where necessary to ensure compliance with physical distancing requirements and applicable Public Health guidelines in view of capacity and logistical constraints that may apply to certain Regional sites. Pursuant to this, questions received in writing from the initial and any ensuing site meeting will be responded to via the issuance of an addendum.

No statement, consent, waiver, acceptance, approval or anything else said or done at the Site Meeting by Niagara Region or any of its employees or representatives shall amend or waive any provision of the RFP Documents, or be binding on Niagara Region or be relied upon in any way by proponents, except when and only to the extent expressly confirmed in an Addendum to the RFP Documents issued in accordance with RFP Section 3.2.2.

(c) Additional Site Visit

In addition to the Non-mandatory Site Visit provided for in Section 1.7.2(b), proponents may register for an “**Additional Site Visit**” on **Thursday, January 13, 2022**. The time of the Additional Site Visit will be specific for each proponent.

Any proponent that wishes to arrange an Additional Site Visit to the MRF shall submit a request to the RFP Contact no later than **Wednesday, January 12, 2022 at 3:00 PM local time**. The request shall set out the:

- (a) purpose of the Additional Site Visit;
- (b) areas of the MRF (including its lands) for which access is requested; and
- (c) names, titles and contact information of the proponent’s representatives who will be attending the Additional Site Visit.

Upon registration, the proponent shall be provided with confirmation of the time for their Additional Site Visit appointment. Niagara Region may not accommodate rescheduling of any missed site visit appointment; therefore every effort should be made for the proponents to attend the confirmed Additional Site Visit appointment.

If the proponent has received approval for and written confirmation of an Additional Site Visit, from the RFP Contact, unless otherwise set out in the RFP Contact’s confirmation the following shall apply to the Additional Site Visit:

- (a) the proponent and their representatives shall strictly obey all instructions from Niagara Region’s representatives during the visit and shall comply with all site-specific security, safety or other types of requirements;
- (b) the proponent and their representatives shall visit only those specific areas of the MRF to which the proponent has been granted access in the RFP Contact’s confirmation;
- (c) the proponent and their representatives shall not take photographs or make any other electronic recordings without the prior written consent of the RFP Contact person; and
- (d) the proponent shall comply with any supplementary rules that may be provided by Niagara Region for Additional Site Visits.

Each proponent acknowledges that because the MRF is an operating facility and is currently in use unforeseen circumstances can arise and Niagara Region may, in its sole discretion, cancel or reschedule any Additional Site Visit, change the areas of access of any Additional Site Visit or otherwise change any Additional Site Visit on short notice or no notice to the proponent or their representatives.

Proponents shall note that except for the Non-mandatory Site Visit provided for in Section 1.7.2(b) and Addition Site Visit provided for in Section 1.7.2 (c), proponents are not permitted to access any of the Material Recycling Facility lands which are not accessible by the general public, except by prior written arrangement with the RFP Contact.

1.8 Submission Instructions

1.8.1 Submission of Proposals

Proposals must be submitted electronically through the bidding system at:

[**<https://niagararegion.bidsandtenders.ca/Module/Tenders/en>**]

Submissions by other methods will not be accepted.

In the event of any technical issues, proponents should contact the bidding system's technical support.

1.8.2 Proposals to be Submitted on Time

Proposals must be finalized and fully uploaded in the bidding system on or before the Submission Deadline. The time of receipt of proposals shall be determined by the bidding system web clock. Late submissions will not be accepted by the bidding system and will be disqualified as late.

Proponents are cautioned that the timing of submission is based on when the proposal is received by the bidding system, not when a proposal is submitted by a proponent. As transmission can be delayed due to file transfer size, transmission speed or other technical factors, proponents should plan to submit proposals well in advance of the Submission Deadline to avoid submitting late due to technical issues. Proponents submitting near the Submission Deadline do so at their own risk.

The bidding system will send a confirmation email to the proponent advising when the proposal was submitted successfully. If you do not receive a confirmation email, contact the bidding system's technical support immediately.

1.8.3 Proposals to be Submitted in Prescribed Format

Proposal materials should be prepared and submitted in accordance with the instructions in the bidding system, including any maximum upload file size.

Documents should not be embedded within uploaded files, as the embedded files may not be accessible or evaluated.

1.8.4 Amendment of Proposals

Proponents may amend their proposals prior to the Submission Deadline. However, the proponent is solely responsible for ensuring that the amended proposal is received by the bidding system by the Submission Deadline.

1.8.5 Withdrawal of Proposals

At any time throughout the RFP process until the execution of a written agreement for provision of the Deliverables, a proponent may withdraw a submitted proposal. Prior to the Submission Deadline, proponents may withdraw a submitted proposal through the bidding system. To withdraw a proposal after the Submission Deadline, a notice of withdrawal must be sent to the RFP Contact and must be signed by an authorized representative of the proponent.

[End of Part 1]

PART 2 – EVALUATION, NEGOTIATION AND AWARD

2.1 Stages of Evaluation and Negotiation

Niagara Region will conduct the evaluation of proposals and negotiations in the following stages:

2.2 Stage I – Mandatory Requirements

2.2.1 Mandatory Submission Requirements

Stage I will consist of a review to determine which proposals comply with all of the mandatory submission requirements. If a proposal fails to satisfy all of the mandatory submission requirements, Niagara Region will issue the proponent a rectification notice identifying the deficiencies and providing the proponent an opportunity to rectify the deficiencies. If the proponent fails to satisfy the mandatory submission requirements within the Rectification Period, its proposal will be rejected. The Rectification Period will begin to run from the date and time that Niagara Region issues a rectification notice to the proponent. The mandatory submission requirements are set out in Section C of Appendix B (RFP Particulars).

2.2.2 Mandatory Technical Requirements

Niagara Region will use the information submitted by the proponent in accordance with Section D of Appendix B (RFP Particulars) to determine if the proponent meets the mandatory technical requirements. Niagara Region reserves the right to make any and all further investigations it deems, in its sole opinion, necessary, prior to the acceptance of any proposal, to determine if a proponent meets the mandatory technical requirements.

If a proposal fails to satisfy all of the mandatory technical requirements, Niagara Region will issue the proponent a rectification notice identifying the deficiencies and providing the proponent an opportunity to rectify the deficiencies. The rectification process for these requirements may occur after any rectification process for mandatory submission requirements. Proposals that do not satisfy the mandatory technical requirements within the Rectification Period will be rejected.

2.3 Stage II – Pricing

Stage II will consist of the following two sub stages:

2.3.1 Evaluation of Price

Stage II will consist of an evaluation of the submitted total value of each proposal in accordance with the method set out in Section F of the RFP Particulars (Appendix B). The evaluation of total value will only be undertaken for those proposals meeting the requirements of Stage I.

In the event that a proponent's pricing for processing cost per tonne appears to be abnormally low in relation to the Deliverables, Niagara Region may require the proponent to provide a detailed explanation of the pricing information to account for the low level of price and confirm that all requirements in respect of the Deliverables have been taken into account. If the proponent is unable to satisfactorily account for the abnormally low pricing, Niagara Region may reject the proposal. Niagara Region may also reject any proposal that contains unbalanced pricing. Pricing may be considered unbalanced where nominal or significantly understated prices are proposed for some elements of the Deliverables and inflated prices are proposed for other elements of the

Deliverables. Unbalanced pricing includes, but is not limited to, “front-loaded” pricing which contains inflated pricing for Deliverables to be provided or completed at the beginning of the contract, offset by understated pricing for Deliverables to be provided or completed later in the contract.

2.3.2 Threshold Review

Niagara Region shall review the total value of each proposal to determine, in its sole discretion, whether it exceeds the minimum transaction value established by Niagara Region for proceeding with a transaction in respect of the Material Recycling Facility at this time (the “**Transaction Threshold**”). If one or more submitted proposal(s) exceed the Transaction Threshold then only those proposal(s) shall proceed to Stage 3. If all submitted proposal(s) fail to meet the Transaction Threshold, then Niagara Region may, in its sole discretion, waive the Transaction Threshold, through Niagara Region Council’s direction and proceed to Stage III without regard to Section 2.3.2.

2.4 Stage III – Concurrent Negotiations and BAFO

2.4.1 Initial Ranking of Proponents

Proponents will be initially ranked based on the results of the pricing evaluation from Stage II.

2.4.2 Concurrent Negotiations

Niagara Region intends to invite the two (2) proponents with the highest total value in excess of the Transaction Threshold to enter into concurrent negotiations. If the total value of any of the remaining proponents who exceeded the Transaction Threshold are within 5.00% of the total value of the second highest proponent, Niagara Region may invite more than two (2) proponents to enter into concurrent negotiations. During these concurrent negotiations, Niagara Region may provide each proponent with any additional information and seek further information and pricing improvements from each proponent.

During this stage, Niagara Region will schedule a commercially confidential meeting (“CCM”) with each of the top-ranked proponents to engage in direct dialogue with the proponents for the purposes of clarifying and coming to a common understanding of the Niagara Region’s requirements and the Proponent’s proposal. Niagara Region may use the negotiations process to negotiate any aspect of the Completion Documents. Additional details and instructions in respect of the CCM process will be provided to the top-ranked proponents.

Although the discussion will be kept confidential, answers to questions that are deemed by Niagara Region to constitute substantive clarifications of the RFP or changes to the Completion Documents and generally applicable to all top-ranked proponents, will be communicated to all top-ranked proponents by way of a post-closing Addendum issued by the deadline indicated in Section 1.7.1 Key Dates.

CCM meetings will be documented by Niagara Region to form the basis of discussions with the selected proponent in 2.5.1 Contract Negotiation Process.

2.4.3 Submission of BAFO

After the expiration of the concurrent negotiation period, each proponent who participated in 2.4.2 Concurrent Negotiations will be invited to revise its initial proposal pricing only and submit its BAFO to Niagara Region. Specific instruction regarding the submission of the BAFO will be provided to the short-listed proponents.

If a BAFO fails to satisfy any mandatory submission requirements, Niagara Region will issue the proponent a rectification notice identifying the deficiencies and providing the proponent an opportunity to rectify the deficiencies. If the proponent fails to satisfy the mandatory submission requirements within the Rectification Period, its BAFO will be rejected. The Rectification Period will begin to run from the date and time that Niagara Region issues a rectification notice to the proponent.

2.4.4 Evaluation of BAFO and Final Ranking of Proponents

Each BAFO will be evaluated and assigned a final ranking using the process set out in Stage II of the RFP Particulars (Appendix B). The top-ranked proponent based on the evaluation of the BAFOs will receive a written invitation to enter into Stage IV to finalize the Completion Documents with Niagara Region. In the event of a tie, the selected proponent will be at the discretion of the Niagara Region.

2.5 Stage IV – Finalization of the Completion Documents

2.5.1 Contract Negotiation Process

Any negotiations will be subject to the process rules contained in the Terms and Conditions of the RFP Process (Part 3) and will not constitute a legally binding offer to enter into any contract on the part of Niagara Region or the proponent and there will be no legally binding relationship created with any proponent prior to the execution of any written agreement(s) and the proponent should be prepared to accept such terms and conditions. Negotiations may include requests by Niagara Region for supplementary information from the proponent to verify, clarify or supplement the information provided in its proposal, and may include requests by Niagara Region for improved pricing or performance terms from the proponent.

It is expected that the parties will execute, in substantially the same form, the Completion Documents included at Appendix “A”.

2.5.2 Time Period for Negotiations

Niagara Region intends to conclude negotiations and finalize the Completion Documents with the top-ranked proponent during the Contract Negotiation Period, commencing from the date Niagara Region invites the top-ranked proponent to enter negotiations. A proponent invited to enter into direct contract negotiations should therefore be prepared to satisfy the pre-conditions of award listed in Section E of the RFP Particulars (Appendix B), provide requested information in a timely fashion and conduct its negotiations expeditiously.

2.5.3 Failure to Enter into Agreement

If the pre-conditions of award listed in Section E of the RFP Particulars (Appendix B) are not satisfied or if the parties cannot conclude negotiations and finalize the Completion Documents

within the Contract Negotiation Period, Niagara Region may discontinue negotiations with the top-ranked proponent and may invite the next-best-ranked proponent to enter into negotiations. This process will continue until an agreement is finalized, until there are no more proponents remaining that are eligible for negotiations or until Niagara Region elects to cancel the RFP process.

2.5.4 Notification of Negotiation Status

Other proponents that may become eligible for contract negotiations may be notified at the commencement of the negotiation process with the top-ranked proponent.

[End of Part 2]

PART 3 – TERMS AND CONDITIONS OF THE RFP PROCESS

3.1 General Information and Instructions

3.1.1 Proponents to Follow Instructions

Proponents should structure their proposals in accordance with the instructions in this RFP. Where information is requested in this RFP, any response made in a proposal should reference the applicable section numbers of this RFP.

A proponent who submits conditions, options, variations, or contingent statements either as part of its proposal or after receiving notice of selection, may be disqualified.

3.1.2 Proposals in English

All proposals are to be in English only.

3.1.3 No Incorporation by Reference

The entire content of the proponent's proposal should be submitted in a fixed format, and the content of websites or other external documents referred to in the proponent's proposal but not attached will not be considered to form part of its proposal.

3.1.4 Past Performance

In the evaluation process, Niagara Region may consider the proponent's past performance or conduct on previous contracts with Niagara Region or other institutions.

3.1.5 Information in RFP Only an Estimate

Niagara Region and its advisers make no representation, warranty, or guarantee as to the accuracy of the information contained in this RFP or issued by way of addenda. Any quantities shown or data contained in this RFP or provided by way of addenda are estimates only, and are for the sole purpose of indicating to proponents the general scale and scope of the Deliverables. It is the proponent's responsibility to obtain all the information necessary to prepare a proposal in response to this RFP.

3.1.6 Proponents to Bear Their Own Costs

The proponent will bear all costs associated with or incurred in the preparation and presentation of its proposal, including, if applicable, costs incurred for interviews or demonstrations.

3.1.7 Proposal to be Retained by Niagara Region

Niagara Region will not return the proposal or any accompanying documentation submitted by a proponent.

3.1.8 No Guarantee of Volume of Work or Exclusivity of Contract

Niagara Region makes no guarantee of the value or volume of work to be assigned to the Successful Proponent. The agreement to be negotiated with the selected proponent will not be

an exclusive contract for the provision of the described Deliverables. Niagara Region may contract with others for goods and services the same as or similar to the Deliverables or may obtain such goods and services internally.

3.2 Communication after Issuance of RFP

3.2.1 Proponents to Review RFP

Proponents should promptly examine all of the documents comprising this RFP and may direct questions or seek additional information in writing through the bidding system on or before the Deadline for Questions. No such communications are to be sent or initiated through any other means. Niagara Region is under no obligation to provide additional information, and Niagara Region is not responsible for any information provided by or obtained from any source other than the RFP Contact or the bidding system. It is the responsibility of the proponent to seek clarification from the RFP Contact on any matter it considers to be unclear. Niagara Region is not responsible for any misunderstanding on the part of the proponent concerning this RFP or its process.

3.2.2 All New Information to Proponents by Way of Addenda

This RFP may be amended only by addendum in accordance with this section. If Niagara Region, for any reason, determines that it is necessary to provide additional information relating to this RFP, such information will be communicated to all proponents by addendum. Each addendum forms an integral part of this RFP and may contain important information, including significant changes to this RFP. Proponents are responsible for obtaining all addenda issued by Niagara Region.

3.2.3 Post-Deadline Addenda and Extension of Submission Deadline

If Niagara Region determines that it is necessary to issue an addendum after the Deadline for Issuing Addenda, Niagara Region may extend the Submission Deadline for a reasonable period of time.

3.2.4 Verify, Clarify, and Supplement

When evaluating proposals, Niagara Region may request further information from the proponent or third parties in order to verify, clarify or supplement the information provided in the proponent's proposal. Niagara Region may revisit, re-evaluate, and rescore the proponent's response or ranking on the basis of any such information.

3.3 Notification and Debriefing

3.3.1 Notification to Other Proponents

Once an agreement is executed by Niagara Region and a proponent, the other proponents may be notified directly in writing and will be notified by public posting of the outcome of the procurement process.

3.3.2 Debriefing

Proponents may request a debriefing after receipt of a notification of the outcome of the procurement process. All requests must be in writing to the RFP Contact and must be made within

thirty (30) days of such notification. The RFP Contact will contact the proponent's representative to schedule the debriefing. Debriefings may occur in person at Niagara Region's location or by way of conference call or other remote meeting format as prescribed by Niagara Region.

3.3.3 Procurement Protest Procedure

Any proponent with concerns about the RFP process is required to attend a debriefing prior to proceeding with a protest.

If, after attending a debriefing, the proponent wishes to challenge the RFP process, it should provide written notice to the RFP Contact in accordance with applicable procurement protest procedures. The written notice must contain:

- (a) a clear statement as to which procurement the proponent wishes to challenge;
- (b) a clear explanation of the proponent's concerns with the procurement, including specifics as to why it disagrees with the procurement process or its outcome; and
- (c) the proponent's contact details, including name, telephone number and email address.

Niagara Region will send an initial response to acknowledge receipt of the proponent's notice and indicate the date by which Niagara Region will provide the proponent with a formal response.

3.4 Conflict of Interest and Prohibited Conduct

3.4.1 Conflict of Interest

For the purposes of this RFP, the term "Conflict of Interest" includes, but is not limited to, any situation or circumstance where:

- (a) in relation to the RFP process, the proponent has an unfair advantage or engages in conduct, directly or indirectly, that may give it an unfair advantage, including but not limited to:
 - (i) having or having access to confidential information of Niagara Region in the preparation of its proposal that is not available to other proponents;
 - (ii) having been involved in the development of the RFP, including having provided advice or assistance in the development of the RFP;
 - (iii) receiving advice or assistance in the preparation of its response from any individual or entity that was involved in the development of the RFP;
 - (iv) communicating with any person with a view to influencing preferred treatment in the RFP process (including but not limited to the lobbying of decision makers involved in the RFP process); or
 - (v) engaging in conduct that compromises, or could be seen to compromise, the integrity of the open and competitive RFP process or render that process non-competitive or unfair;

- (b) in relation to the performance of its contractual obligations under a contract for the Deliverables, the proponent's other commitments, relationships, or financial interests:
- (i) could, or could be seen to, exercise an improper influence over the objective, unbiased, and impartial exercise of its independent judgement; or
 - (ii) could, or could be seen to, compromise, impair, or be incompatible with the effective performance of its contractual obligations.

3.4.2 Disqualification for Conflict of Interest

Niagara Region may disqualify a proponent for any conduct, situation, or circumstances, determined by Niagara Region, in its sole and absolute discretion, to constitute a Conflict of Interest as defined above.

An existing supplier of Niagara Region may be precluded from participating in the RFP process in instances where the Niagara Region has determined that the supplier has a competitive advantage that cannot be adequately addressed to mitigate against unfair advantage. This may include, without limitation, situations in which an existing supplier is in a position to create unnecessary barriers to competition through the manner in which it performs its existing contracts, or situations where the incumbent fails to provide the information within its control or otherwise engages in conduct obstructive to a fair competitive process.

3.4.3 Disqualification for Prohibited Conduct

Niagara Region may disqualify a proponent, rescind an invitation to negotiate, or terminate a contract subsequently entered into if Niagara Region determines that the proponent has engaged in any conduct prohibited by this RFP.

3.4.4 Prohibited Proponent Communications

Proponents must not engage in any communications that could constitute a Conflict of Interest and should take note of the Conflict of Interest declaration set out in the Submission Form (Appendix C). Without limiting the generality of the foregoing, proponents shall not contact or attempt to contact any of the following persons or organizations on matters related to this RFP:

- The Region of Waterloo
- The Corporation of Haldimand County

3.4.5 Proponent Not to Communicate with Media

Proponents must not at any time directly or indirectly communicate with the media in relation to this RFP or any agreement entered into pursuant to this RFP without first obtaining the written permission of the RFP Contact.

3.4.6 No Lobbying

Proponents must not, in relation to this RFP or the evaluation and selection process, engage directly or indirectly in any form of political or other lobbying whatsoever to influence the selection of the Successful Proponent(s).

3.4.7 Illegal or Unethical Conduct

Proponents must not engage in any illegal business practices, including activities such as bid-rigging, price-fixing, bribery, fraud, coercion, or collusion. Proponents must not engage in any unethical conduct, including lobbying, as described above, or other inappropriate communications; offering gifts to any employees, officers, agents, elected or appointed officials, or other representatives of Niagara Region; deceitfulness; submitting proposals containing misrepresentations or other misleading or inaccurate information; or any other conduct that compromises or may be seen to compromise the competitive process provided for in this RFP.

3.4.8 Supplier Suspension

Niagara Region may suspend a supplier from participating in its procurement processes for prescribed time periods based on past performance or based on inappropriate conduct, including but not limited to the following:

- (a) illegal or unethical conduct as described above;
- (b) the refusal of the supplier to honour its submitted pricing or other commitments;
- (c) engaging in litigious conduct, bringing frivolous or vexatious claims in connection with the Client's procurement processes or contracts, or engaging in conduct obstructive to a fair competitive process; or
- (d) any conduct, situation, or circumstance determined by Niagara Region, in its sole and absolute discretion, to have constituted an undisclosed Conflict of Interest.

In advance of a decision to suspend a supplier, Niagara Region will notify the supplier of the grounds for the suspension and the supplier will have an opportunity to respond within a timeframe stated in the notice. Any response received from the supplier within that timeframe will be considered by Niagara Region in making its final decision.

3.5 Confidential Information

3.5.1 Confidential Information of Niagara Region

All information provided by or obtained from Niagara Region in any form in connection with this RFP either before or after the issuance of this RFP

- (a) is the sole property of Niagara Region and must be treated as confidential;
- (b) is not to be used for any purpose other than replying to this RFP and the performance of any subsequent contract for the Deliverables;
- (c) must not be disclosed without prior written authorization from Niagara Region; and
- (d) must be returned by the proponent to Niagara Region immediately upon the request of Niagara Region.

3.5.2 Confidential Information of Proponent

A proponent should identify any information in its proposal or any accompanying documentation supplied in confidence for which confidentiality is to be maintained by Niagara Region. The confidentiality of such information will be maintained by Niagara Region, except as otherwise required by law or by order of a court or tribunal. Proponents are advised that their proposals will, as necessary, be disclosed, on a confidential basis, to advisers retained by Niagara Region to

advise or assist with the RFP process, including the evaluation of proposals. If a proponent has any questions about the collection and use of personal information pursuant to this RFP, questions are to be submitted to the RFP Contact.

3.6 Procurement Process Non-Binding

3.6.1 No Contract A and No Claims

This procurement process is not intended to create and will not create a formal, legally binding bidding process and will instead be governed by the law applicable to direct commercial negotiations. For greater certainty and without limitation:

- (a) this RFP will not give rise to any Contract A–based tendering law duties or any other legal obligations arising out of any process contract or collateral contract; and
- (b) neither the proponent nor Niagara Region will have the right to make any claims (in contract, tort, or otherwise) against the other with respect to the award of a contract, failure to award a contract or failure to honour a proposal submitted in response to this RFP.

3.6.2 No Contract until Execution of Written Agreement

This RFP process is intended to identify qualified proponents for the purposes of negotiating potential agreements. No legal relationship or obligation regarding the Real Estate Transactions or the procurement of any good or service will be created between the proponent and Niagara Region by this RFP process until the successful negotiation and execution of the Completion Documents.

3.6.3 Non-Binding Price Estimates

While the pricing information provided in proposals will be non-binding prior to the execution of the Completion Documents, such information will be assessed during the evaluation of the proposals and the ranking of the proponents. Any inaccurate, misleading, or incomplete information, including withdrawn or altered pricing, could adversely impact any such evaluation or ranking or the decision of Niagara Region to execute the Completion Documents.

3.6.4 Cancellation

Niagara Region may cancel or amend the RFP process without liability at any time.

3.7 Governing Law and Interpretation

These Terms and Conditions of the RFP Process (Part 3):

- (a) are intended to be interpreted broadly and independently (with no particular provision intended to limit the scope of any other provision);
- (b) are non-exhaustive and will not be construed as intending to limit the pre-existing rights of the parties to engage in pre-contractual discussions in accordance with the common law governing direct commercial negotiations; and
- (c) are to be governed by and construed in accordance with the laws of the province of Ontario and the federal laws of Canada applicable therein.

[End of Part 3]

APPENDIX A – COMPLETION DOCUMENTS

Both Purchase and Lease proposals are permitted by this RFP Process. Proponents responding to this RFP should be prepared to enter into the following Transaction Documents:

- i. in the case of a Purchase transaction the Agreement of Purchase and Sale in substantially the same form as is attached at Appendix A1; or
- ii. in the case of a Lease transaction the Lease Agreement in substantially the same form as is attached at Appendix A2.

In the case of either a Purchase or Lease transaction the Successful Proponent will be required to purchase the Equipment and enter into the Operations Contract for the Deliverables attached at Appendix A3.

Proponents should prepare their proposals assuming that all material terms and conditions set out in the draft Completion Documents at Appendices A1, A2 and A3 will be required in any final Agreement, and proponents will be considered to have taken these material terms and conditions into account in its proposal and in its pricing. Niagara Region may, in its sole discretion, decline to enter into negotiations or may cease negotiations, irrespective of the proponent's ranking in the evaluation process, with any Proponent if it becomes apparent that a Proponent has not prepared its proposal taking into account the terms and conditions of the draft Completion Documents.

APPENDIX B – RFP PARTICULARS

Background Information: Real Estate Transaction and Processing Services

a) Description of Assets

Niagara Region's MRF consists of the following key assets:

- Land
- Building(s)
- Vehicle weigh scales
- Equipment – Processing Equipment and Rolling Stock*
- Other Miscellaneous Assets

A summary of all assets is provided within the Transactional folder under the Asset Listing folder in the **Data Room**. Additional information pertaining to the description of the assets is contained within other documents in the **Data Room** such as the documents noted under Section 2 (c)(i). Proponents are encouraged to review all documents within the **Data Room**.

* all processing and rolling stock equipment located in the Material Recovery Facility as itemized in the Transactional folder under the Asset Listing folder in the **Data Room**. Refer to pages 8-10; 20 in the document entitled TRNS Item 1: List of Assets.

b) Description of Operations

Key historical financial and operational information is contained in the Background folder under the Financial and Tonnage Data folder in the **Data Room**.

c) Facility Overview

(i) State of MRF Repair

In October 2021, an assessment of the MRF processing lines and rolling stock was completed by Holliday Recycling Technologies Ltd and a separate appraisal of the MRF and property was completed by D.J. Penwarden Appraisals Ltd in February, 2021. Copies of the reports are provided in the Background Folder under the MRF Appraisals folder in the **Data Room** listed as BKGRD Item(s) 25-32.

(ii) MRF Operating Capacity

The Environmental Compliance Approvals (ECA) for Niagara Region's MRF allow it to receive 450 tonnes of material per day based on a weekly (Monday to Friday) average and store up to 2,500 tonnes on-site at any point in time. The ECA can be found in the the Operational Folder under the ECAs folder in the **Data Room**.

(iii) MRF Receiving Floor and Bale Storage Capacity

Based on the current layout of the MRF receiving floor and volumes received, the MRF receiving (or "tip") floor has a maximum storage capacity of approximately two days. At a pile height of 12 feet, it is estimated that the receiving floor has a combined (Fibre and Containers) practical storage capacity of approximately 110,000 cubic feet. Actual storage

capacity will vary based on pile height, bulk density of material, and angle of repose. An engineer drawing of the MRF tipping floor area can be found in the Background folder within the **Data Room** under the Recycling Centre Drawings folder (BKGRD Item(s) 58-59 – Recycling Centre – As-Builts).

The MRF currently stores bales inside along the East and North side of plant near closest to the loading docks. It is estimated that there is a practical bale storage capacity limit of approximately 1,500 bales based on a maximum stack height limit of four (4) bales.

(iv) Materials to be Processed

A summary of the inbound tonnes received at the MRF over the past five (5) years (BKGRD Item 22 – 2016-2020 Inbound Tonnages) is provided in the Background folder within the Data Room under the Financial and Tonnage Data folder. The total tonnage includes residential and commercial materials delivered by Niagara Region’s contractors, tonnage received from other municipalities that have processing agreements with Niagara Region and IC&I recyclables received from private waste haulers. In 2020, the MRF received 74,152 tonnes of recyclables from various sources as shown in Table 1 of the document. Fibres represented 66% by weight of the received materials while Containers represented 34% by weight of the marketed materials. These percentages of received Fibre and Containers are inclusive of all tonnes received at the MRF (i.e., both residential and IC&I tonnes). Pre/Post Sort fibre and container composition audits of Collected Materials undertaken at the MRF can be found within the Background folder in the **Data Room** under the Audits folder.

A current list of existing IC&I customers (BKGRD Item 24 – IC&I Customers – Recyclable Purchases) is provided within the Background Information folder in the **Data Room** under the IC&I Customers folder. IC&I customers change on a month-to-month basis. Niagara Region does not guarantee any continued supply of material(s) from IC&I customers. The Successful Proponent may, at its discretion, arrange to continue to receive materials from these customers and may also solicit additional customers within the limitations of the MRF’s ECA’s.

Niagara Region does not expressly or by implication represent that the volumes and/or composition of the materials received for processing under the Contract is the same as shown in the sample audits. The Successful Proponent acknowledges that the composition of received materials will change in the future as a result of changes to the nature of Collected Materials and how they are collected and also the ratio of residential to IC&I materials received at the MRF.

(v) MRF Environmental Investigations

Based on previous environmental investigations at the MRF, exceedances of the Ministry of Environment, Conservation and Parks ‘Soil, Groundwater and Sediment Standards for Use under Part XV.1 of the Environmental Protection Act’ were found. As a result, a remedial system is in place and is comprised of a ground water treatment system (GWTS) to contain and treat impacted groundwater, an infiltration gallery to treat impacted overburden soil and groundwater in addition to a monitoring well network to monitor the remedial system’s effectiveness. Information is available within the Background folder under the MRF Environmental Reports folder in the **Data Room**.

A. THE DELIVERABLES

The Successful Proponent will be required to satisfy the following Deliverables as further described herein:

- Oversight and responsibility for adhering to contractual requirements for the processing of Collected Materials and other recyclable materials including recyclable materials from Industrial, Commercial and Institutional (IC&I) customers and waste haulers;
- Enter into an Operations Contract with Niagara Region for receiving, processing and marketing of Niagara Region's Collected Materials, and assume Niagara Region's material processing contracts with the Municipalities in accordance with the terms of this RFP.

1. KEY TERMS

Unless otherwise specified below or elsewhere in this RFP, capitalized words and phrases used in this Appendix "B" have the meaning set out in the Material Processing Contract attached as **Appendix A3** to this RFP.

- "Blue Box Program" means Niagara Region's responsibility under the Blue Box Ontario Regulation 391/21.
- "Bulky Plastics" means large, rigid plastic items such as: plastic buckets, pails, drums and pots; plastic crates and trays; plastic baskets, totes, boxes and case; rigid plastic toys and pools; plastic furniture and pet carriers; plastic shell of infant car seats and booster seats.
- "Collected Materials" include Solicited Materials, Bulky Plastics, Broken Green Bins, Blue and Grey Boxes and Contamination delivered by Niagara Region and its contractors and/or staff to the MRF.
- "Contamination" means any item or material not accepted in Niagara Region's Blue or Grey Box Recycling Program as set out in Niagara Region's waste collection bylaw (By-Law No. 2017-56 as amended or repealed and replaced from time to time).
- "Contamination Rate" means the amount of Contamination by weight present in an amount of Collected Materials divided by the total weight of those Collected Materials and expressed as a percentage.
- "Cross Contamination" means "Blue Box Material" incorrectly placed in the "Grey Box Material" stream and "Grey Box Material" incorrectly placed in the "Blue Box Material" stream.
- "Designated Municipal Official" means Niagara Region's Director of Waste Management Services or their designate.
- "Diversion Rate" means the weight of Recovered Materials attributed by the Contractor to Niagara Region and subsequently marketed to an End Market by the Contractor, divided by the weight of Collected Materials received from Niagara Region expressed as a percentage.

- “End Market” means the purchaser or receiver of the Recovered Materials and shall conform with the definition of “Recovered Resources” as outlined in O.Reg.391/21: Blue Box.
- “Hazardous Materials” means waste that consists of municipal hazardous waste or municipal special waste, or any combination, whether or not the waste is owned, controlled or managed by a municipality as outlined in Ontario Regulation 542/06.
- “Marketed Materials” means Recovered Materials purchased or received by an End Market.
- “Recovered Material” means Solicited Materials and Bulky Plastics recovered from Collected Materials or Drop-Off Depot Collection Programs for sale or delivery to End Markets.
- “Residue” means the portion of Collected Materials that is not Recovered Materials and shipped for disposal.
- “Solicited Materials” means "Blue Box Material" and “Grey Box Material” as set out in Niagara Region’s Waste Collection Bylaw (No. 2017-56 as amended or repealed and replaced from time to time) and other such materials that may be designated for collection by Niagara Region as part of its Blue Box Program from time to time.
- “Successful Proponent” means the person or persons, corporation, or partnership that has been selected to perform and carry out the Contract.

2. SCOPE OF WORK

Irrespective of whether the MRF is leased or purchased, the Successful Proponent will be required to, at a minimum, receive all of Niagara Region’s Collected Materials at the MRF and ensure it is processed in accordance with the terms of this RFP until such time as Niagara Region transitions its Blue Box Program under O.Reg 391/21.

The Successful Proponent will also assume the processing contracts with Haldimand County and Waterloo Region (“the Municipalities”), with no amendments to these contracts unless otherwise agreed upon between the Successful Proponent and the Municipalities. The Successful Proponent will be responsible for disposal of any resulting Residue and marketing of the Recovered Materials to meet the requirements of the Contract. The required processing obligations may be undertaken at a different location, at the Successful Proponent’s discretion, subject to meeting the terms and conditions of the Contract.

2.1. General Operations

At all times during the Operational Period, the Successful Proponent shall operate the MRF in accordance with the final MRF Operating Plan described in Section 2.2 and in accordance with the following:

- i. Be in compliance with all Applicable Laws including without limitation, all laws relating to the protection of the environment and human health and safety;

- ii. Conduct receiving, processing, storage, loading and unloading of all Collected Materials, Recovered Materials and Residue only within the enclosed portions of the MRF except as permitted by the MRF's ECAs;
- iii. Supply and maintain all processing equipment, containers, roll-offs, self-dumping hoppers, other bins, and all rolling stock (e.g., forklifts, loader vehicles, etc.) as may be required to fulfill the Contract;
- iv. Equip any forklifts/clamp trucks with an on-board weigh scale and maintain a record of daily bale weights and tonnage estimates for unprocessed material on the receiving floor and "in system" material yet to be processed and/or baled;
- v. Direct and continuously supervise vehicles on-site so as to safely minimize unloading, eliminate traffic delays and provide adequate training upon request to Niagara Region's collection vehicle drivers related to scaling, unloading, tarping/untarping, vehicle clean out, spills management, traffic flow and general safety while on-site;
- vi. Provide or make provision for all administrative and office supplies and equipment necessary for it to provide the services under the Contract;
- vii. Operate and maintain the vehicle inbound/outbound weighing scales in accordance with the Canadian Weights and Measures Act (R.S.C., 1985, c. W-6) and provide proof of compliance to Niagara Region upon request.
- viii. At all times operate, maintain and repair the MRF in keeping with Industry Standards. The Successful Proponent is responsible for maintaining all aspects of the MRF and associated property except as otherwise required under the Contract.
- ix. Notify Niagara Region of any unscheduled shutdown at the MRF and carry out any and all necessary repairs to minimize such downtime.
- x. Confine its operations at the MRF to the operating limits of the Contract and MRF ECAs.

2.2. MRF Operating Plan

The Successful Proponent shall prepare and submit a preliminary operating plan to Niagara Region for review and comment within two (2) months of award of Contract. Niagara Region will provide comments on the draft operating plan within thirty (30) days of its receipt. The final operating plan, incorporating Niagara Region's comments, shall be completed by the Successful Proponent thirty (60) days prior to the planned commencement of the Contract.

The MRF Operating Plan shall include at a minimum:

- i. An organization chart for the management of operations with job descriptions and staffing plans for the entire MRF;
- ii. A procedure to addressing temporary staff shortages;
- iii. A procedure for scheduling deliveries of incoming Collected Materials from the Region and other sources;

- iv. A procedure for weighing inbound/outbound trucks and recording weigh data;
- v. A procedure for inspecting and rejecting incoming Collected Materials;
- vi. A procedure for receiving and storing incoming Collected Materials;
- vii. A procedure for weighing, storing, loading and shipping Recovered Materials to market;
- viii. A procedure for weighing, storing, loading and disposal of Residue;
- ix. A procedure for monitoring the quality and quantity of Recovered Materials;
- x. A procedure for recording and responding to complaints about the MRF and site operations;
- xi. A procedure for monitoring emissions in accordance with Applicable Law;
- xii. Contingency plans to accommodate strikes, disruptions of processing, shipments or prevent actions that may violate the MRF ECA(s);
- xiii. A site access and safety training plan for applicable Niagara Region municipal staff and contract collections crews;
- xiv. A tour access and safety plan for accommodating visitors; and
- xv. Address any additional requirements of the MRF ECA(s).

A revised MRF Operating Plan will be submitted within twenty (20) Business Days to Niagara Region's Designated Municipal Official for review and approval whenever changes to the operations are made.

2.3. Transition Plan

The Successful Proponent shall prepare and submit a preliminary Transition Plan to Niagara Region for review and comment within three (3) weeks of award of Contract. Niagara Region will provide comments on the draft Transition Plan within two (2) weeks of its receipt. A final Transition Plan, incorporating Niagara Region's comments, shall be submitted by the Successful Proponent within two (2) months of award of Contract.

The required Transition Plan will outline all necessary actions the Successful Proponent must take and requires of Niagara Region to ensure it is fully operational as of the day of the planned commencement of the Contract. The required Transition Plan shall include the following at a minimum:

- i. An outline of key team players and responsibilities;
- ii. A detailed timeline which includes key deliverables, milestones and contingency plans if milestones are missed;
- iii. A list of tasks with associated timelines that would be required of Niagara Region and/or its current third party contractor;

Without limiting any of the other rights Niagara Region has under the Contract, including the right to assess liquidated damages as is more particularly set out therein, the Successful Proponent understands and agrees that Niagara Region reserves the right to make alternative arrangements in accordance Section 2.18 Extended Downtime if, in its sole discretion, the Successful Proponent cannot assure Niagara Region that it will be fully operational as at the Operational Period Commencement Date.

2.4. Materials to be Received and Processed

The Successful Proponent shall receive and process all Collected Materials delivered to the MRF by Niagara Region during the Operational Period of the Contract.

Niagara Region, at its sole discretion and upon reasonable notice to the Successful Proponent, may, during the Term of the Contract, add or remove materials to the list of Solicited Materials currently collected from its residents. The current list of Solicited Materials can be found within the Operational folder in the Solicited Materials folder in the **Data Room**. Reasonable notice shall be defined as sixty (60) calendar days unless otherwise agreed to by the Parties.

2.5. Receipt of Collected Materials and Storage of Processed Materials

To ensure that receipt of Niagara Region's Collected Materials is unimpeded and operations are conducted in full compliance with the MRF's ECA requirements, the Successful Proponent shall ensure its operating plan as set out in Section 2.2 for the MRF anticipate and address daily variations in the receipt and processing of all Collected Materials, storage of Recovered Material and disposal of Residue.

2.6. Minimum Processing Requirements

To ensure adequate processing capacity is available at all times, the Successful Proponent will be required to process all Collected Materials delivered to the MRF by Niagara Region during the Operational Period and prioritize the receipt and processing of Niagara Region's Collected Materials over its other customers.

2.7. Processing and Marketing Obligations

The Successful Proponent shall use their knowledge and discretion to process Niagara Region's Collected Materials in such a way so as to maximize recovery of Collected Materials and shall meet or exceed an annual Diversion Rate of 85% by weight to be measured on a quarterly basis during the Operational Period of the Contract. The Successful Proponent will provide Niagara Region with monthly tonnage reports summarizing the weights of Collected Materials received from Niagara Region (i.e. Solicited and Depot) and the corresponding weights of Marketed Materials and Residue associated with processing Niagara Region's Collected Materials.

2.8. Collected Materials Received in Bags

The Successful Proponent acknowledges that Niagara Region residents may set out plastic film in plastic grocery bags and Collected Materials in transparent recycling bags for collection and shall take all necessary safety and operational measures to ensure the effective recovery of Solicited Materials received in this format. These practices are expected to continue during the Term of the Contract and the Successful Proponent will be required to de-bag such material, as necessary, and recover and market both the Solicited Materials contained within and the plastic bag film.

2.9. Broken Containers

The Successful Proponent acknowledges that Niagara Region residents may set out broken Blue Boxes, Grey Boxes and Green Bins for collection with Solicited Materials. Broken

containers will be delivered to the MRF by Niagara Region's contractors commingled with Blue Box Material. The Successful Proponent will be required to recover and market the broken containers.

2.10. Drop-off Depot Collection Programs

Niagara Region currently has a program in place at Waste and Recycling Drop-off Depots to collect Bulky Plastics (or "large rigid plastics"), old corrugated cardboard and Blue and Grey Box Materials in designated roll-off containers. Material will be delivered to the Material Recovery Facility by Niagara Region's contractors. The Successful Proponent will be required to recover and market the Bulky Plastics along with the Solicited Materials.

2.11. Maximum Contamination Rate

During the Operational Period of the Contract, Niagara Region will seek to maintain an average Contamination Rate of no more than 15% by weight in the delivered curbside Collected Materials. Dedicated loads of Collected Materials from multi-residential, BIAs/DBAs and public spaces are, however, known to exceed this limit and are explicitly excluded from this commitment.

The Successful Proponent acknowledges and agrees that individual loads of Collected Materials delivered to the MRF from curbside single-family sources may exceed this limit and dedicated loads of Collected Materials delivered to the MRF from multi-residential, BIAs/DBAs and public parks sources will routinely exceed this limit. Such exceedances shall not relieve the Successful Proponent from its obligation to achieve the required minimum Diversion Rate.

The Successful Proponent acknowledges and agrees that Cross Contamination, over compacted and non-recoverable Solicited Materials shall not be considered Contamination for the purposes of calculating the Contamination Rate.

2.12. Compaction of Received Material

During the Operational Period of the Contract, Niagara Region will seek to limit the compaction of Collected Materials delivered to the MRF to a 2.5:1 ratio. The Successful Proponent acknowledges and agrees that Collected Materials delivered to the MRF may exceed this limit. Niagara Region may, at its discretion, undertake random monitoring of compaction levels of loads of Collected Material delivered to the MRF by its collection contractors and if requested by the Successful Proponent.

The Successful Proponent shall fully cooperate with Niagara Region in undertaking such monitoring activities by scaling the subject vehicle in and out twice, at the direction of Niagara Region, so that separate weights can be collected on both the fibre and container streams on board the vehicle in question.

2.13. Load Rejection

The Successful Proponent shall visually inspect all loads of Collected Materials delivered to the MRF by Niagara Region or its collection contractors. Where loads of Collected Materials contain Hazardous Materials or materials the MRF is not licensed to receive, the Successful Proponent will receive such loads and separate the Hazardous Materials and/or materials it is not licensed to receive from the remaining Collected Materials where such action(s) can be undertaken

safely. The Successful Proponent shall be responsible for the proper disposal of the Hazardous Materials and/or materials it is not licensed to receive.

Where loads of Collected Materials are, in the view of the Successful Proponent, over-compacted and/or contain sufficient quantities of Contamination, Cross-Contamination or unrecoverable Solicited Materials such that in the view of the Successful Proponent the load is not processible, it may reject the load. If a load must be rejected it shall immediately notify Niagara Region's Designated Municipal Official via telephone. Such actions shall not alleviate the Successful Proponent's obligation to achieve the Diversion Rate.

The Successful Proponent acknowledges and agrees that the weight of rejected loads of Collected Materials will be included in its Residue totals unless otherwise agreed to by Niagara Region.

2.14. Receiving Floor and MRF Access

Niagara Region reserves the right to access, at its discretion, the receiving floor at any and all times during Operating Hours of the MRF to monitor loads of Collected Materials delivered by Niagara Region for over compaction, Contamination and other collection issues. This activity will involve Niagara Region staff and/or contractors being present on the receiving floor to inspect and examine loads of Collected Materials to ensure compliance by its collection contractors and issue verbal and/or written instructions to collection crews as required.

In order to undertake random sampling of inbound loads to monitor Contamination Rates and/or undertake periodic waste composition auditing, Niagara Region will require access to the MRF, specifically the tip floor and the area where the mobile weight scale is located.

The Successful Proponent will fully cooperate with these activities by assisting with the collection of samples from the receiving floor, by providing Niagara Region with a suitable location to sort and evaluate collected samples. At a minimum, a suitable location will entail a safe and separate area in the MRF away from traffic and include a suitable sorting table(s), a certified weigh scale and access to washroom facilities. Niagara Region will provide sorting/storage buckets and will ensure staff are wearing appropriate PPE. Niagara Region will provide the Successful Proponent one week notice prior to the sampling dates. The Successful Proponent will also ensure appropriate safety and operational protocols are developed as part of the MRF Operating Plan and adequate training is provided to both Parties personnel and is followed.

2.15. Unloading Requirements

The Successful Proponent shall ensure that any vehicle delivering Collected Materials to the MRF is received and unloaded within twenty (20) minutes inclusive of the time it scales into the site to the time it scales out.

The time recorded on the weigh slips associated with that load shall be considered to be conclusive evidence of the time spent by the vehicle on site.

This requirement shall not apply where the Successful Proponent can demonstrate to the satisfaction of Niagara Region that the time limit was exceeded solely through the actions of the driver engaging in activity(ies) unrelated to the delivery of Collected Materials.

Furthermore, the Successful Proponent shall not hold up vehicles in the queue for the scale (i.e., inbound or outbound) for more than ten (10) minutes one way. GPS data associated with the relevant vehicle shall be considered conclusive evidence of the time spent by the vehicle in the scale queue.

Niagara Region acknowledges that the maximum times shall be adjusted to twenty (20) minutes one way in the queue at the scale and fifty (50) minutes on-site where the Successful Proponent provides evidence to the satisfaction of Niagara Region that more than four (4) of Niagara Region’s collection vehicles arrived at the same time.

2.16. Operating Hours

The Successful Proponent shall receive Collected Materials from Niagara Region or its contractors from 7 a.m. to 5 p.m. Monday to Friday (including on Statutory Holidays), save and except Christmas Day and New Year’s Day. When Christmas Day and New Year’s Day fall on a weekday, the Successful Proponent shall also receive Collected Materials from Niagara Region or its contractors from 7 a.m. to 5 p.m. on Saturdays following Christmas Day and New Year’s Day.

Niagara Region may periodically require that the MRF (i) remain open after regular hours to receive late load deliveries; or (ii) open on Saturdays, to receive Collected Materials due to collection scheduling or collection service disruptions such as inclement weather. Requests made by Niagara Region to remain open after regular hours during the weekday will be provided before 1:00 p.m. on the day of request. Requests made by Niagara Region to open on Saturdays will be provided before 1:00 p.m. on Fridays. Successful Proponents will be compensated at the following rate:

Item	Compensation
Late Deliveries on Normal Operating Days	\$129.25/hr
Half Day (5 hrs) Deliveries on Saturdays	\$958.08/Half day
Full Day (10 hrs) Deliveries on Saturdays	\$1,916.15/full day

2.17. Scheduled Shutdowns

The Successful Proponent shall give Niagara Region at least fourteen (14) days prior written notice of any scheduled shutdowns of the MRF. Each notice shall contain information regarding the time, duration and reasons for any shutdown and describe the alternate receiving and/or processing arrangements made by the Successful Proponent. Under no circumstances will scheduled shutdowns or other work on the site interrupt the acceptance of Collected Materials.

2.18. Extended Downtime

Should the MRF be temporarily unable to receive Collected Material for whatever reason, the Successful Proponent shall make alternative arrangements for the receipt and processing of Collected Materials at its own cost. Such alternatives shall be to the sole satisfaction of Niagara Region, acting reasonably. If such alternatives are not acceptable to Niagara Region, Niagara Region may use alternatives of its own choosing until the Successful Proponent can again receive Collected Materials at the MRF. If Niagara Region incurs additional costs as a result of using alternative processing options selected by Niagara Region the Successful Proponent shall

be responsible for all such costs. For greater certainty, Niagara Region's acceptance of temporary alternative Collected Materials processing services shall be without prejudice to Niagara Region's rights to terminate the Contract.

2.19. Contract Supervision by the Successful Proponent

Niagara Region will be provided with contact information (including at a minimum, cell phone number and email address) for the Successful Proponent's representatives, including delegated alternates, who shall have overall responsibility for the Contract, and who shall be available to respond to Niagara Region, within 30 minutes, at any time (i.e., 24 hours per day, seven days per week). Email accounts and cell phones must be monitored by the Successful Proponent's representatives regularly Monday to Friday (several times hourly 7 a.m. to 5 p.m.), and at a minimum, twice per day (e.g., 10 a.m. and 2 p.m.) on Saturday.

2.20. Visitor Accommodation

The Successful Proponent shall permit, and assist at no additional charge, Niagara Region with the provision of tours of the MRF at a frequency of up to once per month and multiple tours on special event days such as Earth Day or as otherwise agreed to by the parties. Niagara Region will be responsible for visitor accommodation, provision of all information and coordination of all tours. Niagara Region will inform the Successful Proponent's representative of potential tours with three (3) Business Days' notice and will make reasonable efforts to minimize interference with the MRF's operations during tours. The Successful Proponent will be responsible for developing a tour plan at the outset of the Contract in cooperation with Niagara Region to ensure the safety of all visitors. The Successful Proponent will also provide staff to assist tour groups.

2.21. Weighing Records

All vehicles handling materials shall be weighed in and outbound at the MRF weigh scales, which will properly record the data noted below. Geoware is the current weigh scale software used at the MRF to weigh all loads inbound and outbound. To ensure accuracy, the Successful Proponent shall use this software, or an equivalent acceptable to Niagara Region, to provide the following information on all loads delivered by Niagara Region to the MRF:

- i. Transaction Number
- ii. Transaction Date
- iii. Transaction Entry Time
- iv. Transaction Departure Time
- v. MRF Name
- vi. Business Name
- vii. Business Account Number
- viii. Business Type
- ix. Data Source
- x. Hauler Account Number
- xi. Hauler Name
- xii. Vehicle Type
- xiii. Vehicle ID
- xiv. License Plate
- xv. Material Source Location

- xvi. Material Type
- xvii. Origin Facility
- xviii. Origin Site
- xix. Gross Weight (Kilograms)
- xx. Tare Weight (Kilograms)
- xxi. Net Weight (Kilograms)
- xxii. Unit of Measurement
- xxiii. Payment Type
- xxiv. Fees
- xxv. In/Out Flag
- xxvi. Destination Facility
- xxvii. Destination Site
- xxviii. On-Site Destination
- xxix. Transfer Flag
- xxx. Transfer Date
- xxxi. Comment
- xxxii. Revised Date

Each transaction will need to be identified as active, revised, manual or historical. Niagara Region will dictate the categories/options for the data required above. This information must be provided daily, in an .xml file, and uploaded by the Successful Proponent to Niagara Region's FTP site by 8 a.m. the following Business Day.

The Successful Proponent will also maintain a record of the noted information for all inbound and outbound vehicles, which Niagara Region shall be entitled to observe, verify and have reasonable access to.

The Successful Proponent will also provide separately to Niagara Region weight record information for their delivered loads of Collected Material on a daily basis and in a report format suitable to Niagara Region. The same information will also be provided to Niagara Region for loads of Recovered Materials sold and delivered to market and Residue on a monthly basis and in a format suitable to Niagara Region.

Each month's data shall be fully reconciled and submitted to Niagara Region no later than the 10th Business Day of the following month.

2.22. Records

During the Term of the Contract, the Successful Proponent shall separately maintain all the records used to prepare the reports required under this Contract.

The Successful Proponent shall, upon request, forward to Niagara Region copies of all the above noted records that relate to the performance of this Contract.

2.23. Residue

The Successful Proponent shall be responsible for all costs of all Residue generated as a result of the MRF's operation and maintenance, including the cost of transportation to, and disposal at a licensed disposal facility.

2.24. Disposal of Other Solid or Liquid Waste

The Successful Proponent must immediately clean up any spilled materials in accordance with the MRF Operating Plan and Applicable Law and is responsible for the cost of lawful and appropriate disposal of any other solid or liquid waste and/or hazardous materials that result from performing the Work.

B. MATERIAL DISCLOSURES

1. Examination of Site

Proponents are required to satisfy themselves as to existing conditions of the site and must take all site conditions into account in preparing their proposals.

2. Confidential Disclosure Agreement (Appendix E)

Proponents shall submit one copy of the signed and dated **Appendix E - Confidential Disclosure Agreement** by email to the RFP Contact listed in Section 1.3. Once received by the RFT Contact, the proponent will be given the link and password to the Data Room to access the confidential documents. The Confidential Disclosure Agreement is required by the Deadline listed in Section 1.7.1 Key Dates..

3. Posting of Addenda

Due to the sensitive information that may be in future addenda, all addenda will be posted on the Data Room. Proponents will receive a notification from the bidding system when an addendum has been posted to the **Data Room**.

4. AODA Standards of Accessibility Compliance

Information and communications (without limitation, documents, materials and presentations) provided to Niagara Region as part of the Deliverables, which shall be posted to Niagara Region's website shall be provided in an AODA compliant format, specifically without limitation, meaning that the said documents must conform to World Wide Web Consortium Web Content Accessibility Guidelines (WCAG) 2.0 Level AA.

5. Current Contracts

The Successful Proponent is required to assume the contracts of Haldimand and Waterloo without changes. Copies of these processing agreements are located in the Background folder in the **Data Room** under the MRF Processing Agreements folder.

6. Completion Document Timelines

As is set out in Section 1.6 of Part 1, this RFP Process includes: (i) completion of the Real Estate Transaction; and (ii) the provision of the Deliverables. As is provided at Appendix "A" the Successful Proponent shall be required to enter into the following documents at the time of award:

- (1) In respect of the Real Estate Transaction - either an Agreement of Purchase and Sale or a Lease Agreement, in substantially the form attached to the RFP as Appendix A1 and A2 respectively; and
- (2) In respect of the Deliverables - the Operations Contract attached to the RFP as Appendix A3.

It is anticipated that in the respect of the Real Estate Transaction the closing date, in the case of a Purchase, and the commencement date, in the case of a Lease, will be on or around **January 6, 2023**.

In the case of the Operations Contract, the Transition Period (as defined therein) will commence as at the Effective Date (as defined therein) and expire as at the Operational Period Commencement Date (as defined therein). It is anticipated that the Operational Period Commencement Date will be **January 6, 2023** or such earlier date that the Successful Proponent assumes full accountability for the provision of the Deliverables as may be agreed to by the Parties in writing. Proponents should account for these timelines when submitting their Proposal.

C. MANDATORY SUBMISSION REQUIREMENTS

1. Submission Form (Appendix C)

Proponents should refer to the instructions attached to the solicitation for the Appendix C – Submission Form requirements and provide all required information in accordance with the instructions provided in the bidding system.

2. Pricing

Each proposal must include pricing information that complies with the instructions set out below in Section G of this Appendix B.

3. Other Mandatory Submission Requirements

Each proposal must include a completed Attestation of Mandatory Technical Requirements form assembled in the bidding system.

D. MANDATORY TECHNICAL REQUIREMENTS

Mandatory technical requirements are stated in the Attestation of Mandatory Technical Requirements form in the bidding system.

E. PRE-CONDITIONS OF AWARD

The selected proponent will be required to satisfy the following obligations in respect of the Operations Contract:

1. Certificate of Insurance

The selected proponent must provide Niagara Region with a Certificate of Insurance acceptable to Niagara Region and, if requested by Niagara Region, certified copies of the insurance policies. The Certificate of Insurance must comply with the insurance requirements outlined in the Appendix A3 and must be on Niagara Region's form of Certificate of Insurance which can be found on Niagara Region's website –(www.niagararegion.ca/business/fpr/cert-insurance.aspx). If the Certificate of Insurance is provided in a non-original form (e.g. a facsimile, photocopy or scanned electronic copy), the proponent acknowledges and agrees that Niagara Region is fully entitled to treat any such Certificate as an original and that the proponent will be responsible for the accuracy and validity of the information contained therein. If required by Niagara Region, certified copies of all the above-mentioned policies shall be delivered to Niagara Region. All subsequent policy renewals and certificates of insurance thereafter, during the time that the Contract is in force, shall be forwarded to Niagara Region within fifteen (15) days of their renewal date.

2. Workplace Safety and Insurance Board Clearance

The selected proponent shall provide:

- a) A valid, current Clearance Certificate declaring that the selected proponent is registered with Workplace Safety and Insurance Board ("WSIB"), and has an account in good standing; or
- b) A Letter of Good Standing issued by WSIB.

If WSIB coverage is not required by law to be carried by the selected proponent, the selected proponent shall provide one of the following (as the case may be):

- a) An Exemption Letter from WSIB, satisfactory to Niagara Region's Director of Legal and Court Services;
- b) An Independent Operators Status Certificate issued by WSIB; or
- c) Such further and other evidence as may be satisfactory to Niagara Region's Director of Legal and Court Services.

In addition to the indemnification provided by the selected proponent elsewhere in this RFP, the selected proponent agrees to indemnify Niagara Region and its respective elected officials, directors, officers, agents, employees, and volunteers, successors and assigns for all losses, claims, expenses (including reasonable legal fees) or other charges related to the selected proponent's status with WSIB.

3. Irrevocable Standby Letter of Credit

The selected Proponent must provide to The Regional Municipality of Niagara, at the selected proponent's cost, an Irrevocable Standby Letter Of Credit in the amount of \$350,000.00 (three hundred and fifty thousand) plus HST made payable to The Regional Municipality of Niagara to the satisfaction of Niagara Region and be from a financial institution licensed to operate in Ontario, as is more particularly set out in Section 14 of the Operations Contract.

The Irrevocable Standby Letter of Credit may be drawn upon/cashed by The Regional Municipality of Niagara from time to time if the Successful Proponent fails to perform any of their obligations pursuant to the Operations Contract, and, as a result, Niagara Region expends funds to have such obligations performed. The drawing/cashing is to reimburse Niagara Region for such expenditures. Any portion of the Letter of Credit not drawn upon/cashed one (1) year after the termination of the Contract shall be returned to the Contractor.

A sample form of Irrevocable Standby Letter of Credit, satisfactory to The Regional Municipality of Niagara, is attached as **Appendix F**.

The selected proponent acknowledges and agrees that the entering into of the Operations Contract by Niagara Region is conditional on and subject to the selected proponent satisfying the above-referenced conditions.

Real Estate Transaction

While there are no pre-conditions of award in respect of the Real Estate Transaction the successful proponent will be required to: (i) satisfy the deposit requirements in section 2.3 of the Agreement of Purchase at Sale at Appendix A1 in accordance with the timelines set out therein, in the case of a Purchase Transaction; or (ii) satisfy the rent and security deposit requirements, as well as the insurance requirements* at sections 1.1(g), 1.1(h) and 9.1 of the Lease at Appendix A2, respectively, on or before the effective date thereof, in the case of a Lease Transaction.

** Certificates of Insurance must be provided and acceptable to Niagara Region and, if requested by Niagara Region, certified copies of the insurance policies must be provided. The Certificate of Insurance must be on Niagara Region's form of Certificate of Insurance which can be found on Niagara Region's website –(www.niagararegion.ca/business/fpr/cert-insurance.aspx). If the Certificate of Insurance is provided in a non-original form (e.g. a facsimile, photocopy or scanned electronic copy), the proponent acknowledges and agrees that Niagara Region is fully entitled to treat any such Certificate as an original and that the proponent will be responsible for the accuracy and validity of the information contained therein. All subsequent policy renewals and certificates of insurance thereafter, during the time that the Lease is in force, shall be forwarded to Niagara Region within fifteen (15) days of their renewal date.*

F. PRICE EVALUATION METHOD

Instructions on How to Provide Pricing

- (a) Proponents should submit their pricing information as instructed within the bidding system.
- (b) Rates must be provided in Canadian funds, inclusive of all applicable duties and taxes except for HST, which should be itemized separately.
- (c) The proponent will need to enter either (i) the purchase price for all land, buildings, equipment and vehicle weigh scales as an outright sale on a fee simple basis; or (ii) the lease payments for the land, buildings and vehicle weigh scales with the purchase price for the Equipment.
- (d) In the case of a purchase transaction, the purchase price of any assets (including Equipment) must be outlined with funds being provided on close. Under a lease transaction, the lease payments for land, buildings and vehicle weigh scales must be made monthly from and after the Commencement Date with the purchase price for the Equipment also due upon the lease Commencement Date.
- (e) For both purchase and lease transactions, the proponent must provide pricing for receiving, processing and marketing of Niagara Region's Collected Material for the period of the transaction date to the assumed transition date. Processing cost per tonne relates to the net cost to be charged to Niagara Region on a per tonne basis for the receiving, processing and marketing of the Collected Material. The Proponent should factor in all costs, including disposal of residue, associated with the processing of Collected Material less the revenue obtained from the Recovered Material and operating profit margin. The pricing is to be used by Niagara Region as its only cost for the receiving, processing and marketing of its Collected Material from the proponent, no other costs will be billed to Niagara Region. Niagara Region intends only to use the processing cost per tonne in order to pay for this service.
- (f) For greater certainty, the Successful Proponent will assume Niagara Region's material processing contracts with the Regional Municipality of Waterloo and County of Haldimand on the financial terms and conditions thereunder. Accordingly, there is no separate pricing component for the assumption of these contracts in the Schedule of Prices on the bidding system.
- (g) For purposes of evaluation only, and all necessary financial calculations in connection therewith, the assumed date for the completion of the Real Estate Transaction and commencement of the Operation Period is January 6, 2023. The assumed transition date of Niagara Region's program under O.Reg 391/21 is to be January 1, 2024.
- (h) A purchase transaction has a Purchase Value Determination that is based on:

Part A – Asset Total Purchase Price:

Total Purchase Price is comprised of the following parameters to be populated by the proponent:

- Purchase Price for Land, Buildings and Vehicle Weigh Scales
- Purchase Price for Equipment

Part B - Cost of Processing Niagara Region's Collected Material:

Total Processing Cost/Regional Expense is comprised of:

- Projected Tonnage (estimated 12 month quantity Jan 1 - Dec 31, 2023) which is defined as 51,440 tonnes

multiplied by:

- Processing Cost per Tonne to be populated by the proponent

Part B - Cost of Processing Niagara Region's Collected Material will be subtracted from Part A – Asset Total Purchase Price to determine the Net Purchase Price which will be used in the evaluation and will be compared to the Transaction Threshold as described in Section 2.3.2 Threshold Review.

- (i) A lease transaction has a Lease Value Determination that is based on:

Part A – Net present value (NPV) of Lease Payments:

NPV of Lease Payments (less remediation costs) is comprised of the following parameters:

- Minimum Purchase Price for Equipment (upfront) which is set at \$5,000,000 and may be adjusted by the proponent to exceed the minimum of \$5,000,000
- Present Value of Lease Payments for Land, Buildings and Vehicle Weigh Scales which is determined by the Lease Payment Present Value Calculation:
 - o Base Lease Payment which is populated by the proponent and to which an inflation/growth factor will be applied in the form of a 2.0% annual lease adjustment
 - o A Capitalization Rate with Inflation/Discount Rate, which expresses the time value of money and is the process of reducing a future value to a present value to compare to a purchase price today, is set at 8.50%
 - o The Capitalization Rate with Inflation/Discount Rate is applied to develop the annual Present Value/Discount Factor of $= 1 / (1 * (1 + 8.50\%)^{\text{Period Number}})$ to calculate the Present Value lease payments for the 10 year lease period. The Capitalization Rate with Inflation/Discount Rate is required to allow for lease transaction proposals to be compared to purchase transaction proposals.
- Present Value of Terminal Asset Value is the value of an asset beyond the forecasted period and is set at \$6,200,150
- Environmental Remediation Costs are set at \$3,350,000
- The sum of the Minimum Purchase Price for Equipment (upfront), Present Value of Lease Payments for Land, Buildings and Vehicle Weigh Scales and Present Value of Terminal Asset Value, less the Environmental Remediation Costs results in the NPV of Lease Payments (less remediation costs)

Part B - Cost of Processing Niagara Region's Collected Material:

Total Processing Cost/Regional Expense is comprised of:

- Projected Tonnage (estimated 12 month quantity Jan 1 - Dec 31, 2023) which is defined as 51,440 tonnes

multiplied by:

- Processing Cost per Tonne to be populated by the proponent

Part B - Cost of Processing Niagara Region's Collected Material will be subtracted from Part A – NPV of Lease Payments to determine the Net NPV of Lease which will be used in the evaluation and will be compared to the Transaction Threshold as described in Section 2.3.2 Threshold Review.

Required Pricing Information

Proponents will submit pricing for either an Asset Purchase Valuation or Lease Valuation (Part A). For both options, proponents will submit pricing for Part B – Cost of Processing Niagara Region's Collected Materials.

Proponents shall calculate their pricing using the excel worksheets provided in **Appendix D – Pricing Workbook**.

Appendix D – Pricing Workbook is divided into three (3) separate worksheets: 'Bidding System', 'Purchase', and 'Lease'. The tables on the Bidding System worksheet will auto-populate based on the completion of the corresponding 'Purchase' or 'Lease' worksheet.

Proponents shall refer to the instructions' in the 'Purchase' and 'Lease' worksheets in Appendix D – Pricing Workbook for direction for completing the pricing.

Proponents shall use the 'Purchase' or 'Lease' worksheet to calculate their bid prices. Proponents shall complete the yellow highlighted cells ('Purchase' cells are: B10, B11 and B22; 'Lease' cells are: B10, E13 and B23).

Proponents shall copy the values populated in the 'Value' column for either the 'Pricing Form for Asset Purchase' or 'Pricing Form for Lease Valuation' table into the corresponding table in the bidding system.

The tables submitted through the bidding system will constitute the proponent's proposal. The worksheets are not to be submitted. It is the responsibility of the proponent to independently ensure the correctness of any formulae that perform the NPV and other calculations and auto-populate the spreadsheet with the final pricing numbers to be entered into the bidding system.

Evaluation Framework

Niagara Region has developed an evaluation framework that factors in both the amount to be paid for an asset purchase or lease transaction with purchase of equipment as well as the cost to process Collected Material for the interim period until Niagara Region is transitioned to Full Producer Responsibility.

Niagara Region shall review the values submitted by the proponent in the bidding system to determine whether it exceeds Transaction Threshold as identified in Section 2.3.2.

The top ranked proponent will be the proponent with the **highest Net Purchase Price or Net NPV of Lease that exceeds the Transaction Threshold**.

APPENDIX C – SUBMISSION FORM

Proponents should refer to the instructions attached to the solicitation for the Appendix C – Submission Form requirements and provide all required information in accordance with the instructions provided in the bidding system.

2021-RFP-209 - Disposition or Lease of Niagara Region owned Material Recycling Facility (MRF) and Provision of Processing Services

Opening Date: December 2, 2021 12:15 PM

Closing Date: February 2, 2022 2:00 PM

Schedule of Prices

The Bidder hereby Bids and offers to enter into the Contract referred to and to supply and do all or any part of the Work which is set out or called for in this Bid, at the unit prices, and/or lump sums, hereinafter stated. HST is additional.

* Denotes a "MANDATORY" field.

Do not enter \$0.00 dollars unless you are providing the line item at zero dollars to the Owner.

If the line item and/or table is "NON-MANDATORY" and you are not bidding on it, leave the table and/or line item blank. Do not enter a \$0.00 dollar value.

Pricing Form for Asset Purchase

Complete using values from Appendix D - Pricing Workbook, 'Bidding System' worksheet, 'Pricing Form for Asset Purchase' table.

We will not be submitting for Pricing Form for Asset Purchase

Line Item	Part	Line Description	Value *
1	Part A - Asset Purchase Valuation	Purchase Price for Land, Buildings and Vehicle Weigh Scales	
2	Part A - Asset Purchase Valuation	Purchase Price for Equipment	
3	Part A - Asset Purchase Valuation	Total Purchase Price	
4	Part B - Cost of Processing Niagara Region's Collected Materials	Processing Cost per Tonne	
5	Part B - Cost of Processing Niagara Region's Collected Materials	Total Processing Cost/ Regional Expense	
6	Overall	Net Purchase Price*	

Pricing Form for Lease Valuation

Complete using values from Appendix D - Pricing Workbook, 'Bidding System' worksheet, 'Pricing Form for Lease Valuation' table.

We will not be submitting for Pricing Form for Lease Valuation

Line Item	Part	Line Description	Value *
1	Part A - Lease Valuation	Minimum Purchase Price for Equipment (upfront)	
2	Part A - Lease Valuation	Capitalization Rate with Inflation / Discount Rate**	
3	Part A - Lease Valuation	Inflation or Growth (annual rate of change for future lease payments)	
4	Part A - Lease Valuation	Base Lease Payment	
5	Part A - Lease Valuation	Present Value of Lease Payments for Land, Buildings and Vehicle Weigh Scales	
6	Part A - Lease Valuation	Present Value of Terminal Asset Value***	
7	Part A - Lease Valuation	NPV of Lease Payments (less remediation costs)	
8	Part B - Cost of Processing Niagara Region's Collected Materials	Processing Cost per Tonne	
9	Part B - Cost of Processing Niagara Region's Collected Materials	Total Processing Cost/ Regional Expense	
10	Overall	Net NPV of Lease*	

Specifications

Attestation of Mandatory Technical Requirements

Line Item	Mandatory Technical Requirement	Complies (Yes/No) *
1	The proponent/subcontractor has a minimum of five (5) consecutive years of experience marketing and processing a minimum of 74,000 tonnes of municipal recyclable materials annually, within the last seven (7) years.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2	The proponent/subcontractor have had no financial penalties levied from regulatory noncompliance by the MECP as the result of any contravention of the Environmental Protection Act over the past five (5) years as supported by a signed statement from the proponent/subcontractor uploaded to 'Documents'.	<input type="checkbox"/> Yes <input type="checkbox"/> No

Proponent Information

Please fill out the following form, naming one person to be the proponent's contact for the RFP process and for any clarifications or communication that might be necessary.

Description	Response *
Full Legal Name of Proponent:	
Any Other Relevant Name under which Proponent Carries on Business:	
Street Address:	
City, Province/State:	
Postal Code:	
Phone Number:	
Company Website (if any):	
Proponent Contact Name:	
Proponent Title Name:	
Proponent Contact Phone:	
Proponent Contact Email:	

Corporate Overview

Completion of this table is for informational purposes only. It will not form part of the evaluation of proposals.

Line Item	Requested Information	Response
1	Company Officers, including: Company Name, Officer Name, Current Position, Number of Years with Company	
2	Experience of Senior Management Team in Company (e.g. senior level Contract Administrator, VP of Operations, CEO), including: Name, Current Position, Description of Experience in Contracts with a minimum of five (5) consecutive years of marketing and processing a minimum of 74,000 tonnes of municipal recyclable materials annually, within the last seven (7) years	
3	Number of Employees	
4	Office and facility locations	
5	Number of years of company experience in operation of municipal processing and marketing service provision	

Processing and Marketing Contract Experience

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Company Name (Contractor or Sub-Contractor)	Number of processing and marketing contracts	Municipality	No. of consecutive years in contract	Start date of contract	End date of contract	Minimum number of tonnage processed and marketed annually during term of contract	Total contract value at time of award	Address of processing facility

Sub-Contractors

The Bidder shall state all Subcontractor(s) and type of Work proposed to be used for this project. Bidders shall not indicate "TBD" (To Be Determined) or "TBA" (To Be Announced) or similar wording and shall not indicate multiple choices of Subcontractor names for any Subcontractor category in their list of Subcontractors.

The Bidder shall state only one (1) subcontractor for each type of work.

List of Sub-Contractors

In the spaces provided below, please list those sub contractors you intend to use:

By clicking here I confirm that there are no Subcontractor(s) and the Bidder shall perform the project with their "OWN FORCES".

Line Item	Organization	Contact Name	E-mail	Phone
1				
2				
3				
4				
5				

Documents

It is your responsibility to make sure the uploaded file(s) is/are not defective or corrupted and are able to be opened and viewed by the Owner. If the attached file(s) cannot be opened or viewed, your Bid Call Document may be rejected.

- Signed statement that the proponent/subcontractor have had no financial penalties levied from regulatory noncompliance by the MECF as the result of any contravention of the Environmental Protection Act over the past five (5) years. * (mandatory)

Appendix B

1. Acknowledgment of Non-Binding Procurement Process

The proponent acknowledges that the RFP process will be governed by the terms and conditions of the RFP, and that, among other things, such terms and conditions confirm that this procurement process does not constitute a formal, legally binding bidding process (and for greater certainty, does not give rise to a Contract A bidding process contract), and that no legal relationship or obligation regarding the procurement of any good or service will be created between Niagara Region and the proponent unless and until Niagara Region and the proponent execute a written agreement for the Deliverables.

2. Ability to Provide Deliverables

The proponent has carefully examined the RFP documents and has a clear and comprehensive knowledge of the Deliverables required. The proponent represents and warrants its ability to provide the Deliverables in accordance with the requirements of the RFP for the rates set out in its proposal.

3. Non-Binding Pricing

The proponent has submitted its pricing in accordance with the instructions in the RFP and in Pricing (Appendix C) in particular. The proponent confirms that the pricing information provided is accurate. The proponent acknowledges that any inaccurate, misleading or incomplete information, including withdrawn or altered pricing, could adversely impact the acceptance of its proposal or its eligibility for future work.

4. Addenda

The proponent is deemed to have read and accepted all addenda issued by Niagara Region prior to the Deadline for Issuing Addenda. The onus remains on proponents to make any necessary amendments to their proposals based on the addenda.

5. No Prohibited Conduct

The proponent declares that it has not engaged in any conduct prohibited by this RFP.

6. Conflict of Interest

The proponent has considered the definition of "Conflict of Interest" in Section 3.4 of the RFP and declares that there is no Conflict of Interest relating to the preparation of its proposal, and no foreseeable Conflict of Interest in performing the contractual obligations contemplated in the RFP.

7. Disclosure of Information

The proponent hereby agrees that any information provided in this proposal, even if it is identified as being supplied in confidence, may be disclosed where required by law or by order of a court or tribunal. The proponent hereby consents to the disclosure, on a confidential basis, of this proposal by Niagara Region to the advisers retained by Niagara Region to advise or assist with the RFP process, including with respect to the evaluation of this proposal.

I have the authority to bind the organization.

The proponent has considered the definition of "Conflict of Interest" and declares that there is no Conflict of Interest relating to the preparation of its proposal, and no foreseeable Conflict of Interest in performing the contractual obligations contemplated in the Bid.

Select No to state you do not have a conflict.

Yes No

The Bidder acknowledges and agrees that the addendum/addenda below form part of the Bid Document

Please check the box in the column "I have reviewed this addendum" below to acknowledge each of the addenda.

File Name	I have reviewed the below addendum and attachments (if applicable)	Pages
There have not been any addenda issued for this bid.		

