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Colorado Paint Stewardship Program

Request for Proposal

Paint Transportation and Processing Services

Release Date

February 18, 2015

Due Date

March 12, 2015

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I. INTRODUCTION AND RFP PROCESS

A. Introduction

The Colorado Architectural Paint Stewardship Act became law in June 2014. It follows the passage of similar model, industry-supported paint stewardship legislation in seven other states.

The American Coatings Association established PaintCare Inc., a non-profit 501(c)(3) organization, to implement state-mandated paint stewardship programs on behalf of paint manufacturers in each state that adopts a paint stewardship law.

Similar to the other paint stewardship programs (“PaintCare programs”), the broad purpose of the Colorado paint stewardship legislation is for the paint manufacturing industry to develop and implement a program to reduce, reuse, collect and recycle postconsumer paint, and to reduce the cost to municipal household hazardous waste programs of managing postconsumer paint products.

To accomplish the paint collection and recycling goals of the legislation, PaintCare will establish a network of paint Drop-Off Sites throughout the state by partnering with existing household hazardous waste programs, paint retailers, solid waste transfers stations, and other convenient locations for the public. PaintCare will also hold one-day paint collection events and offer a direct pick up service for entities with large volumes (e.g., painting contractors). The purpose of this RFP is to identify service providers to provide paint transportation and processing services for the programs.

All PaintCare programs are funded by an assessment (“PaintCare Fee”) on each container of new Architectural Paint sold in the state after the state program begins. The fee is added to the wholesale price of paint by manufacturers and passed down through retailers to consumers. Manufacturers collect the fees and pass them to PaintCare to operate the program.

For more information about PaintCare and its programs, visit www.paintcare.org.

B. Calendar of Key Events

Event	Date
RFP Issued	February 18, 2015
Closing date to submit Proposal	March 12, 2015
Contract(s) Awarded	April 15, 2015
Contract(s) Initiated for Pre-Program Services	May 15, 2015
Program Implementation Date	July 1, 2015

C. RFP Questions

It is the responsibility of Bidders to request clarification of any RFP details by sending an email before the due date to Marjaneh Zarrehtarvar at mzarrehtarvar@paint.org.

D. State Permitting

The States of Colorado may have specific requirements for paint and hazardous waste management. To learn more about the state's rules and permit requirements, please contact the state directly at:

Department of Public Health and Environment

Hazardous Materials Customer Technical Assistance

(303) 692-3320 | comments.hmwmd@state.co.us

II. STATEMENT OF WORK & TERMS AND CONDITIONS

A. Definitions

“Architectural Paint” means interior and exterior architectural coatings sold in containers of five gallons or less for commercial or homeowner use. It does not include aerosol spray paints, or industrial, original equipment manufacturer and specialty coatings.

“Bid” means a proposal submitted in response to this RFP.

“Bidder” means a person, company, organization or governmental entity submitting a Bid under this RFP.

“CESQG” is an acronym for Conditionally Exempt Small Quantity Generators (CESQG). A CESQG (a) produces less than 220 pounds of hazardous waste each month; produces less than 2.2 pounds of acutely hazardous waste each month; and accumulates no more than 2,200 pounds of hazardous waste on site.

“Closing Date” means the date and time on or before all Proposals must be submitted.

“Collection Bins” are containers provided by or approved for use by PaintCare or its contractors to hold Program Products. They may include reusable or single-use boxes and drums, and roll-off containers.

“Drop-Off Site” means a physical location authorized by the Program for collection of Program Products.

“Contract” means the executed contract between a Contractor and PaintCare.

“Contractor(s)” means any Bidder awarded a contract with PaintCare as a result of submitting a Proposal in response to this RFP.

“Indemnified Parties” means (a) PaintCare and its sole member (as identified in its Certificate of Incorporation), and their member companies, officers, directors, stockholders, employees, successors, assigns, and agents, and invitees, and (b) any individual or entity who has signed a Drop-Off Site contract with PaintCare relating to any Drop-Off Site from which the Contractor picks up Program Products under this Agreement, as well as that entity’s/individual’s officers, elected officials, directors, stockholders, employees, successors, assigns, and agents.

“Law” means all existing and future federal, state, and local statutes, laws, codes, ordinances, decrees, rules, regulations, requirements, and orders, of any governmental authority, entity, or agency whether federal, state, municipal, local, or other government body or subdivision, including those relating to transportation, unemployment compensation, worker’s compensation, disability, taxes, worker and public health and safety, the environment, and the Program.

“Legislation” means Colorado Paint Product Stewardship Act (SB 14-029), to be codified at Colorado Revised Statutes §§ 25-17-401 - 410 (2014).

“PaintCare” is a tax-exempt entity established under Section 501(c)(3) of the Internal Revenue Code that will carry out the responsibilities of the “stewardship organization” referred to in the Legislation.

“Processing Facility” means a physical location vetted and selected by the Contractor where Program Products from Drop-Off Sites are taken for sorting, temporary storing and/or end-of-life management.

“Program” means the Colorado Paint Stewardship Program set forth in the Legislation and implemented by PaintCare.

“Program Products” means leftover, postconsumer Architectural Paint collected by the Program. Examples of Program Products are included in Appendix A.

“RFP” is an acronym for Request for Proposal.

“Roll-off” means a metal container in sizes from 10 to 40 cubic yards that may be used for hauling larger amounts of Program Products.

“State” means the State of Colorado.

“Transportation Providers” mean independent contractors hired by PaintCare to transport Program Products from the Drop-Off Sites.

B. Program Contract Award(s) and Terms and Conditions

Selected Bidders will be required to enter into a written Contract with PaintCare. PaintCare reserves the right to negotiate actual contract details after a Contractor(s) has been selected. This RFP does not constitute an offer to enter into any business agreement or relationship, nor should any intent to enter into a contract, agreement or relationship be construed.

Bidders are advised in advance that the Terms and Conditions specified in subsections (1) and (2) below will apply to any Contract awarded in connection with this RFP and will apply to the RFP process.

1. Special Contract Terms and Conditions

1.1 Contractors are and shall be deemed independent contractors and not agents or employees of PaintCare, and nothing contained herein shall be construed as constituting any relationship other than independent contractor.

1.2 PaintCare shall have no authority to: (a) manage, direct, or supervise employees, representatives, or agents of any Contractor, including how they perform the work and achieve compliance with applicable law; (b) Contractors shall be responsible for (i) making day-to-day and critical decisions regarding the collection, transportation, processing, treatment, recycling, reuse, recovery for energy, and/or disposal of paint under their contracts and the undertaking, managing, and supervising of those activities; and (ii) achieving compliance with all applicable Law. PaintCare shall not have responsibility for making day-to-day and critical decisions about or undertaking, managing, or supervising activities identified under clause (b)(i) or achieving compliance with the Law under clause (b)(ii).

1.3 PaintCare shall have the right to (a) monitor and verify that Contractors have complied with their Contracts and applicable Law, and (b) consult with Contractors about such compliance, including the transportation of any Program Products to Processing Facilities, and processing and end-of-life management of any Program Products; provided, however, that PaintCare shall not and disclaims any ability to control, supervise, or manage (i) the employees of the Contractor; (ii) the activities undertaken by Contractor; and (iii) the means by which Contractor meets the requirements of the Contract. PaintCare or its designee may, with 72 hours' notice, audit and inspect, with full access, Contractor's and its subcontractors' storage, processing and disposal facilities that handle Program Products during the facilities' hours of operation.

1.4 The Contractor agrees to maintain and to make available to PaintCare, during regular business hours, accurate books and accounting records relating to its services under the Contract. The Contractor will permit PaintCare or its designee to audit, examine, and make excerpts and transcripts, for any books or records, and to make audits of invoices, materials, payrolls, records or personnel and other data related to all other matters covered by the Contract. The Contractor shall maintain such data and records in an accessible location and condition for a period of not less than three (3) years from the date of the report, or after final payment under the Contract, or until after final audit has been resolved, whichever is later. The Contractor will include this requirement in any subcontract for services performed under the Contract.

1.5 Contractor, for itself, its successors and assigns, agrees to defend, indemnify, and hold harmless the Indemnified Parties from and against all claims, suits, demands, obligations, losses, damages (including punitive or exemplary damages), liabilities, expenses (including legal fees, expenses of litigation, court costs, and reasonable costs of investigation), and causes of action of every kind whatsoever, whether based in contract, tort, statute, common law, or strict liability, which are claimed in any way to result from, arise out of, or are connected with the performance of the work, services,

operations, or obligations under the Contract awarded to the Contractor. This indemnification shall not apply to the extent any claims, suits, demands, obligations, losses, damages, liabilities, expenses, or causes of action are proven to result from the negligence, willful misconduct, or breach of the Contract attributable to an Indemnified Party.

1.6 NOTWITHSTANDING ANY OTHER PROVISION OF THE CONTRACT, EXCEPT FOR PARAGRAPH 1.5 ABOVE, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER, REGARDLESS OF WHETHER ANY CLAIM IS BASED IN CONTRACT OR TORT, FOR ANY SPECIAL CONSEQUENTIAL, INDIRECT, OR INCIDENTAL DAMAGES, INCLUDING LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THE CONTRACT OR THE SERVICES PERFORMED IN CONNECTION WITH THE CONTRACT.

1.7 PAINTCARE'S COMMERCIAL PAYMENT OBLIGATIONS UNDER THE CONTRACT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN THE CONTRACT.

1.8 It is the responsibility of Contractors to clearly identify any RFP information provided that they consider to be proprietary, confidential, or trade secret. Contractor acknowledges that as the Program stewardship organization, PaintCare has certain reporting obligations to the State of Colorado regarding the status and progress of the Program. This may include providing information to the States that is furnished by Contractors, including contract administration data. Contractor acknowledges that the Colorado Open Records Act and other state and federal Law generally require the disclosure of documents in the possession of the States upon request of any citizen, unless the content of the document falls within certain categories of exemption.

1.9 PaintCare may, by written notice of default to the Contractor, terminate the Contract in whole or in part if the Contractor fails to: (a) deliver the supplies or to perform the services within the time specified in the Contract with PaintCare or any extension; (b) make progress, so as to endanger performance of the Contract; (c) perform any of the other provisions of the Contract; or (d) violate any applicable environmental law or regulation. PaintCare's right to terminate the Contract under this Paragraph may be exercised if the Contractor does not cure any failure specified above within ten (10) days after receipt of the notice from PaintCare specifying the failure. If the Contract is terminated under this paragraph, PaintCare shall pay Contractor for services performed up to the date of termination of the Contract or of any services provided under the Contract, whichever is earlier.

1.10 PaintCare may terminate the Contract at any time upon ninety (90) days' written notice to the Contractor.

1.11 Any Contract awarded under this RFP may not be assigned, novated, or otherwise transferred by operation of law by the Contractor without the prior written consent of PaintCare, which consent shall not be unreasonably withheld. Any change of control of the Contractor shall be deemed an assignment that requires the prior written consent of PaintCare. For purposes of this RFP, a “change in control” includes any merger, consolidation, sale of all or substantially all of the assets or sale of a substantial block of stock of the Contractor.

1.12 The Contractor may not further contract any part of the work described within this RFP without prior written approval from PaintCare.

1.13 The Contractor may not change product management options or locations without prior written approval from PaintCare. PaintCare or its representatives may perform field audits of all service locations prior to granting approval.

1.14 The Contractor must comply with all applicable federal, state, and local regulations in performing its obligations under the Contract and be able to provide evidence of the same upon request. The Contractor shall be environmentally responsible and shall use (and ensure its Processing Facilities use) industry best practices to safeguard against and minimize environmental impacts associated with its performance of its Contract obligations. The Contractor shall promptly notify PaintCare in writing upon discovery of any failure, or any allegation of any failure, of the Contractor or any Processing Facility to comply with any Law relevant to the performance of its Contract obligations.

1.15 The Contractor shall take every precaution to protect all public and private property during the performance of its Contract obligations. PaintCare shall not be responsible for any damage to persons or property as a result of the use, misuse, or failure of any equipment used by the Contractor, or by any of its employees or contractors. If in the course of rendering the services and fulfilling its Contract obligations, a Contractor’s personnel or equipment cause any damage to the property of PaintCare or any third party, Contractor, at its sole expense, shall promptly replace the damaged property or repair it to the condition existing before the damage.

1.16 The Contractor shall have title to and risk of loss and liability for any Program Products that the Contractor receives through the Program, including but not limited to any risk of loss and liability under the federal Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*, and all other applicable Law.

1.17 The Contractor at its own expense shall carry and maintain on a continuous basis the following

insurance coverage during the term of the Contract and thereafter as provided below, unless self-insured in a manner approved by PaintCare in writing:

- a. Commercial General Liability insurance written on an “occurrence basis” covering personal injury, property damage, and bodily injury and death with limits not less than \$1,000,000 each occurrence, and \$2,000,000 in the aggregate. The Commercial General Liability insurance carried pursuant to this Paragraph 1.18 shall include: (i) comprehensive form; (ii) premises – operations, improvements, and equipment; (iii) explosion and collapse hazard; (iv) underground hazard; (v) products/completed operations hazard; (vi) contractual insurance; (vii) broad form property damage; (viii) independent contractors; (ix) personal injury; and (x) all liability assumed under and indemnities provided under this Agreement;
- b. Comprehensive Commercial Automobile Liability insurance written on an occurrence basis covering bodily injury and property damage with limits not less than \$1,000,000 for each occurrence combined single limit, or such greater amounts as are customary in the industry;
- c. Workers’ Compensation Insurance as required by state law for the states that Bidder employs personnel to fulfill its obligations under the Contract;
- d. Contractors Pollution Liability Insurance with limits not less than \$2,000,000 each occurrence, and \$5,000,000 in the aggregate, including coverage for on-site or off-site claims for bodily injury, death, property damage or clean-up costs, for on-site and off-site clean-up and abatement costs and natural resource damages, for releases during transportation and related claims, clean-up, abatement or damages, and for costs incurred for clean-up or abatement or for other damages or claims at or in connection with any non-owned disposal, treatment, recycling, reclamation, unloading, storage, or other such locations on a blanket basis; and
- e. Excess/umbrella follow form coverage covering the risks insured in the above policies with limits of not less than \$2,000,000 each occurrence, and \$5,000,000 in the aggregate (all of the foregoing, the “Required Insurance”).
- f. PaintCare reserves the right to require additional insurance in greater amounts.

1.18 Except for Workers Compensation, the Required Insurance shall contain or be endorsed to include PaintCare, its officers, agents, and employees, as additional insured, and a waiver of subrogation in favor of PaintCare and its officers, agents, and employees. The Contractor agrees to obtain any endorsement that may be necessary to affect the waiver of subrogation. Except for Workers Compensation, the Required Insurance policies shall contain a written statement in the

policies or in endorsements thereto that they are each primary insurance (except that the excess/umbrella policy is excess to the indicated policies only) to any other insurance available to the Contractor or to any additional insureds or additional named insureds, and shall contain a separation of insureds provision stating that the insurance applies separately to each insured against whom a claim is made or a suit is brought and that the actions or omissions of any insured which might give rise to application of an exclusion to coverage shall only apply to that insured actually committing the actions or omissions.

1.19 Except for Workers Compensation, the Required Insurance shall be endorsed (through a blanket provision) to include any individual or entity who has signed a collection contract with PaintCare relating to a Drop-Off Site from which the Contractor picks up Program Products under the Contract, as well as that individual's/entity's elected officials, officers, directors, stockholders, employees, successors, assigns, and agents..

1.20 The Contractor shall provide a certificate of insurance complying with Paragraph 1.17 within fifteen (15) days of execution of the Contract or twenty-four (24) hours before performance under the Contract commences, whichever date is earlier, demonstrating that the Required Insurance is in full force and effect and all premiums paid. The certificate of insurance shall have no disclaimers of liability. All Required Insurance shall be placed with insurers with rating comparable to A-, VIII, or higher, that are authorized to do business in any state in which the Contractor transports Program Products and intends to process Program Products, including the state of Colorado. Certified copies of all binders of insurance, policies of insurance, and all endorsements thereto shall be provided to PaintCare within seven (7) days of its written request for the same.

1.21 All Required Insurance policies shall provide thirty (30) days' advance written notice to PaintCare of reduction or nonrenewal of coverage or cancellation of coverage for any reason.

1.22 Should any of the above policies be cancelled before the expiration date thereof, notice shall be delivered in accordance with policy provisions.

1.23 Should any of the Required Insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double each occurrence or each claim limits specified above.

1.24 Should any of the Required Insurance lapse during the term of the Contract, requests for payments originating after such lapse shall not be processed until PaintCare receives satisfactory

evidence of reinstated coverage as required by the Contract, effective as of the lapse date. If insurance is not reinstated, PaintCare may, at its sole discretion, terminate the Contract effective on the date of such lapse of insurance.

1.25 All deductibles, self-insured retentions, or similar amounts under the Required Insurance policies shall be in amounts acceptable to PaintCare in its sole discretion. All deductibles, self-insured retentions or similar amounts shall be the sole responsibility of the Contractor and shall not be paid by or payable by PaintCare.

1.26 If a subcontractor will be used to complete any portion of the Contract or to provide any services, the Contractor shall ensure that the subcontractor provides insurance coverage as set forth herein and meeting all of the above requirements for the Required Insurance, including naming the parties designated above and the Contractor as additional insureds in conformity with the above provisions and provide a waiver of subrogation.

1.27 All Required Insurance shall be subject to audit and review by PaintCare or its designees at any time. The Contractor promptly shall cooperate with all reasonable requests made in connection with such audit or review. If any deficiencies are found during such audit or review related to any of the Required Insurance, they shall be corrected by the Contractor at its sole expense as soon as reasonably possible and, in any event, within fourteen (14) days of being provided with notice thereof.

1.28 The Contractor understands and agrees that all persons performing work pursuant to the Contract are, for purposes of Workers' Compensation liability, solely employees of the Contractor and not employees of PaintCare. The Contractor shall be solely liable and responsible for furnishing any and all Workers' Compensation benefits to any person as a result of any injuries arising from or connected with any work performed by or on behalf of the Contractor pursuant to the Contract.

1.29 The Contractor shall be responsible for safety, health, and environmental protection related to and in the performance of its obligations under the Contract and shall take appropriate measures required by applicable Law and legal standards to avoid liability to: (a) provide and maintain safe, health-protective, and environmental-protective working areas at or in proximity to where the Contractor performs any services under the Contract, including adjacent areas, and (b) protect and safeguard (i) all persons at or in proximity to where the Contractor renders the services, including those in adjacent areas, from risk or injury and danger to health, and (ii) property and equipment from damage or loss.

1.30 The Contractor shall be aware of and comply with: (a) the requirements for hazardous waste collection facilities pursuant to all applicable Law; (b) all applicable Law governing the generation, handling, management, treatment, storage, or disposal of hazardous wastes; and (c) all applicable health, safety, and environmental Law, including but not limited to the requirements of the U.S. Occupational Safety and Health Administration (“OSHA”), U.S. Environmental Protection Agency (“EPA”), delegated state programs authorized by OSHA and EPA.

1.31 The Contractor shall not allow or cause the release of hazardous substances, hazardous wastes, or hazardous materials that require a notification, cleanup, or response action under any applicable Law, including but not limited to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 6901 *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 *et seq.* and any state or local law.

1.32 The Contractor shall notify PaintCare immediately of any event during the performance of the services that requires reporting to any governmental authority under any applicable Law, including but not limited to reporting to the National Response Center because of the release of a reportable quantity of hazardous substances pursuant to 42 U.S.C. § 9603 or under any state or local law. Contractor shall make such report immediately and shall ensure that any such notification or report is made within the applicable time limits and shall not delay the making of such report or notification because of any inability to notify PaintCare.

1.33 In the event of any action or occurrence during the performance of the Contractor’s obligations under the Contract which causes or threatens a release of a hazardous substance, hazardous waste, or hazardous material into the environment which presents or may present an imminent and substantial endangerment to public health or welfare or the environment and/or requires cleanup or a response action under applicable Law, the Contractor shall immediately notify PaintCare and shall take all appropriate action to prevent, abate, minimize, and cleanup such release and endangerment in conformance with applicable Law including applicable cleanup standards. The Contractor (and not PaintCare) shall be responsible for the costs of such action and any liability and damages of any type, including actual, incidental, consequential, and punitive damages, arising from any action or occurrence identified in this paragraph 1.33. The Contractor shall not delay the undertaking of appropriate action because of any inability to notify PaintCare.

1.34 Authorization. The Contractor represents and warrants that the Contractor has full power and authority to enter into the Contract and to perform the obligations set forth therein, and the representative(s) signing the Contract on the Contractor’s behalf represents that he/she has the

authority to execute the Contract on behalf of the Contractor and to bind the Contractor to its contractual obligations hereunder.

2. Terms and Conditions

2.1 Bids must provide pricing and supporting information for both transportation and processing – bids for only one or the other will not be accepted. Bidders are permitted to limit their Bids to services relating to only latex or only oil-based Program Products. Likewise, Bidders are permitted to limit their Bids to services relating to only certain geographic areas and/or particular collection sites.

2.2 Failure to comply with or taking exception to the terms and conditions specified in the RFP could lead to the response being considered non-responsive with no further evaluation of the Bidder's Proposal.

2.3 PaintCare is not be obligated or bound to accept any Bid or the lowest pricing quoted in any Bid.

2.4 PaintCare is not be obligated to disclose any information about the winning Bid or Bids.

2.5 PaintCare is not be responsible for any costs incurred by a Bidder in preparing a response to the RFP.

2.6 The awarding of any Contract as a result of this RFP will be at the sole discretion of PaintCare.

2.7 PaintCare reserves the right to award the Contract as a whole to one service provider or may contract with more than one service provider to supply the same service in the same or different geographic region.

2.8 PaintCare reserves the right to contract with service providers who do not submit Proposals.

2.9 The Contractor shall not disclose any details in connection with the Contract to any person or entity except as may be otherwise provided hereunder or required by law. However, in recognizing the Contractor's need to identify its services and related clients to sustain it, PaintCare shall not inhibit the Contractor from publishing its role in the Program within the following conditions:

- a. The Contractor may utilize and develop publicity material regarding the PaintCare Program only upon the prior written consent of PaintCare, which consent shall not be unreasonably withheld; and
- b. During the term of the Contract, the Contractor shall not, and shall not authorize another to,

publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of PaintCare without the prior written consent of PaintCare, which consent shall not be unreasonably withheld.

2.10 Unless earlier terminated pursuant to the Contract terms, the Contract will remain in full force and effect for two (2) years from the Contract effective date.

2.11 Option Years. The Contract shall be automatically renewed each year for additional one (1) year terms unless either party notifies the other in writing at least sixty (60) days in advance of the renewal term commencement date that the Contract shall not be renewed.

2.12 The pricing of each option year will be the same as the pricing during the previous contract period unless otherwise agreed to in writing by PaintCare.

2.13 Payment for all services shall be made in U.S. currency. PaintCare shall pay the Contractor upon receipt of a proper invoice.

a. Each proper invoice will include the information set forth below:

- i. The unique, identifying invoice number;
- ii. The specific work categories of services provided for under the Contract;
- iii. The specific quantity of units invoiced under each category, as appropriate;
- iv. The total invoice amount; and
- v. Additional information as required by PaintCare.

b. Each proper invoice will include a statement by the Contractor employee responsible for submitting the invoice that certifies that the invoice accurately reflects the work performed and the monies owed to the Contractor.

All amounts paid by PaintCare to the Contractor are subject to audit by PaintCare, as set forth in paragraph 1.4.

C. Operational Overview of Program

1. Collection: Program Products will be received from the public at Drop-Off Sites located across Colorado. We expect most Drop-Off Sites to comingle water-based (latex) and oil-based Program Products in the same Collection Bins; most Drop-Off Sites will not be expected to sort and store them separately. Certain Drop-Off Sites may be permitted to distribute some of the collected Program Products to consumers for reuse. Program Products not distributed for reuse or other

PaintCare approved uses will be placed in Collection Bins and managed by the Program. PaintCare anticipates approximately 200 Drop-Off Sites in Colorado, the majority being paint retailers.

2. Transport and Load Consolidation: Collection Bins filled with Program Products will be picked up by Transportation Providers contracted by the Program and transported to Processing Facilities. Transportation Providers may haul full or partial loads depending on how they structure their routes and the proximity of designated Processing Facilities to Drop-Off Sites.

3. Processing Facility: Weighing, sorting, storing, repackaging, bulking, end-of-life processing and data collection of Program Products will occur at Processing Facilities. Program Products will be sorted and managed by type (latex or oil-based) and other criteria.

4. End-of-Life Management: It is anticipated that most latex paint will be reprocessed into recycled-content paint, and a second tier of off-spec or unmarketable colors paint will be processed into a non-paint products or used in a beneficial process. Even lower quality paint may require disposal through solidification and landfill. Oil-based paint may be recycled back into other paint products or utilized for energy value. Emptied containers (metal and plastic) should be recycled where possible.

5. Non-Program Products: A small amount of non-Program Products (e.g., paint thinners) may inadvertently be received through the Program. Contractors, as well as any Processing Facilities they employ, must be prepared to sort, classify, package and properly manage non-Program Products.

6. Tracking and Reporting: Contractors will be required to provide the Program with monthly and annual records and reports as well as other related information for tracking and reporting purposes, as required by the Program. Reports will include:

- Number of Collection Bins and weight;
- Received date;
- Copies of associated bill of lading, manifest or other shipping documents;
- Pounds and gallons of paint processed, broken down by Program Product type (oil-based vs. latex) and broken down by processing method;
- Methodology and conversion factors used to determine pounds and gallons;
- Destination facility, description or processing method and percentage of each processing methods; and
- Pounds of plastic and metal containers recycled.

- For each Processing Facility, annual recycling certificates or other written documents signed by a knowledgeable person verifying that all Program Products brought to that Processing Facility during the certification period were appropriately processed in accordance with the requirements of the Contract.

D. Quantity and Technical Information

The following estimates are based on the best available information from industry studies and experience from other PaintCare programs. This information may be used for planning purposes, but PaintCare does not guarantee any minimum or maximum volume of paint, or that the following information will correspond with actual results in the Colorado Program.

- 1. Estimate of Quantity of New Paint Sold:** In 2013, it was estimated that approximately 13 million gallons of Architectural Paint were sold in Colorado, the large majority of which was likely latex paint.
- 2. Estimate of Postconsumer Paint:** Studies estimate that approximately 10% of Architectural Paint that is sold remains unused and that mature and convenient postconsumer paint collection programs capture 70-80% of the available volume. Active PaintCare programs receive 70-85% latex paint and 15-30% oil-based paint.
- 3. Paint Can Size:** The maximum container size included in the Program at this time is 5 gallons. There is no minimum container size.
- 4. Volume per Container:** Fullness of leftover paint containers vary. Experience in other PaintCare programs indicates that leftover paint containers are 30-40% full on average.
- 5. Empty Paint Cans and Dry Paint:** Empty paint cans are not collected by the Program, but containers with dry paint will be expected to be managed in anticipation of current or future recyclability of the dry paint.
- 6. Weight:** The weight of leftover paint can vary depending on original ingredients and current condition. However, estimated average weights of both latex and oil-based paint are 10 pounds per gallon. The weight of Collection Bins filled with Program Products can vary substantially depending on contents and container size. The average weight of loose packed cubic yard boxes used in other paint stewardship programs is about 750 pounds (gross).

E. Environmental Regulatory Information

Important Note and Disclaimer: The information in this section is intended as a general overview; however, Bidders should not rely on this information and are strongly urged to consult qualified professionals to determine the applicability of hazardous waste management regulations to the work described in this RFP.

1. Labeling: Most Collection Bins filled with Program Products will contain both latex and oil-based paint. Collection Bins filled with oil-based Program Products should be labeled in accordance with all applicable Law. Commingled Collection Bins (containing both latex and oil-based Program Products) must be labeled by the Contractor and will have the following markings:

- Hazardous material marker; labeled as Paint: UN1263 on one-side of the Collection Container.
- DOT Class 3 Flammable Liquid diamond label within six (6) inches of the Hazardous material marker noted above.
- DOT SP-11624 (2" letters) on two sides of the collection container.

The following photo shows a properly labeled, full Collection Container from the Oregon programs.



2. DOT Special Permit-11624: Non-DOT specification Collection Bins used in the Program must meet the specifications of DOT-SP11624, and all Contractors must be party to DOT SP-11624.

E. Collection Bins

- 1. Disposable Collection Bins:** Corrugated fiberboard boxes – commonly referred to as gaylords – will be utilized by the Program for the storage and transport of Program Products. Contractors will supply these containers. Disposable Collection Bins must have a lid.
- 2. Reusable Collection Bins:** In an effort to minimize waste and to accommodate outdoor storage, the Program may utilize waterproof reusable Collection Bins. These bins are typically one cubic yard in size, have an integrated pallet, are leak-proof, and stackable by forklift. PaintCare intends to obtain these reusable Collection Bins from sources other than the Contractor. In addition, where appropriate, 55-gallon drums and large roll-off boxes may be utilized, both of which will be supplied by the Contractor. Reusable Collection Bins must have a lid.

F. Transportation Logistics

- 1. Call Center:** Contractor will be required to provide and staff a toll-free call center for Drop-Off Sites to request a pick-up. The call center must be staffed Monday-Friday from 8 am to 5 pm CST and have a message service for off-hours and weekends. An emergency response number must be staffed 24/7.
- 2. Service Schedule:** Maintaining positive working relationships with Drop-Off Sites is essential to Program success. As the Program develops, Transportation Providers will understand collected volumes, frequency of pick-up and logistical limitations of each Drop-Off Site and can better plan for efficient collection. Until then, sites in urban areas will require pick-up within five (5) business days of a request. Sites in rural areas will require pick-up within ten (10) business days of a request. Any modification to this schedule must be approved by PaintCare in writing. Initial delivery of empty Collection Bins to Drop-Off Sites in urban areas must be accomplished within ten (10) business days of a request. Initial delivery of empty Collection Bins to Drop-Off Sites in rural areas must be accomplished within fifteen (15) business days of a request.
- 3. Large Volume Direct Pick-Up:** Most Drop-Off Sites will be permanent sites and available to both households and businesses to drop-off Program Products on a regular basis. However, some large painting contractors, institutions, and other entities or individuals that have accumulated large volumes of Program Products may be offered a direct pick-up from their site. In these cases, Contractor will offer a one-stop service, where Collection Bins are delivered, filled immediately with assistance from the Transportation Provider, and transported away on the same day. In addition, Contractors may be asked to provide labor to facilitate the screening and packing of Program

Products into Collection Bins. A minimum volume for direct pick-up is required (300 gallons at this time). PaintCare receives requests for the service and passed approved customers to the Transportation Provider. PaintCare may limit collection of oil-based Program Products to only households and CESQGs, but intends to collect latex paint from any type of generator.

4. Bills of Lading (BOL) and Manifests: Transportation Providers will provide completed BOLs and/or manifests to Drop-Off Sites at the time of pick-up. These document must contain, at a minimum:

- Drop-Off Site name and address
- Pick-up date
- Unique BOL/manifest number
- Number, type and size of Collection Bins
- Estimated gross weight
- Signature of Drop-Off Site employee
- Signature of Contractor's driver

5. Unloading/Loading: The Program will establish Drop-Off Sites throughout Colorado. Each Drop-Off Site will have its own logistical challenges including container storage and accessibility limitations. Contractors must unload/load all Collection Bins (empty and full) from their vehicle; the Drop-Off sites will not be expected to assist with unloading/loading of Collection Bins. Trucks must be equipped with lift gates and must carry pallet jacks, drum dollies and other equipment as needed the unloading/loading and movement of Collection Bins.

6. Accessibility: Local traffic patterns and Drop-Off Site accessibility will affect the size of the truck that can service a location. Contractors will need to have a variety of truck/trailer combinations to service all Drop-Off Site locations.

G. Representations and Warranties

The Contractor represents, covenants, and warrants that:

1. The Contractor is a company in good standing and qualified to carry on business in Colorado and any other applicable state in which Contractor proposes to perform the services and has the approval, capacity, and authority to enter into the Contract and to supply or utilize the personnel, services and facilities of the Contractor to perform the obligations of the Contractor under the Contract;

2. The Contract does not in any way conflict with any other agreements of the Contractor;
3. The Contractor possesses the business, professional, technical expertise, training, and experience required to perform its obligations under the Contract;
4. The Contractor possesses the equipment, facilities, and employees to perform the obligations under the Contract;
5. The Contractor shall perform its obligations under the Contract in a diligent, safe, and workmanlike manner that conforms with generally accepted industry and professional practices, and the care and skill ordinarily exercised, for such services; and
6. The Contractor and/or its facilities, employees, or agents, have been issued, as of the date of the Contract and throughout the term of the Contract, all material permits, licenses, certificates, or approvals required by applicable statutes, ordinances, orders, rules and regulations necessary to perform its obligations under the Contract.

III. PROPOSAL CONTENT AND INSTRUCTIONS TO BIDDERS

A. General Submission Instructions

1. Proposals must be sent by e-mail in either Microsoft Word or Adobe PDF format to Marjaneh Zarrehparvar at mzarrehparvar@paint.org.
2. Proposals must be received by March 12, 2015. All submissions will have their responses acknowledged.
3. Bidders must prepare a Proposal which addresses all requirements detailed in the RFP, including pricing information. The Proposal must be signed by a duly authorized representative empowered to bind the Bidder.

B. Proposal Content

1. Cover Sheet: Include the following information in the cover sheet:

- “Colorado Paint Stewardship Program”
- Identity of the submitting Bidder
- Name, title and signature of the person authorized to obligate the Bidder contractually
- Name, title, telephone number and email address of the person authorized to negotiate agreements on behalf of the Bidder
- Names, titles, telephone numbers and email addresses of persons to be contacted for clarification and additional information

2. Transportation

Provide the following information on the transportation component of the Program.

2.1 A list of existing transportation resources that will be utilized for this Program, including:

- Transportation facility names and addresses
- Operating hours
- Number of staff
- Number and type of trucks
- Number and type of trailers

2.2 Describe how your call center would manage and track pick-up requests.

2.3 Provide a flowchart or narrative of your proposed transportation system, including how you would coordinate the process from initial pick up request to drop-off at Processing Facilities.

3. Processing Facilities / End-of-Life Management

Provide a list of existing or intended Processing Facilities to be used for managing Program Products.

For each Processing Facility, provide the following information:

- a. Facility name.
- b. Facility address. If the Bidder is proposing to establish a new location, include the intended physical location to the best extent possible (e.g. city and state, region within a state, or state at a minimum).
- c. Detailed description of paint management activities that will take place at the site including sorting, temporary storage, latex end-of-life processing, oil-based end-of-life processing, etc.
- d. Current processing capabilities in gallons per day, per week and per year. If the Bidder is proposing to establish a new location or expand operations at an existing facility, describe future processing volumes and capacities.
- e. Gallons of postconsumer paint processed in the past 12 months.
- f. Describe the types of Collection Bins (including roll-offs) that each Processing Facility is able to receive.
- g. Describe (in narrative or in a flowchart) the process for materials handling of Program Products, empty containers and non-Program Products. Include each of the following that apply:
 - Weighing
 - Sorting
 - Storage
 - End-of-life processing of Program Products
 - Garbage management
 - Non-Program Products management
 - Empty container management

4. Bidder Qualification, Past Performance and Experience

4.1 Provide an outline of the Bidder's experience managing postconsumer paint and/or milk-run programs. Include three current customer references with name, physical address, telephone and e-mail address.

4.2 Provide brief resumes of the key personnel that will be involved in the Program, including their background, expertise and years in the industry.

C. Pricing

Rate sheets: The attached rate sheets (note that there are two tabs) must be submitted for the Proposal to be complete. Pricing should be inclusive of all services and materials required. If a Bidder will use third party Processing Facilities, it is the responsibility of the Bidder to obtain necessary pricing and commitments from those entities. Pricing must be valid through June 30, 2017.

Alternative pricing model: Alternative pricing models may be considered. Please Contact Marjaneh Zarrehtarparvar at mzarrehtarparvar@paint.org to discuss your Proposal for an alternative pricing model.

D. Insurance, Permits, Environmental Compliance, Audit Procedures, and Financial Statements

If your Proposal is considered for Contracting, the following items must be provided prior to finalizing a Contract.

Insurance: Provide evidence of the insurance requirements set forth in paragraph 1.17, or such greater amounts as you currently carry. Prior to the execution of a Contract, Bidders may be required to acquire additional insurance or obtain increased policy limits if, in the sole discretion of PaintCare, such additional insurance coverage is deemed prudent.

Permits: Provide copies of regulatory permits or approvals. If the Bidder is proposing to establish a new location, provide a list of required permits and the regulatory agency responsible for each.

Environmental Compliance Records: Provide environmental compliance history for your company and any proposed Processing Facilities, including copies of violations and corrective actions taken.

Processing Facility Audit Procedures: Provide copies of company audit protocols or other criteria used to vet Processing Facilities (e.g., for financial stability, safety record, environmental compliance, etc.), as well as the results of your company's audit/vetting of each Processing Facility. Audit/vetting procedures

must include verification of end markets for any products that a Processing Facility makes from Program Products.

Financial Statements: Provide a copy of financial statements which have been reviewed or audited by a certified public accountant or federal income tax returns with all attachments for the three most recent fiscal operating years.

IV. EVALUATION CRITERIA

PaintCare intends to award a Contract to the responsible Bidder(s) whose response conforms to the RFP and whose Bid presents the greatest value to achieving the goals of the Program. The goal is to award a Contract to the Bidder(s) that propose(s) the best value, considering all evaluation factors.

PaintCare may award a Contract to a Bidder that demonstrates higher technical competence and/or relevant past experience over the lowest price response; award may not necessarily be made to the Bidder(s) with the lowest price.

PaintCare reserves the right to award to a single or multiple Contractor(s). PaintCare also reserves the right to award the Contract without discussions.

The evaluation of Proposals shall be within the sole judgment and discretion of PaintCare. However, Bidders are advised that the following evaluation criteria will be considered:

Price

PaintCare will conduct an evaluation of the Bidder's Proposal to determine price reasonableness or price realism. Price realism will be a significant factor in the award decision. In evaluation of a bidder's proposed price, PaintCare's concern is to determine what PaintCare should realistically pay for the effort, the prospective bidder's understanding of the proposed Contract objective, and the bidder's ability to organize and perform the proposed Contract. Evaluation criteria includes:

- Is the Bidder's proposed pricing fair, reasonable, and competitive?
- How does Bidder's proposed pricing rank against other Bidders?
- Does Contractor's proposed pricing indicate a potential performance risk?

Bidders should bear in mind that any Proposal that is unrealistically high or low in proposed pricing may be deemed reflective of a lack of understanding of the RFP and a failure to understand the complexity and risk or the requirements as set forth in this RFP.

PaintCare may negotiate with prospective Contractors to clarify or modify price, technical, or other sections of their Proposal.

Relevant Past Experience and Qualifications

Past performance reflects performance on project(s) similar in size, scope, and complexity to the requirements contained in the RFP. (While conducting the past performance assessment, PaintCare may use data obtained from other sources and information outside of what is provided in the Proposal.)

Evaluation criteria includes:

- Does Bidder's Proposal demonstrate that it has experience and the ability to successfully manage and perform each of the applicable components within the RFP?
- Does Bidder have existing infrastructure and financial resources to support the Program?
- Does Bidder have appropriate procedures and capabilities to appropriately audit and vet Processing Facilities?

Technical Understanding

The degree to which the offeror's resources, including people, materials, equipment, and financing, provide sufficient capability and capacity to provide the services required under the Contract. Evaluation criteria includes:

- Has the Bidder demonstrated a thorough understanding of the purpose and scope of the Program?
- Has the Bidder demonstrated an understanding of the deliverables that it is to provide?
- Has the Bidder demonstrated an understanding of the time schedule for implementation and can meet it?

APPENDIX A

Program and Non-Program Products

Program Products

- Interior and exterior architectural paints: latex, acrylic, water-based, alkyd, oil-based, enamel (including textured coatings)
- Deck coatings, floor paints (including elastomeric)
- Primers, sealers, undercoaters
- Stains
- Shellacs, lacquers, varnishes, urethanes (single component)
- Waterproofing concrete/masonry/wood sealers and repellents (not tar or bitumen-based)
- Metal coatings, rust preventatives
- Field and lawn paints

Non-Program Products

- Paint thinners, mineral spirits, solvents
- Aerosol paints (spray cans)
- Auto and marine paints
- Art and craft paints
- Caulking compounds, epoxies, glues, adhesives
- Paint additives, colorants, tints, resins
- Wood preservatives (containing pesticides)
- Roof patch and repair
- Asphalt, tar and bitumen-based products
- 2-component coatings
- Deck cleaners
- Traffic and road marking paints
- Industrial Maintenance (IM) coatings
- Original Equipment Manufacturer (OEM) (shop application) paints and finishes