



RECYCLING CONTRACT NEGOTIATION GUIDEBOOK

NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS

FINAL | May 2009

This study was funded through a solid waste management grant provided by the Texas Commission on Environmental Quality through the North Central Texas Council of Governments. This funding does not necessarily indicate endorsement of the study's findings and recommendations.

R·W·BECK

Mind Powered: Insight with Impact.

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**NORTH CENTRAL TEXAS COUNCIL OF
GOVERNMENTS**

**RECYCLING CONTRACT
NEGOTIATION GUIDEBOOK**

FINAL

TABLE OF CONTENTS

Introduction

Recycling Contracting in North Central Texas.....1

Engaging in the Competitive Procurement Process.....2

Developing General Contract Provisions3

Developing Collection Contract Provisions4

Developing Processing Contract Provisions.....5

Understanding the Financial Terms of Recycling Contracts6

Managing Contract Administration7

Resources and Reference Materials8

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INTRODUCTION

PROJECT BACKGROUND AND PURPOSE

In January 2008, the North Central Texas Council of Governments (NCTCOG) retained R. W. Beck, Inc. (R. W. Beck) to develop a Recycling Contract Negotiation Guidebook (Guidebook). The purpose of this Guidebook is to provide a resource to local governments and private companies in North Central Texas on residential recyclable materials contracting issues.

The NCTCOG received a solid waste management grant from the Texas Commission on Environmental Quality (TCEQ) to develop this Guidebook. This concept of this Guidebook was developed by the Time to Recycle Subcommittee (TTR) of the Resource Conservation Committee (RCC). The TTR identified the need to provide a resource to local governments and private companies in the region to develop more effective recycling service contracts. The need for this effort was further confirmed as a result of the Regional Recycling Rate Benchmarking Study completed by R. W. Beck for NCTCOG.¹ The purpose of this previous study was to develop baseline recycling rates for cities in North Central Texas. Along with the other findings of the

¹ The Regional Recycling Rate Benchmarking Study was funded with a solid waste management grant from the Texas Commission for Environmental Quality.

study, R. W. Beck found that, for many cities in the region, either 1) recycling data was not available for that community or that 2) the city did not have access to their recycling data due to lack of such provisions in the contract with the service provider.

GUIDEBOOK FOCUS

The scope of recyclable materials contracting as a topic is very broad. In order to bring focus to this document, as well as make it relevant to communities and private companies in North Central Texas, R. W. Beck developed the Guidebook with a specific emphasis on residential recycling service contracts. While commercial contracts and franchise agreements can be a significant aspect of municipal recycling programs, commercial recycling is not a focus of this document. However, concepts from this document may be applied, as appropriate, to commercial recycling agreements. In addition, in this Guidebook, R. W. Beck emphasized issues that are prevalent in the North Central Texas region. Relevant issues were identified through an interview process, as discussed later in this Introduction.

METHODOLOGY

To identify key issues to be addressed in this Guidebook, R. W. Beck conducted interviews with local governments and private companies in the region. Chapter 1 summarizes the entities that were chosen for the interview process as well as the aggregated results of the interviews.

In addition to interviews, R. W. Beck conducted a literature review to identify any similar projects related to recyclable materials contracting issues. The articles, studies, and other reference materials identified in the literature review are listed in Chapter 8 of this Guidebook.

SAMPLE CONTRACT LANGUAGE

R. W. Beck consulted with legal counsel in the development of the sample contract language included in this Guidebook. The sample language is meant to be used by local governments and private companies as a reference and a starting point for developing provisions for

recycling service contracts. **This Guidebook is not meant to be used as a substitute for legal counsel in procurement or contract negotiations. NCTCOG and R. W. Beck strongly recommend that users of this Guidebook consult with City Attorneys and/or outside legal counsel in utilizing the language provided in this Guidebook. This Guidebook does not constitute legal advice, recommendations, counsel, or guidance.**

The sample contract language includes many terms that are capitalized. Generally speaking, capitalized words and phrases are terms that would need to be defined in the definitions section of a contract.

ORGANIZATION

This Guidebook is organized into eight chapters, plus an introduction. The organization is summarized below.

- Introduction
- Chapter 1 – Recycling Contracting in North Central Texas
- Chapter 2 – Engaging in the Competitive Procurement Process
- Chapter 3 – Developing General Contract Provisions
- Chapter 4 – Developing Collection Contract Provisions
- Chapter 5 – Developing Processing Contract Provisions
- Chapter 6 – Understanding the Financial Terms of Recycling Contracts
- Chapter 7 – Managing Contract Administration
- Chapter 8 – Resources and Reference Materials

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CHAPTER 1: RECYCLING CONTRACTING IN NORTH CENTRAL TEXAS

NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS
RECYCLING CONTRACT NEGOTIATION GUIDEBOOK



What is the current state of recycling contracts in North Central Texas?

What are the key issues that need to be addressed by this Guidebook?

CHAPTER 1

RECYCLING CONTRACTS IN NORTH CENTRAL TEXAS

OVERVIEW

R. W. Beck recognizes that it is critical to ensure that this Guidebook is a useful and applicable tool for local governments and private companies in the North Central Texas region. Therefore, as part of the development of the Guidebook, R. W. Beck conducted interviews with local governments and private companies in the region to understand the following:

- What is the current state of recycling contracts in North Central Texas?; and,
- What are the key issues that need to be addressed in this Guidebook?

INTERVIEW PROCESS

R. W. Beck identified nine private recycling companies to participate in the interview process. These companies include haulers and processors of recyclables, as well as companies that offer both hauling and processing services.

- Abitibi Bowater
- Allied Waste
- Community Waste Disposal
- Greenstar
- IESI

- Pratt Industries
- Recycle America (Waste Management)
- Republic Services
- Waste Management

R. W. Beck contacted all of the private companies above and conducted interviews with seven of the nine companies.

R. W. Beck worked with NCTCOG staff and the TTR Subcommittee to identify the most appropriate cities to participate in the interview process. R. W. Beck, along with NCTCOG and TTR representatives, considered many factors, such as population and geographic location, in selecting the cities to be interviewed. In addition, the local governments selected have a broad range of recycling programs and recycling rates. These local governments that were identified are listed below. R. W. Beck contacted all of the cities listed and conducted interviews with 15 of the 20 cities.

- | | |
|--------------|-----------------|
| ▪ Arlington | ▪ Grand Prairie |
| ▪ Corsicana | ▪ Lancaster |
| ▪ Crowley | ▪ Lewisville |
| ▪ Dallas | ▪ Little Elm |
| ▪ Decatur | ▪ Mansfield |
| ▪ Denton | ▪ Mesquite |
| ▪ Euless | ▪ Midlothian |
| ▪ Fort Worth | ▪ Plano |
| ▪ Frisco | ▪ Southlake |
| ▪ Granbury | ▪ Weatherford |

The remainder of this chapter summarizes the findings of the interviews with local governments and private companies. R. W. Beck kept the results of individual interviews confidential; all responses have been aggregated and written in summary format.

RECYCLING PROGRAMS

Program Design

Recycling programs in North Central Texas vary from source-separated drop-off programs to fully-automated single-stream programs. Generally speaking, most cities in the region have

single-stream programs that utilize either open-top bins or rolling carts for collection. Collections are typically conducted one time per week, but some communities have bi-weekly collection. In addition, a few communities use resident-purchased blue bags for curbside collection.

Most single-stream programs in the region accept the following materials:

- Aluminum cans;
- Steel cans;
- PET bottles (#1);
- HDPE colored and natural bottles (#2);
- Newspaper;
- Old corrugated cardboard (OCC); and,
- Mixed paper.

The following materials are not as common as the materials listed above, but they have been accepted in some municipal programs in North Central Texas.

- **Glass beverage containers:** The market for glass in the region is not well developed, and as such, some processors have chosen not to accept glass.
- **Rigid plastic containers #3-#7:** The market for rigid plastic containers developed as a result of historically high prices for plastic in early 2008; therefore, some processors began to accept this material and market it as a separate commodity.

Recycling Approach

Communities in North Central Texas have varying approaches to their recycling programs.

In the interview process, R. W. Beck identified two primary approaches.

- **Program:** Many cities in the region approach recycling as a program to divert waste. This approach can result in decisions that are driven by diversion goals and overall program improvement.
- **Service:** There are also many cities in the region that view recycling as primarily a service offered to residents. This approach can result in programs that aim to provide the service at the lowest cost.

The overall approach of a city toward recycling has a significant impact on how they make decisions regarding their recycling contracts and procurement for recycling service. For instance, in cities where recycling is viewed as a service, changes to the program – and to contracts – are avoided unless there is a blatant issue that must be addressed. In other words,

if the service isn't broken, don't fix it! On the other hand, cities that view recycling as a program are more apt to continuously improve upon their recycling contracts in order to achieve increased diversion and a better overall program. These cities are more willing to adjust their contracts and change vendors in order to improve the program and diversion rates.

PUBLIC AND PRIVATE SECTOR RELATIONSHIPS

Municipalities in North Central Texas have favorable relationships with their recycling contractors, and many of these relationships are longstanding. Contractors in the Region provide reliable and quality service, and their partnership has enabled many communities to develop successful recycling programs.

The local governments and private companies interviewed expressed that it is important for the contractor to be a partner in achieving the goals of the recycling program.

PROCUREMENT PROCESS

R. W. Beck asked interviewees in the region to assess the typical procurement process for recycling service. The responses are summarized below.

General Comments

Based on interviews, recycling service is generally included in a city's overall procurement for residential solid waste management services. In other words, recycling is typically not treated as a separate discussion from the rest of the solid waste management services that are being procured. Recycling-related contract provisions are not a primary focus of contract negotiations. One exception would be that if the city performs residential collection service, they are more apt to have a separate processing agreement.

In addition, interviewees emphasized the importance for cities to have clear objectives for their recycling programs. The objectives and vision of the recycling program drive all aspects of the procurement.

Challenges with Procurement

There are some challenges associated with recycling procurement. Some of the challenges from the perspective of cities are listed below.

- **Unfamiliarity with procurement for processing services.** Local governments are generally comfortable with procurement for collection service. However, they are less familiar with contracting for processing services and do not have an understanding of typical provisions, such as material audits and revenue sharing. Cities also find it difficult to develop RFPs for processing service.
- **Unfamiliarity with open-ended procurement.** Many cities have experience with integrated contracting, but they are not familiar with RFP development and proposal analysis for separate contracting. Open-ended procurement is also particularly challenging because of the alternative options that must be evaluated.
- **Analyzing financial proposals.** Analyzing the financial portion of recycling proposals is very challenging to cities. Cities may not have the staff or expertise to understand the financial implications of proposed contract terms.
- **Lack of staff with procurement expertise.** Many cities do not have internal staff that has experience with recycling procurement issues.

In addition, some procurement challenges from the perspective of private companies are listed below.

- **Lack of municipal data.** Absence of municipal program data makes it challenging to develop proposals to provide recycling service. Typically, when data is lacking, proposers make conservative assumptions, which can ultimately increase the proposed rates and fees.
- **Misconceptions regarding the value of recyclable material.** Some communities are not aware of the value of recyclable material, and other communities tend to overestimate the value of recyclables. It is challenging to manage these misconceptions in the context of a competitive procurement. Commodity price fluctuations also add to misconceptions.
- **Inadequate proposal preparation time.** If private companies do not have enough time to prepare bids it can preclude them from proposing or affect the quality of the submittal. Less time can also result in the proposer making more conservative assumptions, which can increase the rates and fees proposed.

- **Lack of understanding of the feasibility of recycling certain materials (e.g., glass).** Many cities do not have an understanding of how MRFs operate and what materials can feasibly be processed and sold.

Selection Criteria

There are a variety of criteria that are commonly used by cities in the region to select recycling contractors. Below are some of the typical criteria that were specifically mentioned in the interview process, in no particular order.

- Price;
- Company stability and finances;
- History and relationship with the city;
- References;
- Proposal service plan; and,
- Location of processing facility.

Role of Outside Advisors

Even the most experienced solid waste and recycling industry professionals may have limited experience with procurement for recycling services. Since contracts are typically long term, a professional with 20 years of experience may conduct one or two procurements in his or her career. Outside advisors, such as attorneys and consultants, who assist with procurements regularly, can provide a valuable service to local governments in providing insight and experience into recycling procurements. Outside advisors will represent some cost to the city, but the cost of outside advisors will be much lower than the cost of an unfavorable contract. In addition, some communities have required that the selected contractor embed the cost of outside advisors into the contract fees.

CONTRACT STRUCTURE

Bundling with Other Services

Most communities in North Central Texas view recycling service as just one aspect of the overall residential solid waste management program. Therefore, it is very common for recycling collection service to be “bundled” with other services – such as refuse, yard waste, and bulky item collection – into one service contract.

Integrated Collection and Processing

Integrated collection and processing contracts, in which one contractor performs collection and processing service, is the typical contract structure in the region. Integrated contracting typically results in a lower overall service fee because revenue from recycled material offsets the cost of providing service.

More cities are beginning to pursue separate contracts with processing companies. Of the cities that were interviewed, only the cities of Plano, Fort Worth, Lewisville, Mesquite, Denton, and Dallas have separate contracts with processors. Processors are generally very open to directly contracting with cities, especially processors that do not have collection operations. There are many benefits for municipalities that contract with processors, including the following:

- Cities have the opportunity to generate revenue from their recycling program by participating in revenue sharing.
- Separate contracting puts the municipality into direct relationship with the processor, who can provide important feedback on contamination and other program issues.
- The processor can act as a technical advisor for public education efforts.

Both local governments and private companies expressed that it may not be feasible for smaller communities with limited staff to manage separate contracts for processing and collection of recyclables.

CONTRACT PROVISIONS

R. W. Beck asked interviewees about common recycling contract provisions in North Central Texas. Below is a summary of the responses.

Diversion Incentives

In discussions with R. W. Beck, many local governments expressed interest in contract provisions that provide incentives for the hauler and/or processor to maximize recycling in the community. R. W. Beck did not identify any cities in the region that have explicit diversion incentives in their recycling agreements. In fact, most interviewees were unaware of what options exist to provide such incentives.

Private recycling companies confirmed that diversion incentives are not standard practice in the region. In addition, private companies expressed some concern over the concept of diversion incentives due to the limited influence that contractors have over a city's recycling volumes. Generally speaking, private companies in the region view maximizing recycling as the ultimate responsibility of the local government. Contractors are very open and willing to partner with communities to help them achieve recycling goals, but see it as inappropriate to place undue responsibility for diversion rates on the contractor.

R. W. Beck did not identify any specific contract provisions in North Central Texas that provide incentive for the contractor to increase diversion. However, processors and haulers have implicit incentives due to the way that contracts are structured, as described below.

- **Haulers have an incentive to minimize participation and recycling volumes.** Since haulers are typically paid a per-household fee regardless of participation, their profitability is increased when residents do not participate. Therefore, there is an implied financial incentive to minimize participation and volumes.
- **Processors have an incentive to maximize recycling volumes and minimize contamination.** Processors typically receive a processing fee for each ton of material generated. In addition, the volume and quality of recyclable material has a direct impact on the revenue received by the processor.

Term

Recycling contract terms in the Region are typically between five and seven years; however, contract terms vary widely. For instance, contracts that involve constructing a MRF can be 15 to 20 year agreements.

Many contracts also include options for the city to renew the contract at the end of the term. As previously mentioned, there are some cities that have contracted with the same vendor for many years. In fact, in some interviews, city staff did not know when the original procurement occurred due to the length of the contractual relationship.

Reporting

Reporting requirements vary widely among cities in North Central Texas. Some cities include very detailed reporting requirements in their recycling agreements, including specific formats for presenting the data, while other communities do not require any data reporting from the contractor.

Contractors typically comply with reporting requirements that are included in the agreement with the city. However, if not required by the contract, cities can experience significant challenges collecting recycling data from their contractor.

Participation rate and set out rate information can be very valuable for recycling coordinators in determining the most effective public education methods for the community. Some collection contracts stipulate that haulers collect and report this data. Set-out rate information, which is a count of the number of bins that are set out on a given collection day, can be collected by recycling drivers. However, should the local government choose to require more detailed information about participation and set outs, it may be necessary for the hauler to utilize additional personnel to collect the data.

Containers

Many cities in North Central Texas provide recycling containers to their residents; however, in other cases, the contractor is required to provide the container. If the contractor provides the containers, they are typically responsible for maintenance, inventory, and replacement of the containers as well. It can be convenient for cities to require their contractors to provide recycling containers. However, this situation can create a significant barrier to changing vendors. City-owned containers make contract transitions more manageable and feasible when they are needed.

Customer Service

Much like containers, some cities provide their residents with customer service (e.g., telephone answering service), while others require that the contractor provide such services. This decision typically depends on the city's existing customer service capabilities.

Contamination

Contamination is an issue in most municipal recycling programs, including programs in North Central Texas. Municipal processing contracts typically stipulate the level of contamination that will be the responsibility of the contractor and the level that will be the responsibility of the city. Based on feedback from interviewees, it is very important that this be clearly defined in the contract.

Public Education

R. W. Beck asked local governments and private companies about typical public education provisions in contracts as well as the appropriate role of the city and contractor in public education. Their responses can be summarized as shown below.

- **Cities should take the lead role in developing public education programs.** Public education programs are most effective when cities have ownership and control. Customer education is the primary skill set of recycling coordinators and city staff, not recycling companies. Private companies do not feel it is appropriate for them to have the lead role in recycling education.
- **Contractors should fill the role of technical advisor.** Private companies and cities agree that it is important for contractors to fulfill the role of technical advisor. Contractors provide critical insight into education programs by identifying problem routes, providing feed back on common contamination problems, and giving technical input on specific materials to target for recovery.
- **Contractors partner with cities by providing specific support.** Contractors can provide specific items, such as funding, literature, or promotional items, to support public education programs. In addition, contractors can make public appearances and participate in public service announcements. The expectations for the contractor should be specifically stated in the contract.

FINANCIAL TERMS

The following describes the typical financial terms of recycling contracts in North Central Texas.

Base Service Fees

The most common fee structure for collection contracts is a monthly base service fee that is administered on a per-household basis. In integrated contracts, there is typically no revenue sharing arrangement. The hauler owns the material and is able to offer a lower base service fee by offsetting the cost of the program with revenue from recyclables.

Processing Fees

In municipal contracts with processors, the municipality typically pays a per-ton processing fee. Processing fees are typically only incurred when a municipality has a separate contract

with the processing company. Otherwise, the cost of processing is embedded into the monthly base service fee.

Revenue Sharing

Cities that have separate contracts with processors typically have revenue sharing arrangements. In integrated contracts, haulers do not provide revenue sharing to the municipality. In interviews, haulers expressed that, if cities want to have revenue sharing, it is more practical and feasible to accomplish this through a separate processing contract.

Even though revenue sharing has continued to come to the forefront in North Central Texas, many cities are not familiar with revenue sharing and are not comfortable taking on uncertainty related to revenue.

Contract Fee Adjustment

In interviews, some contractors expressed concern that the indices typically used to adjust contract fees do not accurately reflect the costs associated with the recycling business. For instance, the Consumer Price Index (CPI) includes many items that are not related to recycling collection or processing, such as food and housing. There is a need to examine more closely the indices and mechanisms used to adjust fees in recycling contracts.

R. W. Beck conducted interviews with local governments and private companies during 2008 when fuel prices had spiked quickly to historically high levels. Therefore, in interviews, there was much discussion about contract fuel price adjustments and surcharge issues.

In general, recycling contracts – specifically collection contracts – do not include specific methods to adjust the contract price when the price of fuel changes. Therefore, when the price of fuel increased drastically in a short period of time, many contractors approached their customer cities requesting to increase fees. There is a need to determine the most appropriate way to handle fuel cost adjustment in the future.

CONCLUSIONS

What is the current state of recycling contracts in the region?

Below summarizes R. W. Beck's findings regarding the current state of recycling contracts in North Central Texas.

- **A city's approach to recycling (e.g., program vs. service) significantly impacts decisions regarding the recycling contract.** Communities that view recycling as a service are hesitant to make changes or adjustments to the contract.
- **Strong partnerships with contractors are necessary for recycling programs to be successful.** Contractors can partner with the city in acting as a technical advisor as well as supporting public education efforts.
- **Diversion incentives for contractors are not prevalent.** Explicit diversion incentives are not included in recycling contracts. In fact, haulers have an implicit financial incentive to minimize recycling. Processors have an implicit financial incentive to maximize the quantity and quality of material.
- **Opportunities exist to improve the typical procurement process.** Local governments have successfully procured recycling services in the past. However, a need exists for local governments to become more familiar with different procurement structures as well as with procurement for processing service.
- **Communities are beginning to contract separately with processors, but some cities lack the knowledge necessary to move in this direction.** There is a need for cities to be educated on the ins and outs of processing contracts.
- **The financial structure of recycling contracts is relatively standardized in the region.** The same types of fees are charged for similar contracts in the region.
- **Specific contract provisions vary widely between communities.** Topics such as containers, customer service, reporting, and public education are handled differently based on the needs and preferences of each community.

What are key issues that need to be addressed in this Guidebook?

Based on the findings of the interviews, R. W. Beck identified the need to address the following specific issues in this Guidebook. Beside each topic is the section and page where the topic is discussed. This list is not a comprehensive list of topics that are included in the Guidebook, but it represents topics that were specifically identified in the interview process.

- **Description of the procurement process, including:** Separate vs. integrated contracting (page 2-8); Open-ended procurement (page 2-8); Timeline (page 2-3); and best value vs. pricing-based selection criteria (page 2-17).
- **Contract provisions, such as:** Contamination (page 6-20); Contract term (page 3-3); Material audit process for processing contracts (page 5-6); Reporting requirements (page

- 4-10 and 5-11); Container ownership (page 4-6); Public education (page 4-11, 5-11, and 6-9); and insurance requirements (page 3-10).
- **Financial portion of processing contracts, including:** Revenue sharing (page 6-12); Fee escalation procedures (page 6-21); and fuel price adjustments (page 6-24).

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CHAPTER 2: ENGAGING IN THE COMPETITIVE PROCUREMENT PROCESS

NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS
RECYCLING CONTRACT NEGOTIATION GUIDEBOOK



What are the options for structuring the procurement process?

What should be included in an RFP for recycling service?

CHAPTER 2

ENGAGING IN THE COMPETITIVE PROCUREMENT PROCESS

OVERVIEW

Once your local government has made the decision to move ahead with a competitive procurement for recycling services, the next steps are to:

- Select a procurement approach;
- Define the scope of services;
- Develop the procurement documents;
- Issue the procurement documents;
- Evaluate the proposals; and
- Negotiate and award the contract.

This section of the guidebook presents an overview of the process involved with procuring recyclable materials collection, processing and marketing services. In North Central Texas, marketing services are almost always included as part of the processing contract. Therefore, when referring to processing services in this chapter, R. W. Beck is generally referring to the combination of processing and marketing services.

Alternatives to Competitive Procurement

Instead of a competitive bid or proposal process, local governments may choose to enter into direct negotiations with a particular contractor. Before making this decision, local governments must determine whether direct negotiations are more advantageous than a competitive process. The State of Texas Local

Government Code allows bypassing of the competitive bid or proposal process when specific contracts are “necessary to preserve or protect the public health or safety of the municipality’s residents”.¹ Local governments should consult with City Attorneys or outside legal counsel to determine the appropriateness of this option.

In addition, some communities may have the option to “piggyback”, or be added, on to a contract between another community and a service provider. Based on R. W. Beck’s experience, this approach is not a common method to procure solid waste and recycling services in the North Central Texas region. If your community is considering whether to piggyback, your community should evaluate a wide range of critical issues, including the following:

- Liability in the event of a default by the service provider or the community with the original contract;
- Disruption in service in the event of a default the service provider or the community with the original contract;
- Impact on level of service and quality of service requirements unique to your community;
- Cost of service impacts associated with the original contract that may increase cost of service for your community; and
- Other contractual terms in the original contract impacting your community piggyback agreement.

Communities should consult with their City Attorney and Purchasing Department to evaluate whether piggybacking is an option and identify issues, such as those listed above, which could arise from such an agreement.

SELECTING A PROCUREMENT APPROACH

Selecting a procurement approach will assist the local government in achieving the goals for its recycling program. Five key decisions regarding the procurement approach are listed below.

- Who should be on your procurement team?
- What is the timeline?
- Should you use an Invitation for Bids, Request for Proposals or a Two-step Process?

¹ Texas Local Government Code Ann. § 252.021 (2009)

- Is managed competition an option in your community?
- Should you issue a separate, integrated, or an open-ended solicitation?

Selection of a Procurement Team

It is not everyday that a local government solicits offers for recycling services. Therefore, a local government procuring recycling services should assemble a team to assist with this important undertaking. Potential procurement team members include:

- Public Works or Sanitation Department representatives;
- Recycling Manager or Coordinator;
- City Manager or representative;
- Billing and Customer Service representatives;
- Purchasing Department representatives;
- Legal Department representatives or outside counsel;
- Elected officials;
- Citizen group representatives; and
- Consultants or other outside advisors.

It is important that the local government form a procurement team that has the knowledge and availability to conduct the recycling procurement. In fact, the question of whether to hire outside consultants to assist with your procurement depends on the skills, experience level, and availability of your internal procurement team. Because recycling contracts are typically longer-term (between five and 20 years), even a very experienced staff person may have limited experience with procuring recycling services. In addition, because of the demands of day-to-day responsibilities, your staff may not have the time that is needed to devote to the procurement process and evaluation of the proposals. Both of these reasons can result in the need to retain outside advisors.

A local government may choose to have a consultant help with a step of the procurement process, such as preparation of procurement documents or financial evaluation of proposals, or the entire procurement process. Consulting services do represent a cost to the local government. One option to provide funding for outside counsel and advisors is to require that the selected contractor pay for professional fees incurred by the local government as part of the contract.

Development of a Timeline

Remember that successful procurement requires adequate time for each step of the process. At the beginning of the process, the team should establish a timeline for the procurement. Figure 2-1 below presents a sample recycling procurement timeline. Some steps may take more time than others depending on the unique characteristics of your procurement.

It is critical to account for the transition period after the award of a contract. The transition period allows the successful offeror or offerors to purchase the required equipment, hire experienced personnel, and conduct other tasks associated with providing recycling services in your community. The required transition period can vary depending on the services provided. For instance, the transition period will be longer if the successful firm is required to build a new Materials Recovery Facility (MRF) for the processing of the recyclables compared to a firm that is only required to purchase new collection vehicles.

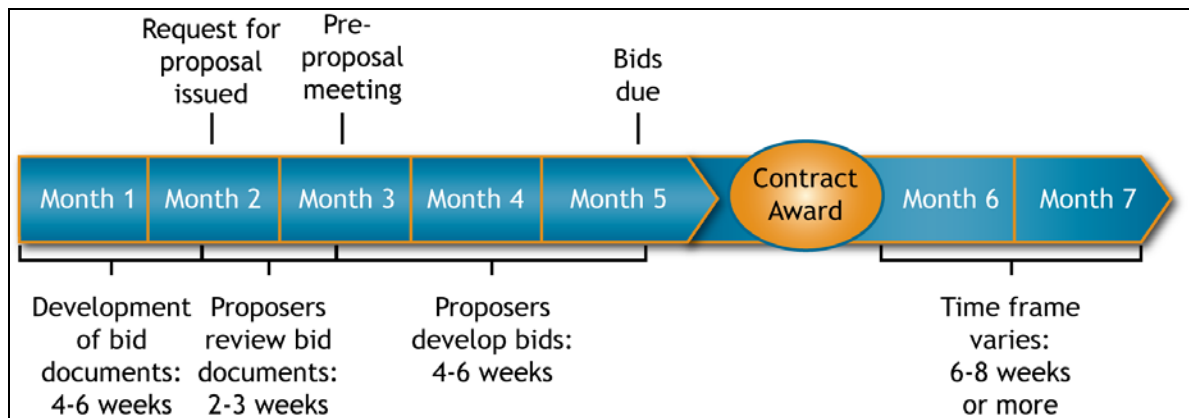


Figure 2-1: Sample Procurement Timeline

Procurement Structure

Selecting the procurement structure should be based on the laws and preferences of the local government. Generally speaking, there are three types of procurement structures, as described below.

- Invitation for Bids
- Request for Proposals
- Two-step Process

Invitation for Bids (IFB)

An IFB structure allows for a local government to evaluate bids based on satisfaction of minimum standards and price only. For this type of procurement, the local government

would provide a detailed description of the minimum standards for the service provided. Offerors would then provide bids on the price to provide the service.

IFBs are often used for procurement of equipment or for other procurements that require the development of detailed specifications. For instance, if a city is purchasing a baler, it prepares documents describing the specifications for the baler and then evaluates the bids based on the company that can provide the baler for the best price. Since the item being procured is straightforward and easily definable by the local government, there is little need to evaluate the bids on any other criteria.

An IFB is not the ideal structure for procurement of recyclable materials collection and/or processing services due to the following reasons.

- For complex, long-term service agreements, there are **many other important factors to consider in addition to price**, such as: references, experience providing the service, financial stability of the company, and other factors.
- An IFB process **requires the city to provide a detailed description of the minimum standards to provide recycling service**. This is in contrast to a proposal-based process, wherein proposers provide detailed information about how they would provide the services.
- An IFB process provides **no incentive for bidders to be innovative or submit alternatives** to providing the service.
- The local government may be **obligated to select the lowest price bidder rather than the best value** for rate payers.
- The city runs the risk of being **obligated to select a low-priced bidder that is not qualified** to perform the service.

There are some advantages to the IFB process. Because the bidders have not proposed alternative options or scenarios, the bid evaluation process is relatively straightforward. From among the bidders that can satisfy the minimum requirements, the city must select the lowest price. In addition, for this procurement structure, there is little risk of protest from unsuccessful bidders. However, due to the reasons listed above, R. W. Beck strongly recommends that cities in North Central Texas not use the IFB structure to procure recyclable materials collection and processing service.

Request for Proposals (RFP)

In an RFP process, the local government invites potential vendors to submit proposals to provide service. In the proposal, the potential contractor will provide details on the operational and financial aspects of the service that they will provide. An RFP process allows the local government to select the contractor that represents the “best value” to the city by evaluating each proposal on a variety of criteria.

R. W. Beck considers RFP to be an appropriate structure for procurement of recycling service due to the following reasons.

- It allows the local government to **evaluate potential contractors based on criteria beyond price** (e.g., experience, financial stability, references).
- An RFP process **provides incentive for potential vendors to propose a higher level of service** rather than just satisfying a minimum threshold (as with an IFB).
- Proposers **may present alternatives to providing service** and show the variation in price based on differing alternatives.
- Potential **contractors may provide input and feedback** to the city on issues such as program design and contract term.

There are some disadvantages to the RFP process. Unlike the IFB structure, RFPs generally require a high level of effort from city staff and/or consultants, especially when it comes to proposal evaluation. When contractors are able to provide alternatives to providing service, financial evaluation of proposals can be complex. However, this can be mitigated by requiring that proposers submit a price for some “baseline” level of service for apples-to-apples comparison. All other alternatives can be offered in addition to the base level of service. In addition, it may be beneficial to have consultants conduct the financial analysis of the proposals.

In addition, RFPs present a higher potential for protest from unsuccessful proposers. However, this risk of protest can be mitigated by clearly defining the evaluation process and criteria in the procurement instruction documents.

Two-Step Process

A two-step procurement approach is a slightly modified version of an RFP approach. In a two-step process, potential contractors are asked to provide their submittal in two envelopes. The first envelope (Envelope 1) includes a response to a Request for Qualifications and a

technical proposal. The purpose of these documents is to represent that each proposer is qualified to provide the service. For all proposers that are deemed qualified, the city will open a second envelope (Envelope 2) that contains the cost proposal and any alternatives to providing service. The cost proposals may be evaluated on a best price or a best value basis, depending on what the procurement team decides is the best approach.

The advantages to the two-step process are similar to the advantages associated with an RFP, namely that the city is able to conduct a more in-depth analysis of submittals and determine the proposer who offers the “best value”. Also, the two-step process provides the additional advantage of allowing the city to eliminate unqualified bidders early in the process. This can save the procurement team a considerable amount of time conducting financial analyses for unqualified proposals. However, the procurement timeline can be longer with this approach due to the two-step nature of the process.

Table 2-1 provides a matrix comparing the three procurement structures.

In general, a RFP affords the local government the ability to select the best value by allowing the opportunity to evaluate proposers based on criteria beyond price. When conducting a recycling procurement, price is often an important factor; however, there are other criteria that are of significant importance when selecting a contractor to provide recycling services. For these reasons, the remainder of this chapter assumes the local government has chosen to utilize a RFP structure (or the slightly modified two-step process) to procure recycling services. If you choose to use a different structure, the procurement team will need to verify that the requirements of the selected procurement structure are met.

Table 2-1
Procurement Structure Comparison Matrix

STRUCTURE	WORKS WELL WHEN	PROS	CONS
IFB	<ul style="list-style-type: none"> Services can be definitively specified All bidders are qualified Sole evaluation criteria is price 	<ul style="list-style-type: none"> Simple evaluation process Little risk of protest from unsuccessful bidders 	<ul style="list-style-type: none"> Risk of obligation to select an unqualified bidder Does not account for selection criteria beyond price City obligated to select lowest price rather than best value No incentive to present alternatives or higher level of service
RFP	<ul style="list-style-type: none"> City is receptive to different approaches to delivering service Price is not the sole evaluating factor 	<ul style="list-style-type: none"> Evaluation based on factors beyond price Allows proposers to provide alternatives to provide service Promotes innovation 	<ul style="list-style-type: none"> Complex evaluation process due to alternatives presented Higher risk of protest from unsuccessful proposers
TWO-STEP	<ul style="list-style-type: none"> City wants to avoid in-depth analysis of all proposals City is receptive to different approaches to delivering service Price is not the sole evaluating factor 	<ul style="list-style-type: none"> Allows early elimination of unqualified proposers Allows evaluation of factors beyond price Allows proposers to provide alternatives to provide service Promotes innovation 	<ul style="list-style-type: none"> Can be a longer process than RFP Complex evaluation process due to alternatives presented Higher risk of protest from unsuccessful proposers

Managed Competition

Managed competition is not prevalent in North Central Texas; however, R. W. Beck identified it as a procurement process to mention for the purposes of this Guidebook. Managed competition refers to a process in which the local government competes with private companies to provide service in the city. The IFB, RFP, or two-step process should make clear that the local government will also be submitting a proposal or bid.

There are two primary questions that local governments need to answer when determining whether managed competition is an option in their community.

- Can the city provide service?
- Is there interest from the private sector in providing service?

In North Central Texas, managed competition would be most feasible for recyclable materials collection service rather than processing service. Managed competition for processing service is possible, but it would be more complex and challenging due to the need for the local government to operate a processing facility.

Separate, Open-ended, or Integrated Procurement

After deciding what procurement structure best suits your local government and whether a managed competition process is an option, the next decision is whether to have separate, integrated or an open-ended procurement for recyclable materials collection and processing services. Definitions of these approaches are below.

- **Separate procurement:** Local governments solicit a proposal for collection services and a separate proposal for processing services. This approach is sometimes referred to as “un-bundled” services. As mentioned previously, processing refers to both processing and marketing of materials.
- **Open-ended procurement:** Local governments solicit bids for recycling collection and/or processing services. Proposers may bid on any or all services. The resulting contract may be “bundled” or “un-bundled”, depending on the proposals that are received.
- **Integrated procurement:** Local governments solicit a single bid for recycling collection and processing services. This approach is sometimes referred to as “bundled” services.

A separate procurement or an open-ended procurement provides the local government with flexibility to individually choose the contractor for collection and processing of recyclable materials. On the other hand, an integrated procurement process gives the local government the opportunity to work with a single contractor or a team of contractors that have demonstrated a desire to work with each other. For example, a contractor providing collection services might team with a contractor providing processing services and submit a single offer to the local government under an integrated procurement process.

In North Central Texas, there are several companies that can potentially provide both collection and processing service. Conversely, there are also companies that are only able to

provide one of these services. Because of the characteristics of the marketplace, there are distinct advantages to an open-ended procurement. However, in some cases, cities may not have the resources within the procurement team to conduct an open-ended procurement due to the more complex evaluation process. In addition, there are several cities in the Metroplex that conduct recyclable materials collection with municipal crews. Because of this, these communities are able to contract separately with a processing company and do not need to procure a collection contract.

Advantages and Disadvantages

In North Central Texas, integrated procurements are very common. The tendency with integrated contracts is for the focus to be on recyclable materials collection. However, open-ended and separate procurements make it possible for a municipality to have a contract directly with the recyclable materials processor. In R. W. Beck's professional opinion, there are many advantages to local governments having a direct contractual relationship with recyclable materials processors, including the following.

- **Processors have a direct financial incentive to maximize recycling in the municipality because every ton diverted results in additional revenue.** Contracting directly with processors aligns two parties that have the common goal of increasing recycling.
- **Processors have a direct financial incentive to minimize contamination of material because the quality of the material impacts their bottom line.** Processors have the ability to give municipalities much-needed feedback on the quality of collected material.
- **Processors can provide technical input on public education efforts and materials.** The knowledge of the processing system is a valuable perspective when designing and modifying a public education program.
- **Processors can provide detailed data on the composition and quantity of material recycled.** Most processing contracts require a material composition audit, which provides the city with essential program data.

Table 2-2 provides the pros and cons to the three procurement options.

Table 2-2
Separate, Open-Ended, and Integrated Procurement Comparison Matrix

STRUCTURE	WORKS WELL WHEN	PROS	CONS
SEPARATE	<ul style="list-style-type: none"> City has staff and resources to conduct two procurements City has ability to manage two contracts There is a lack of companies in the marketplace that could provide both services bundled 	<ul style="list-style-type: none"> Ability to independently select collection contractor and processing contractor Potentially results in more bidders than an integrated procurement 	<ul style="list-style-type: none"> Two independent procurements require more time and effort Administrative oversight of two contracts can be challenging, especially for smaller communities Can be challenging for companies that wish to submit proposals for each service
OPEN-ENDED	<ul style="list-style-type: none"> City wants to explore multiple options for separate or integrated contracting A variety of companies in the marketplace could provide one or both services City has the procurement team resources to analyze multiple options 	<ul style="list-style-type: none"> Ability to independently select collection contractor and processing contractor Maximizes the competitiveness of the procurement by allowing offerors to propose on any or all services Allows the local government to analyze all possible options for how service can be provided 	<ul style="list-style-type: none"> Potential to not receive an offer on each requested service Possible that the local government will have to negotiate two separate contracts Potential administrative oversight of two or more contracts Proposal evaluation can be complex
INTEGRATED	<ul style="list-style-type: none"> City does not have the ability to manage separate contracts City does not have procurement team or outside advisors to analyze multiple options 	<ul style="list-style-type: none"> Single procurement Established relationship between the collection contractor and the processing contractor. Administrative oversight of only one contract 	<ul style="list-style-type: none"> Requirement to select a contractor that can provide both services Can minimize competition by eliminating companies that only provide one type of service

Private collection haulers of recyclable materials are focused on providing reliable and quality service to customers for a fair price, and they have served local governments in North

Central Texas well in this capacity. However, private collection haulers typically don't have a direct business incentive to increase the quantity and quality of material diverted in your community. Since haulers are typically paid on a per-household basis, regardless of overall program participation, it is more profitable for them if participation and material recovery is low. When cities contract separately with processors, it provides alignment of incentives between two parties that have the same objectives – to maximize recycling.

Mesquite, Texas: Procuring Recycling Processing Service

The City of Mesquite, Texas started a curbside recycling program using resident-purchased blue bags in 1992. The City collected and transported all recyclable material to the Allied Waste MRF in Duncanville, which is approximately 25 miles from the City. Rising fuel costs, the desire to expand recycling, and interest in revenue sharing resulted in the City making the decision to develop an RFP for recycling processing service. To support its program expansion, the City also received grant funding from the TCEQ through NCTCOG to purchase 18-gallon bins for one-third of its residential households.

With limited experience in recycling processing procurement, the City faced some challenges with the RFP process. The first major challenge was the development of the RFP itself. However, based on researching RFP's developed by select communities, the City was able to develop and issue the procurement documents. The second significant challenge was financial analysis of the four proposals that they received. City staff emphasized that careful, detailed analysis of the proposals was needed to fully understand the financial implications of each proposal.

In August 2008, the City awarded the processing contract to Greenstar, whose MRF in Garland is approximately 10 miles away from the City. The City receives revenue (minus a processing fee of \$45 per ton of material delivered to the facility) based on the monthly market value of the various recyclable commodities. The city receives a revenue share between 50 and 80 percent, depending on the commodity. The City plans to use revenue generated from material to assist with the purchase for recycling bins for the rest of its residential households. The new program and processing contract has helped the City to double its recycling tonnage from 100 tons per month to nearly 200 tons per month.

DEFINING THE SCOPE OF SERVICES

The scope of services clearly specifies the duties to be performed by the contractor and the expected outcomes. The procurement team must work together to make sure that the procurement documents clearly state the needs and expectations of the local government. The more detailed the scope, the greater likelihood that the proposals will meet the community's needs. However, if the proposal is too prescriptive, it can limit the ability of proposers to provide innovative alternatives to providing the service. When drafting the scope of services, it is important to maintain a proper balance between providing detailed expectations and leaving items open to creativity and innovation for the proposers.

Collection Service

When contracting for collection services, the scope of services typically specifies the information listed below. If the RFP allows the contractor various options, this should be clearly noted.

- Definition of customers to be served (i.e., single-family homes and/or multi-family homes), including service area and number of customers.
- Identification of recyclable materials to be collected.
- Description of the method for collection of recyclable materials (i.e., single-stream in which all materials are commingled or dual-stream in which fiber and containers are collected in separate streams).
- Description of collection bins (i.e., open-top bins or wheeled carts with lids).
- Frequency of service (e.g., weekly or every other week).
- Location of processing facility to which the material will be delivered.
- Responsibility for purchase, distribution, maintenance and storage of recycling containers.
- Performance standards (e.g., missed collection).
- Reporting and recordkeeping requirements.
- Responsibility for administrative services (e.g., billing and collections, customer complaints).
- Promotional or educational requirements of the contractor.
- Any other requirements or expectations to be placed on the contractor.

Processing Service

When procuring processing and marketing services, the scope of services will depend on whether the local government owns a processing facility or if processing is to be conducted at a privately-owned and operated facility. Generally speaking, the scope of services for recyclable materials processing will typically include the items listed below when the municipality is procuring a service contract with a private MRF.

- Materials to be accepted at the facility
- Description of the method for collection for the recyclable materials (e.g., dual-stream or single-stream)
- Performance standards for processing and marketing (e.g., vehicle turn-around time)
- Reporting and recordkeeping requirements
- Promotional or educational requirements of the contractor
- Any other requirements or expectations to be placed on the contractor

Defining the recycling services accurately will allow proposers to sharpen their pencils and allow the city to best meet the needs of its residents. It is critical that the local government and the procurement team have a clear consensus on the services that are to be provided by the contractor or contractors. If there is a specific aspect of the program that is non-negotiable for the city – such as inclusion of a specific material or collection frequency – it should be made clear in the procurement documents.

DEVELOPING THE PROCUREMENT DOCUMENTS

The RFP should be drafted with the mindset of making all potential proposers thoroughly informed about the city’s goals for the recycling program. Some suggested sections for the RFP are listed below.

Definitions

Procurement documents can include many key terms and phrases that could be interpreted differently by different contractors. For instance, the term “audit” can be used to describe a review of a contractor’s books and financial records, but it can also refer to an assessment of the composition of a city’s recyclable materials. It is important to clearly define any key terms used in the RFP. If a sample contract is included as an attachment, the RFP can refer to the definitions included in the contract.

Background and Objectives

As stated above, the RFP should aim to make all proposers equally informed about the city's recycling program. Background information allows contractors to have the complete picture of the community's situation in order to draft a proposal to best meet the city's needs.

In general, the RFP should include information about the community itself, including geographic boundaries, general demographics, population, and number of households, including single-family and multi-family. In addition, it is helpful to provide some background as to why the RFP is being developed. For a new program, what are some of the reasons the program is being implemented? What are the goals and objectives of the program? For an existing program, are there any changes or improvements that the city wishes to make?

In the case of an RFP for recycling services, it is also critical to provide as much historical data as possible regarding program performance, including the following, if available:

- Annual quantities of material collected (for the past three to five years);
- Material composition; and
- Participation and/or set out rates (if available).

Scope of Services

An accurate and thorough description of the services to be provided is a critical component of an effective RFP. The RFP should clearly state the services to be provided by the contractor as well as any alternatives that could also be proposed.

Length of Contract

The RFP should specify the term of the contract so that potential proposers can determine the length of time that personnel and equipment will be designated to the city's contract. Generally speaking, contractors depreciate the value of equipment over the initial term of the contract only, and exclude renewal terms. A shorter contract length can result in a higher cost to the city due to the vendor depreciating the assets over a shorter amount of time.

If there will be opportunities for contract extensions, specify in the contract the number and length of extensions offered and any conditions that must be met to earn the extension.

A more specific discussion on contract length can be found in Chapter 3 of this Guidebook.

Instructions for Proposers

The RFP should contain clear instructions for vendors to submit their proposals to the city, including the deadline, format (i.e., printed or electronic), location, and any submittal fee that must be paid. The RFP should also include a contact person from the city that can answer any questions that vendors may have during the process. It is beneficial to the procurement process to have one point of contact for proposers to provide consistency and avoid potential confusion.

In addition, the content to be included in the submittal should be clearly outlined. Standardized forms can be helpful to ensure that the proposers include all of the requested information. In addition, providing a checklist of items to be submitted can help ensure that proposers submit all required materials.

Evaluation Process and Criteria

The evaluation process and criteria used to evaluate the proposals should be clearly stated in the RFP. Assigning weights or points to different criteria will help to communicate the relative importance of different factors to the city. Evaluation criteria are discussed in more detail later in this chapter.

Qualifications and Experience

When evaluating proposals, it is critical for the city to understand the level of experience that the proposers have in providing the services outlined in the RFP. The procurement documents should require proposers to describe their qualifications and experience in providing the services. References should be required. Any minimum qualifications for the proposers should be clearly stated.

Project Approach or Implementation

The RFP should request that vendors explain how they will perform the service, including a description of the labor, facilities, and equipment to be used. Proposers should be required to demonstrate that they have the ability to obtain the resources needed to service the city.

Financial Proposal

The RFP should specify how contractors should present the cost proposal to provide service. It is helpful to provide a specific form that must be completed by the proposers to ensure easier comparison across proposals. In addition, it will be important to make clear in the RFP the city's preferred fee structure (i.e., base monthly service fee per household) for the service.

ISSUING THE PROCUREMENT DOCUMENTS

Identifying Potential Proposers

It is best to cast a broad net to reach the greatest number of qualified vendors when conducting the procurement process. This approach maximizes competition and also assures the public that the procurement process is open and fair. Ads in local publications and media as well as trade publications will reach the targeted audience.

The procurement team may also want to use their prior experience and knowledge of the local recycling market to generate a list of vendors that should be contacted directly. Invitations and announcements should be issued to all identified vendors on the same day and in the same manner.

Pre-Proposal Meeting

A pre-proposal meeting is often held after the procurement documents are issued. It provides the local government an opportunity to explain the desired services to the interested vendors and to answer questions. It also provides a forum for a local government to “sell” their project as an attractive business opportunity for potential vendors. R. W. Beck recommends that the local government conduct site visits for the vendors to observe the recycling operation, if applicable. At the pre-proposal meeting, vendors also have the opportunity to provide the local government with feedback on the scope of services. In some cases, local governments choose to amend the procurement documents based on valuable feedback provided by vendors. Such pre-proposal meetings can be voluntary or mandatory. Mandatory meetings ensure that all interested vendors obtain the same information and also provides the local government with a sense of the number of proposals to anticipate. However, there are also benefits to voluntary pre-bid meetings. Voluntary meetings can provide an opportunity for companies who have a conflict with the scheduled meetings to still propose. In addition, in a voluntary meeting scenario, the proposers are unsure as to what other companies are submitting proposals, which can increase the competitiveness of the procurement.

EVALUATING THE PROPOSALS

In order to reduce the potential for a protest from unsuccessful offerors, it is recommended that local governments set forth the evaluation process in the procurement document. Local governments may elect to assign points to any or all of the following criteria:

- Cost;
- Experience and qualifications;
- Proposed approach;
- Proposed equipment;
- Proposed personnel;
- Financial stability; and
- Litigation history.

Experience may encompass such factors as reference satisfaction and minimum years of similar experience. The local government may take into account the hours of operation or whether recycling service will be offered on the same day as solid waste service when analyzing the proposed approach. The evaluation criteria, set forth in the procurement documents and followed by the evaluation committee, should give greater weight to those factors that are of highest importance to the local government and their residents.

NEGOTIATING AND AWARDING THE CONTRACT

Developing a clear, concise RFP or other procurement document is essential to ensuring successful contract negotiations. R. W. Beck recommends a draft contract be included as an attachment to the procurement documents, which will help to minimize the time required to successfully negotiate the final contract.

After you have identified the highest scoring offeror based on your evaluation of the proposals, you may choose to negotiate a contract with such offeror. The remaining sections in this Guidebook provide more detail on specific contract terms that will be negotiated as part of this process. Upon the local government and the offeror reaching an agreement as to the contract, the local government can begin the steps as set forth by local laws to award the contract.

Minneapolis, Minnesota: Leveraging the Marketplace in a Competitive Procurement for Processing Service

The City of Minneapolis has a source-separated curbside recycling program for its 108,000 residential households. One-half of these households are serviced with municipal collection crews. Recyclables are collected bi-weekly, and residents that enroll in the program receive a rebate on their monthly solid waste bill.

In 2003, the City initiated a procurement process for a recyclable materials processing agreement. The existing agreement was with Browning Ferris Industries, and the high quality of the recyclable material allowed the City to generate between \$25 and \$35 per ton of material processed. While this level of revenue generation represented an effective processing agreement, the City saw some opportunities to improve upon the agreement through engaging in the competitive procurement process.

The City wanted to compare the potential revenue that could be generated from a program that allowed more commingling of material, such as dual-stream and single-stream. Therefore, proposing processors provided pricing information to process source-separated, dual-stream, and single-stream materials. This allowed the City to understand the magnitude of collection cost savings that would be needed to make commingling economically viable.

In addition, the City evaluated price proposals based on a five year historical time horizon (1999-2003). Conducting this analysis enabled them to understand the variation in revenue that would be generated based on the changing composition of material and fluctuating commodity values.

After the completion of the evaluation process, the existing processor was ultimately selected as the new service provider. However, by leveraging the competitive market through the procurement process, the City doubled the net per ton revenue from the previous contract to \$56 per ton. The revenue generated from the new processing agreement is expected to almost fully offset collection costs.

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CHAPTER 3: DEVELOPING GENERAL CONTRACT PROVISIONS

NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS
RECYCLING CONTRACT NEGOTIATION GUIDEBOOK



What general provisions should be included in both collection and processing contracts for recyclable materials?

CHAPTER 3

DEVELOPING GENERAL CONTRACT PROVISIONS

OVERVIEW

Regardless of whether you are contracting for collection, processing, or integrated collection and processing services, there are some general provisions that should be included in all recycling contracts. This chapter discusses the following general contract provisions:

- Definitions;
- Contract term;
- Performance assurances;
- Liability assurances;
- Contract enforcement and remedies;
- Dispute resolutions;
- Assignment and/or subcontracting;
- Compliance with laws and regulations; and
- Miscellaneous general contract provisions.

R. W. Beck consulted with legal counsel in the development of the sample contract language included in this Guidebook. The sample language provided is meant to be used by local governments and private companies as a reference and a starting point for developing language to be used in recycling service contracts. **This Guidebook is not meant to be used as a substitute for legal counsel in procurement or contract negotiations.** R. W. Beck strongly

recommends that users of this Guidebook consult with City Attorneys and/or outside legal counsel in utilizing the language provided in this Guidebook. This Guidebook does not constitute legal advice, recommendations, counsel, or guidance.

R. W. Beck intentionally did not develop sample contract language for certain provisions in this chapter. Contract language for these provisions is best provided by your City Attorney or Procurement Department.

DEFINITIONS

It is very important to include definitions at the beginning of the contract. Definitions provide clarification on terms used in the contract that can potentially be ambiguous or misleading. Definitions are typically listed in alphabetical order. Some terms that are specific to recycling contracts include, but are not limited to, the terms in Table 3-1.

Table 3-1
Definitions for to Recycling Contracts

WORD/PHRASE	DESCRIPTION	SAMPLE
ACCEPTABLE MATERIALS/ RECYCLABLE MATERIALS	The definitions section can include a list of the materials that will be accepted as part of the program.	<i>Shall mean recyclable material including: newsprint; corrugated cardboard; chipboard; office paper; magazines; aluminum cans; steel tin cans; green, clear, and brown glass food and beverage containers; and #1 and #2 plastic bottles.</i>
CITY	Clearly identifies that the term "city" refers to a specific community.	<i>Shall mean the City of Dallas, TX</i>
CONTAMINATED MATERIAL	Defines what will be considered contaminated material in the contract.	<i>Shall mean all material collected by the recycling vehicles that is not considered Acceptable Material as defined in this contract. Contamination can include trash and/or refuse, as well as Unacceptable Material.</i>
CONTRACTOR	Clearly identifies the company that is included in the agreement.	<i>Shall mean Waste Management of Texas, Inc.</i>
LETTER OF CREDIT	Identifies the financial instrument and differentiates from Performance Bond, if needed.	<i>Shall mean a standby Letter of Credit issued by a local banking institution made out in favor of the city.</i>
MRF/PROCESSING	Identifies the processing facility to which material should be delivered,	<i>Shall mean the material recovery facility located at 1234 Parker Road,</i>

FACILITY	including the name and address.	<i>Dallas, Texas that is owned and operated by Parker Road Recycling Company.</i>
MULTI-FAMILY HOUSEHOLD	Identifies the minimum living units that constitute a multi-family complex.	<i>Shall mean a building designed for residential occupancy by more than four families.</i>
PERFORMANCE BOND	Identifies the financial instrument and differentiates from Letter of Credit, if needed.	<i>Shall mean a corporate surety bond that guarantees compensation to the city in the event that the city must assume the duties of the contractor in order to continue the services defined in this contract.</i>
PROCESS RESIDUALS	Identifies residuals as being distinct from contamination.	<i>Shall mean any material which cannot reasonably be recycled due to limitations of the sorting process.</i>

CONTRACT TERM

Recycling collection contract terms typically have two components: the initial term and renewal terms.

- **Initial term** begins on the date the contractor is obligated to provide service. The length of the initial term varies depending on the type of services provided. An initial term is typically between three and 20 years.
- **Renewal terms** begin on the date of the initial term or on the date that the previous renewal term expires. Renewal terms are generally shorter than initial terms.

Local governments should refer to their procurement laws to determine whether their community has a maximum number of years, including the initial term and renewal terms that can be awarded for different types of contracts.

Initial Term

The initial term for a recyclable materials collection contract is typically medium to long term. This is partially because it is time consuming and costly for cities to conduct the procurement process. However, the primary reason for longer contract terms is to allow contractors to recover the capital cost of equipment (e.g., vehicles, carts) purchased to provide the collection service. Since renewal terms are not guaranteed, contractors will likely depreciate these capital costs exclusively over the initial contract term. The Table 3-2 shows some typical contract lengths for different types of recycling contracts. Please note that collection and processing service contracts are the primary focus of this Guidebook.

Table 3-2
Typical Initial Term Length for Recycling Contracts

SERVICES PROVIDED	ASSET USEFUL LIFE	INITIAL CONTRACT TERM
Collection (service contract)	Vehicles – 7 years	5 to 10 years
Processing (service contract)	Facility & Equipment – 10 to 20 years	3 to 20 years ¹
MRF operations (operating contract)	Facility & Equipment – 10 to 20 years	10 to 20 years
MRF construction (operating contract)	Facility & Equipment – 10 to 20 years	10 to 20 years

1. The length of a MRF processing contract depends on the circumstances of the contract. If the contractor must construct a new facility in the city to process the city's materials, the contract term will be longer to compensate the contractor for its risk. If the contractor owns and operates an existing facility with multiple service contracts, the contract term may be shorter.

The appropriate initial term for a collection contract depends upon the city's assessment of the need for the contractor to invest in new equipment. For instance, if there is a strong local, private-sector presence in your region, then there may be less of a need to have a longer service contracts.

Renewal Term

The recycling collection contract should also include the possibility to extend or renew the contract when it expires. The two different types of contract renewals are automatic and optional, as described below.

- **Automatic renewal** provides that, unless there is some form of written notice provided within a certain time frame prior to the expiration of the contract, the contract will be automatically renewed for a specified term. These provisions can be written so that either the city or the contractor or both can choose not to renew the agreement.
- **Optional renewal** allows the city the option, in its sole discretion, to renew the contract at the end of the term. In this case, the city must provide written notice to the contractor in order to renew the contract. If no notice is provided, the contract expires at the end of the term.

R. W. Beck recommends recycling contracts provide for optional renewals. Optional renewals eliminate the potential for the contract to be continued against the intent of the local government.

SAMPLE CONTRACT TERM PROVISION

Unless terminated in accordance with Section ___ of this Contract or extended in accordance with this Section, the term of this Agreement shall be for a period of ___ (___) consecutive years commencing on [insert date] at 12:01 AM, CST and expiring on [insert date] at 12:00 PM, CST. City may at its sole discretion extend the term of this Contract for up to ___ (___) additional ___ (___) year terms. To exercise its option, City shall provide written notice to Contractor not later than _____ (___) calendar days preceding the scheduled Expiration Date. This provision in no way limits the City's right to terminate this Agreement at any time during the initial term or any extension thereof pursuant to the provisions in this Agreement.

PERFORMANCE ASSURANCES

Performance assurances are general contract provisions that protect a local government's rights under the recycling contract. Performance assurance provisions come into play in one of two time frames:

- During the contract term; and
- After a contract is terminated.

Termination, discussed in further detail later in this chapter, is the right of the local government or the contractor to cancel the contract.

All performance assurance provisions discussed in this section, as well as any other performance assurances, should be included in the agreement from the date of execution.

During the Contract Term

Performance assurance provisions that come into play during the term of the agreement not only assist to assure compliance with the recycling contract but also to evaluate the recycling program. Reporting and data collection, discussed in Chapters 4 and 5, is an example of a contract provision that assures that a contractor lives up to its responsibilities as set forth in the recycling contract. In addition to reporting provisions, local governments should include general performance assurance provisions such as recordkeeping, auditing and inspection rights.

Recordkeeping

Recordkeeping provisions set requirements on the contractor for storage of records pertaining to services provided under the recycling contract. For example, a recordkeeping provision may require the contractor to keep records such as:

- Tonnages of recyclable materials by material category;
- Customer complaint and resolution log;
- Improper set-out logs;
- Tonnages of rejects and residue;
- Copies of sales invoices for recyclable materials; and
- Other records related to services provided under the contract.

A recordkeeping provision should include requirements as to the time frame for which the contractor must maintain the records and the method of storage (i.e., electronic or printed copies).

Auditing

Local governments should reserve the right to audit the contractor on a periodic basis in the recycling contract. The right to audit the contractor will allow the city to verify:

- Fees paid by the local government to the contractor; and
- Payments paid by the contractor to the local government.

Some of the fees and payments that a local government should be able to verify include:

- Processing fees;
- Revenue share payments for the sale of recyclable materials;
- Franchise fee payment; and
- Other fees.

Local governments must include a provision in the contract in order to assure the right to audit is meaningful.

SAMPLE AUDITING PROVISION

City, at City Administrator's or his/her designee's sole discretion, may audit Contractor. The right to audit shall include the right of City to examine and reproduce Contractor's records. City may perform audits between ____ AM, CST and ____ PM, CST, excluding Saturdays and Sundays, from the Execution Date of Contract through ____ () years after the date final payment from City to Contractor

for Recycling Services is received by Contractor. If City Administrator or his/her designee elects to audit Contractor, Contractor shall provide City Administrator and his/her representatives access to all records of Contractor relating to Contract. Records shall include pertinent books, invoices, weight tickets, _____, and all other documents and papers relating to Contract not otherwise excluded by this Section of the Contract. Records shall not include financial statements, tax returns, payroll records, _____, or any other proprietary information. Contractor shall provide adequate and appropriate work space at Contractor's facilities located within City in order to conduct audits in compliance with the provisions of this section. City shall give Contractor at least _____ (__) calendar days advance written notice in accordance with Section __ of this Contract of intention to audit. City shall pay audit costs incurred by third party retained by City and costs of City staff. City shall not pay for any costs incurred by Contractor or third parties retained by Contractor. Contractor shall be solely responsible for audit costs incurred by Contractor and third parties retained by Contractor.

Inspection Rights

Inspection rights give a local government the authority to inspect any or all of the following:

- Records of the contractor;
- Contractor's collection and processing equipment; and
- Contractor's facilities.

A contract provision granting inspection rights to the local government will likely require the city to give reasonable notice to the contractor prior to inspection. In addition, it is common that inspection of records must be done at the contractor's facilities. The right to inspect not only allows the local government to make sure the contractor is in compliance with the contract, but also to confirm the contractor is complying with applicable laws, regulations, and ordinances.

SAMPLE INSPECTION RIGHTS PROVISION

City, at City Administrator's or his/her designee's sole discretion, may inspect Contractor's equipment and facilities. City may perform inspection during the hours of operation as defined in Section __ of the Contract from the Execution Date of

Contract through Expiration Date or Termination Date, whichever occurs first. If City Administrator or his/her designee elects to inspect Contractor's equipment or facilities, Contractor shall provide City Administrator and his/her representatives access to any and all equipment and facilities relating to Contract. Equipment shall include vehicles, _____, and all other equipment relating to Contract. Facilities shall include local customer office, _____, and all other facilities relating to Contract. Equipment and facilities shall not include _____. Contractor shall provide adequate and appropriate work space at Contractor's facilities located within City in order to conduct inspections in compliance with the provisions of this section. City shall give Contractor at least _____ (__) calendar days advance written notice in accordance with Section __ of this Contract of intention inspect Contractor's equipment and/or facilities. City shall pay inspection costs incurred by third party retained by City and costs of City staff. City shall not pay for any costs incurred by Contractor or third parties retained by Contractor. Contractor shall be solely responsible for inspection costs incurred by Contractor and third parties retained by Contractor.

After Contract Termination

If a local government finds itself in the situation in which the recycling contract is terminated, the local government may incur costs due to the termination, such as the cost involved with procuring replacement recycling services. Performance assurances for post-termination are in place to hedge against these costs. Generally speaking, there are three types of post-termination performance assurances, as discussed below:

- Performance Bond;
- Letter of Credit; and
- Parent Guarantee.

R. W. Beck did not provide sample contract language for performance assurances that occur after contract termination. It is best that local governments consult with the City Attorney or outside counsel for the appropriate language needed for these provisions.

Performance Bonds and Letters of Credit

Performance Bonds and Letters of Credit are similar credit instruments meant to provide cash to a local government in the event that the hauler does not perform and the city is forced to

take over service (e.g., bankruptcy, default). Performance bonds and letters of credit should be large enough to provide the city with adequate funding to:

- Take over service for the amount of time it takes to re-procure services (e.g., monthly service cost multiplied by the number of months of the transition; and
- Procure a new service provider.

Generally speaking, Letters of Credit are easier to liquidate for cities in the event of contractor non-performance. However, contractors tend to prefer Performance Bonds for service contracts. Some cities allow contractors to choose what type of performance assurance instrument that they provide.

Whichever instrument is chosen, it is critical that the city maintain appropriate documentation of the instrument.

Parent Guarantee

A Parent Guarantee is a provision in the contract that states that a contractor's parent company will act as the guarantor in a contractual arrangement. In other words, the parent company will guarantee service to the local government. Parent guarantees are not mutually exclusive with Performance Bonds/Letters of Credit.

LIABILITY ASSURANCES

As with any contract for services, claims may arise as a result of the recycling contract. Therefore, local governments should include liability assurances in their contracts. Some of the most common liability assurances are indemnification provision and insurance coverage requirements. There may be additional provisions that a local government may wish to include in their recycling contracts.

R. W. Beck did not provide sample contract language for liability assurances. It is best that local governments consult with the City Attorney or outside counsel for the appropriate language needed for these provisions.

Indemnification Provision

Indemnification provisions identify the party responsible for defending against legal actions as a result of negligent acts, intentional acts, or omissions by the contractor in performing service. For example, an indemnification provision may, depending on how the provision is

drafted, require the contractor to pay for property damages caused by the contractor's employee to a customer even if the claim was filed against the local government. Failure to include an indemnification provision may cause the local government to incur costs that it otherwise wouldn't have had to incur.

Insurance Coverage Requirements

There are two components in developing the insurance coverage requirements for a recycling services contract. The first component, which is often overlooked, includes the general insurance requirement such as:

- Responsibility for payment of insurance premiums and deductibles;
- Requirement to submit copy of insurance certificate to local government;
- Requirement for local government to be named as an additional insured;
- Notification requirement for cancellation or change in insurance coverage; and,
- Submission of notice of accident or occurrence to local government.

The second component of insurance coverage requirement provides information regarding the specific insurance requirements such as policies and policy limits. Some policies that a local government may wish to include in the recycling contract are:

- Workers Compensation;
- Employer's Liability;
- Commercial General Liability;
- Automobile; and,
- Umbrella Liability.

The local government, City Attorney and other City officials and advisors should determine the policy limits for each insurance policy that best meets the needs of the local government.

CONTRACT ENFORCEMENT AND REMEDIES

Chapters 4 and 5 provide a discussion of liquidated damages (also called Administrative Fees) as a means for contract enforcement and remedies. However, in addition to liquidated damages, the local government should reserve the right to withhold payment and terminate the agreement. Payment withheld and termination provisions are intended for serious circumstances such as breach of contract. Since these provisions are for select instances, the

local government must make sure to clearly state when the local government may utilize these rights.

Payment Withheld

A payment withheld provision allows a local government to withhold payment until the circumstance that caused the local government to withhold payment is corrected. For example, the local government may choose to reserve the right to withhold payment if the contractor fails to submit payment to the local government for revenue sharing in accordance with the contract. Once the contractor submits payment for revenue sharing, the local government would be obligated to pay the contractor. A payment withheld provision should include guidelines for delivering notice to the contractor, the ability for the contractor to dispute the payment withheld, and other terms that describe the process for withholding of payment by the local government.

SAMPLE PAYMENT WITHHELD PROVISION

In addition to express provisions elsewhere contained in this Contract, City may withhold from any payment otherwise due the Contractor such amount as determined necessary to protect the City's interests on account of:

- (i) Unsatisfactory progress of the work not caused by condition beyond Contractor's control;*
- (ii) Contractor's failure to carry out instructions or orders of the City, City's representatives, or City Administrator or his/her designees;*
- (iii) Execution of work not in accordance with the Agreement;*
- (iv) Defective work not corrected;*
- (v) Unsafe working conditions allowed to persist by Contractor; (vi) Damage to another contractor;*
- (vii) Use of any subcontractors without the City's prior written approval;*
- (viii) Failure of Contractor to make payments to any subcontractor for material or labor;*
- (ix) A reasonable doubt that the Contractor shall be able to complete Recycling Services for the term of the Contract;*

(x) *Claim filed by or against Contractor or reasonable evidence indicating potential filing of claims;*

(xi) *Failure of Contractor to provide required reports and other reports as required by City; or*

(xii) *Failure of Contractor to provide accurate invoices and supporting data as required by this Contract.*

When the above grounds are removed, payment shall be made for amounts withheld. City shall never be liable for interest on any delayed or late payment due to City withholding payment. The City's right to withhold payments under this Section will be reasonable in light of the nature of the claim, amount of available insurance and performance bond pursuant to this Agreement.

Right to Terminate

Recycling contracts should always include the right to terminate for cause. The right to terminate for cause should be available to the local government and to the contractor. A right to terminate for cause allows a party the right to terminate the contract if the other party breaches the agreement.

In addition to the right to terminate for cause, a recycling agreement may include the following termination rights:

- **Right to terminate for convenience** allows the local government the right to terminate without cause; and,
- **Right to terminate for unavailability of funds** allows the local government to terminate the contract in the event funds are not allocated for the recycling services.

A local government should be aware that the inclusion of a right to terminate for convenience or a right to terminate for unavailability of funds in the contract may cause some contractors to choose not to propose or bid on the recycling services.

R. W. Beck did not provide sample contract language for termination provisions. It is best that local governments consult with the City Attorney or outside counsel for the appropriate language needed for these provisions.

DISPUTE RESOLUTIONS

All recycling contracts should include dispute resolution provisions. These provisions should address disputes that are handled between the parties and disputes that involve the judicial system. For disputes handled internally, the dispute resolution provision should include:

- Whether the contractor is required to continue to provide recycling services during the dispute;
- Whom should receive notice as to the dispute on behalf of the local government and the contractor;
- Who will be responsible for deciding the outcome of the dispute;
- If the contractor or local government wishes to appeal the decision regarding the dispute, what is the appeal process; and
- Other terms regarding the dispute resolution process.
- For disputes involving the judicial system, the dispute resolution provision should state:
 - Whether the local government is required to participate in mediation;
 - Whom is responsible for attorney fees;
 - What laws shall govern the dispute;
 - Where will the judicial proceeding be held; and,
 - Other terms regarding the dispute resolution process.

It is always best to agree upon the dispute resolution process prior to a dispute arising.

R. W. Beck did not provide sample contract language for dispute resolution. It is best that local governments consult with the City Attorney or outside counsel for the appropriate language needed for these provisions.

ASSIGNMENT AND SUBCONTRACTING

Local governments may elect to allow, prohibit, or require approval for assignment and/or subcontracting. Assignment of the contract is the ability of the contractor to assign the contractor's responsibilities and liabilities under the contract to another party. Subcontracting of the contract is the ability of the contractor to assign part or all of the contractor's

responsibilities under the contract to another party; however, the contractor still remains liable to the local government.

Since local governments select a contractor for recycling services for reasons beyond cost, a local government should consider including a general provision prohibiting or requiring approval for assignment and subcontracting of the contract.

SAMPLE ASSIGNMENT AND SUBCONTRACTING PROVISION

Contractor shall not assign, subcontract, convey, or otherwise dispose of this Contract or permits required for this Contract without the written permission of City. If Contractor assigns, subcontracts, conveys, or otherwise disposes of this Contract or permits without the written permission of City, Contractor shall remain liable to City under this Contract. If City provides Contractor written permission to subcontract, Contractor shall be remain liable to City for full and complete satisfactory and acceptable performance of Recycling Services in accordance with this Contract.

COMPLIANCE WITH LAWS, REGULATIONS, AND ORDINANCES

A contractor providing recycling services is subject to federal, state, and local laws, regulations, and ordinances. Today, many recycling contracts include a provision placing the responsibility on the contractor to be informed of the laws, regulations and ordinances that impact the services provided. In addition, recycling contracts obligate the contractor to comply with current and future laws, regulations, and ordinances in performance of the services pursuant to the contract.

SAMPLE COMPLIANCE WITH LAWS, REGULATIONS, AND ORDINANCES PROVISION

Contractor shall comply at all times with all applicable local, State and Federal laws, regulations, ordinances and similar requirements, including all applicable requirements concerning noise, odors, effluent and emissions, now and thereafter in effect.

MISCELLANEOUS GENERAL CONTRACT PROVISIONS

This section of the Guidebook is intended to provide an overview of general provisions included in recycling contracts. It is important to note that there are other general provisions that the local government should include in their recycling contracts, including those listed below.

- **Force Majeure:** Identifies situations, such as Acts of God, in which the Contractor shall not be required to provide recycling services.
- **Independent Contractor:** For liability purposes, this provision states the contractor is an independent contractor and is not an employee of the local government.
- **Payment of Licenses, Permits, and Taxes:** Clarifies that contractor is solely responsible for all costs related to licenses, permits and taxes.
- **Severability:** If a provision of the contract is found to be invalid, illegal or unenforceable, the remaining provisions of the contract shall remain in effect.
- **Modifications to Contract:** Identifies the procedure for modifying the contract including notice and signature requirements.

A recycling contract is a partnership between the local government and the contractor. In addition to provisions that are specific to the services provided, the local government must make sure to address the general provisions that will govern this partnership.

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CHAPTER 4: DEVELOPING COLLECTION CONTRACT PROVISIONS

NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS
RECYCLING CONTRACT NEGOTIATION GUIDEBOOK



What provisions should be included in a collection contract for recyclable materials? How can a contract provide incentive for the contractor to increase diversion?

CHAPTER 4

DEVELOPING COLLECTION CONTRACT PROVISIONS

OVERVIEW

This chapter discusses contract provisions that are specific to contracts for recyclable materials collection services. Many of the provisions discussed here will also be applicable to integrated collection and processing contracts.

In developing and negotiating the contract, the goal is to adequately address all conceivable collection issues that might arise during the term of the agreement. More detail generally results in a better agreement. But, it is important to keep in mind the city's administrative resources to manage and monitor the contract when negotiating provisions with the contractor. In addition, keep in mind that increasing contractor requirements will often increase the cost to provide service and will be reflected in the rates.

R. W. Beck consulted with legal counsel in the development of the sample contract language included in this Guidebook. The sample language provided is meant to be used by local governments and private companies as a reference and a starting point for developing language to be used in recycling service contracts. **This Guidebook is not meant to be used as a substitute for legal counsel in procurement or contract negotiations.** R. W. Beck strongly

recommends that users of this Guidebook consult with City Attorneys and/or outside legal counsel in utilizing the language provided in this Guidebook. This Guidebook does not constitute legal advice, recommendations, counsel, or guidance.

R. W. Beck intentionally did not develop sample contract language for certain provisions in this chapter. Contract language for these provisions is best provided by your City Attorney or Procurement Department.

CONTRACTOR OPERATIONAL OBLIGATIONS

Your recycling collection agreement will have a number of provisions that describe the contractor's operational obligations. Provided below are some common operational contract provisions, including the following:

- Collection method;
- Collection frequency and schedule;
- Collection vehicles;
- Collection containers;
- Delivery of recyclable materials;
- Ownership and risk of loss; and
- Non-collection.

As mentioned, there may be other operational obligations, beyond those described in this chapter, that the local government may include in their contract.

Collection Method

Typically, there are three different methods for collecting recyclable materials.

- **Source Separated Collection** means recyclable materials are separated by commodity type at the place where the recyclables are generated.
- **Dual-Stream Collection** means recyclable materials are separated into two material groups, fibers and containers, at the place where the recyclables are generated and further sorted at the processing facility.
- **Single-Stream Collection** means recyclable materials are commingled at the place where the recyclables are generated and sorted at the processing facility.

Local governments must identify in the recyclable materials collection contract the collection method to be used by the contractor. In making a decision as to the method of collection, you

should take into account the current process in which recyclable are being collected and the requirements of processing facilities in the area. Since the vast majority of the processing facilities in North Central Texas are designed to accept single-stream materials, it is likely that most contracts will specify single-stream collection.

The collection method is often identified in the definition section. Provided below is sample definition language for Recycling Collection Services and Single-Stream.

SAMPLE DEFINITION LANGUAGE

“Recycling Collection Services” shall mean the Single-Stream Collection of Recyclable Materials from Service Units within the City, utilizing Recycling Container, and the delivery of the Recyclable Materials to the Designated Recycling Facility.

“Single-Stream” shall mean a recycling process in which all Recyclable Materials are Collected mixed together with no sorting required by the Service Unit.

Collection Frequency and Schedule

Recyclable materials collection contracts must specify the frequency of collection. The most common frequency for collection is once per week; however, some communities have elected for every-other-week recyclable materials collection service. Once-per-week collection is generally perceived to be more convenient and simple for the residential customers. However, every-other-week collection can provide environmental benefits, such as reduced emissions from collection vehicles, and operational benefits, such as maximizing volume per set out.

In addition to determining the frequency of collection, the local government should address recyclable materials collection scheduling issues that are likely to arise. Some of the scheduling issues that the contract should address include:

- Whether collection of recyclable materials is required to be provided on the same day as garbage collection;
- Whether recyclable materials collection will be provided on city holidays. If not, the contract should state when the collection services scheduled on the holidays will be performed;
- Whether the contractor may postpone collection in the event of inclement weather. If so, the procedure for postponement of collection services should be outlined; and

- Whether the contractor may change the recyclable materials collection routes during the term of the contract. If so, the procedure for changing the routes should be outlined.

Frequency, scheduling and other decisions will impact the costs for recyclable materials collection. When making these decisions, local governments should consider the benefits and costs of each alternative.

SAMPLE COLLECTION FREQUENCY AND SCHEDULE PROVISION

Contractor shall provide collection of Recyclable Materials one (1) time per week from residential customers. Collection of Recyclable Materials shall occur on the days scheduled for refuse and garbage collection.

Hours of Operation

Contractors providing recyclable materials collection services will need to be accessible to the city and its residents. When defining the hours of operation, the contract should identify the hours of operation for the following components of recyclable materials collection services.

- **Collection services hours** are the hours for which the contractor may provide collection services. When determining the collection service hours, the local government should consider the impact on the community such as whether the services are being provided in or near residential neighborhoods.
- **Customer office hours** are the hours which residents may reach the contractor to report missed collection, damage to property, or other complaints regarding recyclable materials collection services. (This pertains to a Contractor-Operated Call Center, as described later in this chapter.)
- **Contractor representative hours** are the hours which a representative of the contractor with authority to make decisions on the contract is accessible to the local government. R. W. Beck recommends the contractor representative be accessible to the local government 24 hours everyday.

SAMPLE COLLECTION SERVICE HOURS PROVISION

Excluding Holidays, Contractor shall provide Recyclable Collection Service from Monday through Friday, ____ AM, CST to ____PM, CST and Saturday ____ AM, CST to ____ PM, CST. Recyclable Collection Service shall not be provided on

Sundays. Contractor shall not make any changes to the hours of operation as provided in this Section without the prior written approval of the Contract Administrator or his/her designee.

Collection Vehicles

Recyclable materials collection contracts typically specify requirements for collection vehicles. At a minimum, recycling collection contracts should require contractors to provide sufficient front-line and spare vehicles to execute the contract terms (i.e., provide the service).

In addition to the requirement to maintain sufficient vehicles, R. W. Beck also recommends that local governments consider the following vehicle requirements for collection contracts:

- Prevention of leakage and spillage from collection vehicles;
- Compliance with U.S. Environmental Protection Agency noise emission regulations;
- Minimum frequency of cleaning and deodorizing of collection vehicles;
- Two-way communications device;
- First aid kit;
- An approved dry chemical fire extinguisher;
- Warning flashers;
- Warning alarms to indicate movement in reverse;
- A broom and shovel for cleaning up spills;
- Identification of collection vehicles with contractor's name, phone number, and truck number; and
- City right to inspect collection vehicles.

Some local governments choose to require new vehicles or set a maximum age for collection vehicles. Due to the cost of collection vehicles, the local government should consider the impact of vehicle age requirements on the contractor's recycling costs.

In addition, in support of city-wide sustainability efforts, some cities have chosen to place requirements on the contractor for use of alternative fuels in collection vehicles. This could also be applicable because nine counties within North Central Texas have been designated as nonattainment for the pollutant ozone in accordance with the National Ambient Air Quality Standards (NAAQS). Cities should include any sustainability provisions for vehicles in this section of their contract.

SAMPLE COLLECTION VEHICLES PROVISION

Contractor shall provide and maintain and have available at all times during the term of this Contract the necessary amount of Collection vehicles and equipment to perform the Recyclable Collection Services as specified herein.

Collection Containers

When drafting the contract provisions regarding recycling containers, local governments should make certain to address the following:

- Purchase;
- Assembly;
- Distribution;
- Storage;
- Maintenance;
- Replacement; and
- Ownership.

The decision as to whether the local government or the collection contractor purchases the recycling containers is critical to the local government's ability to change collection contractors at the end of the contract. Unless the contract provides otherwise, the party that purchases the recycling containers will own the recycling containers at the end of the contract term. Since the purchase of recycling containers can be a significant capital expenditure, some local governments have required the contractor to purchase the recycling containers and transfer ownership at the end of the contract. If a local government decides to go this route, it should require that the recycling containers' specifications (i.e., manufacturer, size, color, graphics) be approved by the city. In addition, it should be noted that the transfer of title may be contentious since the relationship between the city and the contractor will eventually come to an end. Therefore, R. W. Beck generally recommends that the local government purchase the recycling containers at the outset of the agreement.

Provided below is sample contract language for the purchase of recycling carts for a single-stream, residential curbside program. Note that it is common for the party responsible for the purchase of containers to be responsible for the assembly and initial distribution. Sometimes the container manufacturer will provide this service. However, cities can choose to allocate these responsibilities in whatever way would best meet their needs.

SAMPLE COLLECTION CONTAINERS PROVISION

_____, at its sole cost, shall purchase all Recycling Carts required for the provision of Recyclable Materials Collection Services pursuant to this Contract. In addition, _____, at its sole cost, shall assemble and deliver one (1) Recycling Cart to each Residential Service Unit prior to the Commencement Date, but not sooner than _____, 2009, unless instructed otherwise by the City.

Delivery of Recyclable Materials

Sometimes recycling collection contracts make the error of failing to state where the recyclable materials shall be delivered. Contracts typically specify the processing facility in one of the following ways:

- Identify the facility and facility address; or
- State the designated facility as solely determined by the local government.

If a city elects to use the second approach, it should initially inform bidders or proposers which facility has been designated. In addition, the local government should include adjustments in the event a change in the designated facility causes the collection contractor to incur additional transportation costs.

Provided below is sample contract language for the provision of delivering recyclable materials for processing. Note that delivery requirements can be included as part of one of the definitions. The sample below for a residential curbside program includes the delivery provision in the definition of collection and identifies the facility by address.

SAMPLE DELIVERY DEFINITIONS

“Collect” or “Collection” shall mean the process by which Program Recyclables are removed from Curbside or other location designated by the Contract Administrator or his designee and delivery of the Program Recyclables to the Recyclable Materials Processing Facility.

"Recyclable Materials Processing Facility (RMPF)" shall mean a facility engaged in the storage, Processing, Marketing, and/or reuse of Recovered Materials. The Recyclable Materials Processing Facility shall be located at

_____.

Ownership and Risk of Loss

The ownership and risk of loss provision in a contract describes which entity has title (i.e., ownership) and risk of loss of the recyclable materials at different stages of the collection operation. In integrated collection and processing contracts, in which one company handles both collection and processing, it is common for the title and the risk of loss of the material to transfer to the hauler once they are collected from the curb.

In separate or unbundled collection and processing contracts, however, it is uncommon for ownership to pass to the collection contractor. In this situation, the collection contractor is providing transportation only and would likely not have ownership of the recyclable materials. Ownership would pass to the processor upon acceptance of the material at the facility. Ownership of rejected loads would not pass to the processor, but would remain with the city. To the contrary, risk of loss would likely pass to the contractor upon collection of the recyclable materials from the customers. This topic is further discussed in Chapter 5.

SAMPLE OWNERSHIP AND RISK OF LOSS PROVISION

Ownership and risk of loss to Recyclable Materials shall pass to Contractor once Contractor takes possession of the Recyclable Materials at the Service Unit. Ownership and risk of loss to Recyclables Materials shall remain with Contractor until the Recyclable Materials are accepted at the MRF. After ownership and the risk of loss passes to Contractor, Contractor shall be liable to City for any and all Recyclable Materials lost, damaged, or scavenged for the sum of funds that would have been paid to City in accordance with the provisions of this Contract.

Non-Collection

When discussing non-collection, the local government should address the following two questions.

- When is it acceptable for a contractor not to collect a set-out?
- If a contractor is not required to collect a set-out, what kind of notification must the contractor provide the customer and the local government?

As to the first question, some contracts hold the contractor, specifically the truck drivers, responsible for identifying and not collecting any materials that are excluded from the city's program. For instance, if a driver identified that a particular house had a large amount of unacceptable material, such as food waste, in its recycling bin, the contract may allow the

driver to not collect that bin. However, this type of provision primarily applies to programs that utilize manual collection with open-top bins. In cart-based, single-stream programs, it is not practical or appropriate to require the drivers to inspect material at the curb. Automated collection drivers should focus on collection efforts and should not be required to get out of the truck to inspect material. For these programs, cities must typically implement other enforcement initiatives, such as hiring designated recycling enforcement officers.

As to the second question, contracts that permit a contractor to not collect a set-out most often also require the contractor to provide a written notice or tag on the customer's container to explain the non-collection. Some local governments also require the contractor to keep a copy of the notice for inspection by the city upon request or to automatically submit a copy of the notice to the city upon the occurrence.

SAMPLE NON-COLLECTION PROVISION

Contractor shall develop, print, and distribute, at Contractor's sole expense, an Improper Set-out Notice. The Improper Set-out Notice shall be approved by the City Administrator and shall at a minimum include one (1) original with two (2) carbon copies. The Improper Set-out Notice shall include (a) the date (b) reason for non-collection, and (c) Contractor's customer service telephone number, and (d) any other information the City requests. Contractor shall attach the original Improper Set-out Notice via a non-adhesive means to the handle of the Recycling Cart. Contractor shall maintain the carbon copies of Improper Set-out Notices in a format Contractor can immediately retrieve upon request by City Administrator or his designee. Contractor shall provide a monthly report of Improper Set-out Notices as set forth in this Contract.

CONTRACTOR ADMINISTRATIVE OBLIGATIONS

In addition to the operational obligations of providing recyclable materials collection service, the contractor will also likely have some administrative responsibilities pursuant to the contract. Listed below are example contract provisions related to a collection contractor's administrative obligations.

- Reporting and data collection;
- Public education;

- Customer service call center;
- Billing;
- Local office; and
- Diversion incentive.

As discussed in the prior section, there may be other administrative obligations, beyond those described in this chapter, that the local government should include in its recyclable materials collection contract.

Reporting and Data Collection

To assist the city in evaluating the progress of its recyclable materials collection program and to confirm the contractor is fulfilling its obligations, local governments should include contractual provisions that require the contracted collection hauler to provide monthly and annual reports concerning the recycling services. Cities may specify both the frequency and the format of reports from the contractor.

SAMPLE REPORTING PROVISION

Within fourteen (14) calendar days of the Execution Date, Contractor shall submit to the City Administrator for its approval the format and sample contents of the reports to be generated in fulfillment of the reporting requirements as set forth in Section ___ of this Contract. If City Administrator does not approve the format and sample contents of the reports, City Administrator shall submit written notice to the Contractor stating the reasons for disapproval. Upon receipt of written notice of disapproval, Contractor shall within seven (7) calendar days amend the proposed format and sample contents of the reports to address the reasons identified in the notice and deliver such to the City Administrator for approval.

The types of information that are generally included in the reports include, but are not limited to, the following:

- Gross weight of material delivered to the processing facility, recorded by date, time and truck number;
- Customer set out and participation rate, including frequency of data collection and methodology used;
- Customer complaints, including missed collections, and resolution log; and
- Improper set-out log

A recycling set out rate represents the number of households on a residential collection route that set out materials during a given week. To gather this data, haulers can require their recycling truck drivers to record the number of homes that set out materials for recycling on a particular route. In most situations, set out rate information, combined with an understanding of pounds per set out, provides a local government with sufficient data to assess program performance and develop effective public education.

A recycling participation rate represents an understanding of which specific households on the recycling routes participate in the program at some point during a defined period of time, usually a month. This requires tracking which specific addresses set out materials in a given month. If local governments identified the need to collect this information, it would likely need to be collected by personnel other than the recycling truck drivers.

In addition, if a city has an integrated collection and processing contract or a contract with the processor, other valuable information may be requested such as:

- Tonnages by commodity, delivered by date;
- Net amounts of recyclable materials marketed, by material type; and
- Amounts of process residuals disposed.

If a city does not have an integrated collection and processing contract or a direct contract with the processor, then it is unlikely that it would be able to receive the additional information identified in Chapter 5 of this Guidebook. Regardless of the information the collection contractor is required to provide, the local government should always stipulate in the contract that the contractor will provide a description of the methodology used to generate the data required.

Public Education

Local governments may wish to include provisions requiring the contractor participate in public education efforts. In determining public education provisions, it is important to be specific in exactly what the contractor will be required to do. Broad contract language with regard to public education is difficult to enforce. Local governments should establish in the contract the specific frequency and level of effort that is required of the contractor for public education.

Contracts may specify that collection contractors participate in public education in the following ways:

- Appearing at certain public events (e.g., Earth Day, America Recycles Day);

- Conducting a specific number of presentations for community groups and organizations (e.g., Chamber of Commerce, schools);
- Maintain a dedicated website for the city’s program; and
- Development, printing and/or distribution of education materials (e.g., utility bill inserts, flyers).

Ideally the contractor will be a partner and technical advisor in public education and not have complete authority over – or responsibility for – the public education program. In negotiating public education provisions, be sure that the city has the right to review and approve all contractor-provided materials before they are distributed.

In addition, local governments may also require contractors to contribute financially to the public education program. Local governments have the option to require funding for public education in either a lump-sum payment or a per-household payment. Financial contributions to public education are further discussed in Chapter 6 of this Guidebook.

If requiring the contractor to participate in public education, it is possible that the contractor will also require the city to provide a certain level of participation and documentation. For instance, the contractor may require the local government to provide documentation of how public education funding is spent. In addition, the city may choose to obligate itself to provide a certain level of funding for public education. This can be advantageous to the city in the event of city budget shortfalls.

Provided below is a sample public education provision regarding a specific public education effort – a program introduction notice.

SAMPLE PUBLIC EDUCATION PROVISION

City shall, at its sole cost, develop and print the Program Introduction Notices. Contractor shall, at its sole cost, distribute a Program Introduction Notice to each Residential Service Unit for which Contractor delivers a Recycling Cart and each Residential Service Unit that picks up a Recycling Cart at Contractor’s office. For each Program Introduction Notice delivered by Contractor, Contractor shall attach the Program Introduction Notice via a non-adhesive means to the Recycling Cart.

Customer Service Call Center

It is important to assure that customers are able to report complaints, such as a missed collection, to either the city or the contractor. When drafting the contract, the city will need to include different terms dependent on whether the city or the contractor will operate the call center.

City-Operated Call Center

To the extent that a city has internal customer service capabilities (e.g., telephone answering system, customer service representatives), it is ideal that the city would handle its own customer service for recycling. If the city fields customer service calls and requests, it provides a greater level of control over the program and allows the city to monitor the performance of the contractor more closely.

Contractor-Operated Call Center

If the contractor will be handling customer service, it is important to include the following details in the contract:

- Operating hours of telephone answering service;
- Amount of time allowed for resolution of complaints;
- Business and/or telephone directory under which the contractor must secure a listing; and
- Procedure for reporting complaints and resolution of complaints to the city.

For cities that have contractor-operated call centers, it is critical to establish ways to ensure that customer complaints are being handled in a manner consistent with the contract provisions. R. W. Beck recommends that notification be provided to the city for all complaints as well as documentation of when and how the contractor resolved the complaint. However, in addition to record keeping, R. W. Beck recommends that local governments conduct periodic surveys (on a quarterly, semi-annual, or annual basis) of customers to assess the performance of the contractor. Local governments may also utilize the right to audit the contractor's records to assess the effectiveness of the contractor-operated call center.

SAMPLE CITY-OPERATED CALL CENTER PROVISION

All service complaints shall initially be directed to the City's Customer Service Department. City shall generate an electronic work order for complaints the City deems legitimate. City shall electronically submit to Contractor electronic work

orders for complaints City deems legitimate. If electronic work order is transmitted by the City prior to noon, CST, Contractor shall resolve each complaint identified in the electronic work order by 5:00 PM, CST the day of transmittal of the electronic work order from the City. If electronic work order is transmitted by the City on or after noon, CST, Contractor shall resolve each complaint identified in the electronic work order by 5:00 PM, CST the following Business Day. On the calendar day of resolution of the complaint or the following Business Day, Contractor shall resubmit the electronic work order with the resolution identified to the City.

Billing and Payment

When developing the billing and payment contract provisions, the first question is who will be responsible for billing. In North Central Texas, it is most common for the city to assume responsibility for billing customers. A city may choose to include the recycling charge on the utility or property tax bill or embed the cost of recycling in the overall solid waste service fee.

Once the decision is made as to who will be responsible for the billing, the city must decide how payment will be calculated. Two typical ways to calculate payment are:

- Physical households served; and
- Number of active solid waste accounts.

If the local government chooses to pay the contractor based on households served, the city shall be responsible for payment for delinquent customers. If the local government chooses to pay based on accounts receivable, the contractor will likely increase the cost for collection service assuming some customers will not pay their bill.

If the local government is responsible for the billing, payment for franchise fees, administrative fees, liquidated damages and other fees payable to the city, those fees should be subtracted from the payment to the contractor. If billing is to be performed by the contractor, the contract should state the procedure for the contractor to submit payment to the city.

R. W. Beck did not provide sample contract language for billing and payment. It is best that local governments consult with the City Attorney and/or the Finance Department for the appropriate language needed for these provisions.

Local Office

Some local governments may choose to require that their contractor maintain a local office from which they conduct business in the city or region. The local office would not necessarily need to be within the city limits, but the local government could stipulate that it be within a certain number of miles from city hall. This local office may also be the office where customer service calls are taken by contractor staff. Local governments may specify the required hours of operation and may opt to require the contractor to designate a qualified managing agent to conduct business on behalf of the contractor in the city to be located at the local office.

SAMPLE LOCAL OFFICE PROVISION

Contractor shall maintain during the term of this Contract, a fully operational office within the City equipped with internet and telephone services via a non-toll call from the City. Contractor's local office shall be staffed by the Contractor's employees, whom shall be familiar with the City and shall have the authority to transact all business requirements for the performance of this Contract, when the local office is open. At a minimum, Contractor shall maintain the local office be open Monday through Friday from 8:00 AM, CST to 5:00 PM, CST or during Collection Services whichever is longer.

Personnel Standards

Personnel standards in collection contracts are intended to protect the community and the contractor's employees. The local government should include requirements such as:

- Requirement that personnel are qualified to perform the duties (i.e., commercial drivers license);
- Requirement for personnel to provide collection services in a courteous and professional manner;
- Requirement that personnel adhere to Federal, State, and local laws in performance of their duties;
- Requirement as to personnel's uniforms and safety equipment;
- Requirement for new employee training to include familiarizing the employee with the city and the contract requirements;
- Requirement for regularly scheduled employee operational and safety training; and

- Other requirements that relate to the services to be provided under the contract

It is the city's responsibility to assure that the collection contractor's employees provide services consistent with the expectations of the city and its residents.

R. W. Beck did not provide sample contract language for personnel standards. It is best that local governments consult with the City Attorney for the appropriate language needed for these provisions.

Administrative Fees

Administrative fees, also known as liquidated damages, are assessed in order to assure the contractor provides recycling services in accordance with the contract. It is important to remember that these charges are meant to compensate the city for the cost associated with contractor non-performance. Therefore, if the fee should be excessive and penalize the contractor for non-performance it will not be enforceable in the court of law.

As an example, cities may choose to assess administrative fees for the following types of infractions:

- Failure to clean up recyclable materials spilled within a certain time frame of notification;
- Unresolved customer complaints;
- Neglect to collect recyclable materials, which are properly prepared and set out by the resident, 24 hours after either oral or written notification;
- Non-collection of entire blocks and/or neighborhoods;
- Failure to clean up oil or other fluids from vehicle spills or leaks;
- Exceeding gross vehicle weight limits as set forth by Federal, State, or local law;
- Failure to submit reports; and
- Failure to maintain a local office.

To the extent that the above items are required by the contract, the city may include administrative fees for non-performance in the contract. In addition, the local government should identify any other obligations of the contractor that it may wish to establish administrative fee for in the event the contractor fails to fulfill its obligation.

Once the scenarios that give rise to administrative fees have been identified, the city must determine the process for payment of administrative fees. There are primarily three options for a local government to collect administrative fees, as listed below.

- **Withholding from monthly payment:** The city subtracts the amount of administrative fees from the monthly payment to the contractor.
- **Escrow account:** The contractor can maintain an escrow account from which the city may draw in the event that administrative fees are incurred. The city may inform the contractor when the account needs to be replenished.
- **Standard invoicing:** The city may submit a standard invoice to the contractor to collect administrative fees.

The decision as to how administrative fees will be collected is influenced by who is responsible for the billing. If the city does the billing, then R. W. Beck recommends the city withhold the administrative fees from the monthly payment to the contractor. If the city does not perform the billing, the city may elect to require an escrow account or perform standard invoicing.

SAMPLE ADMINISTRATIVE FEES PROVISION

Contractor understands that if Contractor does not timely perform its obligations pursuant to the terms of this Contract, City shall suffer damages which are difficult to determine and adequately specify. Contractor agrees, in addition to any other remedies available to City, that City may withhold payment from the Contractor in the amounts specified in this section of the Contract as Administrative Damages for failure of the Contractor to fulfill its obligations as set forth in this Contract.

DIVERSION INCENTIVES

Description

In the course of interviews with local governments and private companies in North Central Texas, R. W. Beck did not identify any cities that have diversion incentives included in their collection contracts. In fact, R. W. Beck found that most collection contractors have a direct financial incentive to *minimize* recycling collection services because they are paid on a per-household basis.

R. W. Beck conducted research to determine what incentive structures are in place in other communities to maximize recycling. These incentive structures are discussed in this section.

Any change in the incentive or financial structure of collection contracts in the region will represent a significant paradigm shift for both cities and private companies. Therefore, to the extent that cities choose to implement an incentive structure as described below, it will be critical to invite collaboration from the private sector to ensure a “win-win” for all parties.

In addition, cities must weigh the benefits of new contract incentives against the possibility of increased costs from the contractor who view the new incentive structure as an increase in business risk. If a contractor enters into an agreement with which they have minimal experience, you can expect that they will inflate the amount that they expect to be paid to account for unknown risks.

Bonus Incentives

Listed below are potential contract incentives that provide a bonus to contractors when diversion goals are reached. These incentives would not necessarily require adjustments to the financial structure of the collection contract (e.g., per household collection cost).

Avoided Disposal Cost Sharing

Cities may incent contractors to increase diversion by sharing the cost savings associated with disposal avoidance. This can be a particularly effective tool if the contractor loses revenue when the city recycles because the city uses that contractor’s landfill. For this incentive, contractors would receive a portion of disposal cost savings if certain target diversion rates were met. An example of a disposal cost sharing structure is shown in Table 4-1 below.

Table 4-1
Avoided Disposal Cost Sharing

YEAR	TARGET DIVERSION RATE	CONTRACTOR SHARE OF COST SAVINGS
2009 (BASELINE)	15%	50%
2010	20%	50%
2011	25%	50%
2012	30%	50%

This diversion incentive was specifically explored by Leon County, Florida in May 2004.¹

¹ Source: *Increased Commercial and Residential Waste Diversion through Innovative Programs and Contracts*, May 2004

Contract Term Extension

Cities may choose to give the contractor the right to extend the service contract at the end of the contract term if a certain level of diversion is reached. Most recyclable materials collection contracts currently give the city the right or option to extend the contract.

Revenue Sharing

If cities have separate processing contracts with revenue sharing agreements, they can consider sharing a percentage of the revenue that they receive from commodities with their contracted hauler. This ties the compensation of the contractor directly to the amount and quality of material that is collected.

Bonus

A cash bonus is also an option to incentivize contracted haulers to increase recycling. This would involve a one-time payment to haulers for reaching a certain level of diversion.

Resource Management Contracting

Resource Management (RM) is an innovative contracting strategy that aims to compensate solid waste contractors based on efficient management of resources rather than on the volume of solid waste disposed. The concept was originally pioneered by General Motors Corporation (GM) in working with contractors for chemical purchasing, use, and management. The U.S. Environmental Protection Agency, through its WasteWise program, has partnered with GM to produce resources to help organizations utilize RM contracting strategies.

RM contracting has been used very successfully in the commercial arena, but it has yet to be thoroughly explored by local governments for residential waste management. However, the principles of RM contracting could be applied to the residential sector to provide incentive for contractors to increase recycling.

The primary principle of RM contracting is to structure the financial terms of the contract such that the cost savings and financial benefits associated with recycling flow back to the contractor if diversion goals are met. The financial benefits of recycling include:

- Disposal cost avoidance; and
- Recycling revenue.

For instance, if a local government had a baseline recycling rate of 12 percent, they could structure their contract in such a way that the baseline revenue share for materials was 50 percent to the city. The city could incent the contractor to increase diversion by increasing the revenue share to the contractor if a milestone diversion rate were met.

Contract Structure Incentives

The most prevalent collection contract structure in North Central Texas is to pay collection contractors a per-unit fee for every household serviced. As previously mentioned, this provides no incentive for diversion, and it actually results in a more profitable contract if diversion is minimized.

One option to restructure collection contracts to incent diversion would be to break the base service fee into two components, as shown below.

- Collection component (per-household); and
- Diversion component (per-ton recycled).

This type of structure would allow the contractor to recover the cost of collecting material through the per-household fee. The potential for increasing compensation through the per-ton collection component would give the contractor incentive to increase recycling.

San Jose, California: Economic Incentives to Increase Recycling

San Jose has been using economic incentives to motivate contractors to increase diversion since 1993. In order to help achieve compliance with California's mandatory diversion requirements, San Jose pioneered the development of economic incentives to increase recycling. The City structures its agreements with recycling contractors so that the contractor makes the most money when diversion is maximized.

For instance, the City's curbside collection and processing contractor, California Waste Solutions (CWS), has a contract with the City that provides a strong incentive to maximize residential recycling. The contract requires CWS to achieve a minimum diversion rate of 35% (excluding yard waste). For each 1% over the mandatory diversion rate, measured annually, CWS receives a bonus of 0.5% of the annual contract revenues. However, for each 1% that CWS is below the mandatory diversion rate, they must pay the city a penalty of 0.5% of annual contract revenues. CWS also keeps all revenues that are generated from recyclables. The narrow bonus and penalty margins specified in the contract make bonuses

rewarding and attainable for the contractor. Progressive contract structures and economic incentives have enabled San Jose to achieve one of the highest recycling rates in the nation at 62%.²

MISCELLANEOUS PROVISIONS

Listed below are some additional collection provisions that may be included in a recyclable materials collection contract.

- **Contingency plan:** Requires the contractor to submit a written plan to the city in the case of equipment failure or other hindrances to providing service.
- **Change in key personnel:** Requires the contractor to notify the city in writing of changes in key personnel.
- **Designated service area:** Defines the geographic area to be serviced by the contractor.
- **Special needs customers:** Requires the contractor to provide “back-door” service to city-designated special needs customers.
- **Customer set out procedures and requirements:** Describes proper customer set out procedures and defines when the contractor is not required to collect material that is not properly prepared.
- **General provisions,** such as the ones mentioned in Chapter 3 of this Guidebook.

² Source: *Waste News Municipal Recycling Survey*, March 3, 2008

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CHAPTER 5: DEVELOPING PROCESSING CONTRACT PROVISIONS



What provisions should be included in a processing contract for recyclable materials? How can a contract provide incentive for the contractor to increase diversion?

CHAPTER 5

DEVELOPING PROCESSING CONTRACT PROVISIONS

OVERVIEW

This chapter discusses contract provisions that are specific to processing contracts. Specifically, most of the provisions discussed in this chapter will be applicable to processing service contracts for Material Recovery Facilities (MRFs) that are already constructed.

In developing and negotiating the contract, the goal is to adequately address all conceivable issues that might arise during the term of the agreement. More detail generally results in a better agreement. But, it is important to keep in mind your city's administrative resources to manage and monitor the contract when you are negotiating provisions with the contractor.

R. W. Beck consulted with legal counsel in the development of the sample contract language included in this Guidebook. The sample language provided is meant to be used by local governments and private companies as a reference and a starting point for developing language to be used in recycling service contracts. **This Guidebook is not meant to be used as a substitute for legal counsel in procurement or contract negotiations. R. W. Beck strongly recommends that users of this Guidebook consult with City Attorneys and/or outside legal counsel in**

utilizing the language provided in this Guidebook. This Guidebook does not constitute legal advice, recommendations, counsel, or guidance.

R. W. Beck intentionally did not develop sample contract language for certain provisions in this chapter. Contract language for these provisions is best provided by your City Attorney or Procurement Department.

CONTRACTOR OPERATIONAL OBLIGATIONS

Similar to collection contracts, the processing agreement will have a number of provisions that describe the contractor's operational obligations. Provided below is a description of some common operational contract provisions, including the following:

- Processing method;
- Marketing requirements;
- MRF provisions;
- Addition or removal of recyclable materials;
- Residue allowances and material audits;
- Ownership and risk of loss;
- Rejected loads; and
- Commingling of materials.

Processing Method

The processing method is typically determined by the type of collection method currently in place in the city. If the city chooses to change its collection method as part of this procurement process, it should be clearly stated in the procurement documents. Many times the collection method is dependent on the MRF capabilities in the region. When the city enters into a contract with a MRF, the contract must stipulate the types of materials required to be accepted and processed by the facility. This includes specifying the collection methods that the MRF must accept. The collection methods, defined in Chapter 4, include:

- Source Separated Collection;
- Dual-Stream Collection; and
- Single-Stream Collection.

The city should be specific when identifying the program recyclable materials.

SAMPLE DEFINITION FOR GLASS

“Glass” shall mean all glass beverage containers, whether clear, green, brown, liquor bottles and juice bottles.

In addition, the contract may require polyethylene terephthalate (PET) plastic to be separated from high-density polyethylene (HDPE) and steel/tin cans to be separated from aluminum cans. The higher the quality of the recyclable materials resulting from the program after processing will increase the recyclable revenues to fund a city’s recycling initiatives.

Marketing Requirements

In addition to processing, the contractor shall be responsible for marketing the recyclable materials. Some common marketing provisions are:

- Development of market specifications;
- Requirement to provide copies of marketing agreements and materials;
- Requirement to assure materials are not marketed to end markets that shall dispose or landfill recyclable materials; and
- Protocol for lack of demand for a recyclable material.

Effective marketing directly impacts the success of your recycling program. Effective marketing can generate revenues for the city to educate citizens on recycling or expand the program.

SAMPLE MARKETING REQUIREMENTS PROVISION

Within fourteen (14) calendar days of execution of this Contract, Contractor shall submit to City’s Recycling Manager signed copies of any and all Marketing agreements and Recyclable Materials agreements relating, directly or indirectly, to City’s Program Recyclables. Throughout the term of this Contract as defined in Section __, Contractor shall submit to City’s Recycling Manager signed copies of any and all Marketing agreements and Recyclable Materials agreements, including but not limited to changes to existing agreements, renegotiations of agreements, and new agreements, relating, directly or indirectly to City’s Program Recyclables fourteen (14) calendar days prior to the date such change, renegotiation or new agreement takes effect.

MRF Provisions

There are various contract provisions that are specific to the MRF. These provisions include requirements as to the following.

- **Processing Capacity:** This term can be generic, require the contractor to have sufficient processing capability to provide recycling services as set forth in the agreement, or specific, require the contractor to have the capability to accept a certain tonnage per day.
- **Identification of Alternate Facility:** The contract should state the procedure for identification of an alternate facility in the event the contractor's facility is unable to accept recyclable materials.
- **Staging, dumping and maneuvering:** Processing contracts often include staging, dumping and maneuvering requirements such as requirements for specific types of vehicles to dump and maneuver safely at the processing facility.
- **Facility Specification:** These provision may include requirements such as the facility must have a roof, adequate signage, and other specifications.
- **Truck turn around time:** Since increased tipping times cause the cost of collection to increase, it is important to state a requirement for truck turn around times in your processing contract.
- **Scale house capabilities:** Scale house capabilities, ability to accurately record tonnages, hauler, source, and other information, is important in evaluating your recycling program.
- **Litter and odor:** Processing contracts should require the contractor to minimize litter and odor by, for example, requiring the contractor to pick up litter on and around the facility daily.
- **Other MRF requirements:** Some other MRF requirements that you might wish to include items such as access for self-haulers and neighboring communities.

Remember, anything that is important to you or your residents should be included in the contract. These terms can be general or specific as long as they satisfy your goal.

SAMPLE PROCESSING CAPACITY PROVISION

Contractor shall assure for the term of this Agreement, as defined in Section _ of this Agreement, that adequate Recyclable Material Processing capability will be provided at the MRF for all Recyclable Materials delivered by City or City's haulers.

Addition or Removal of Recyclable Materials

Since processing contracts are typically longer term, it is always a possibility that markets will develop (or deteriorate) for a commodity during the contract term. Processing contracts should include some general language that the processor and city will renegotiate in good faith in the event that markets for a certain commodity change.

SAMPLE ADDITION OR REMOVAL OF MATERIALS PROVISION

If at any time during the term of this Agreement City desires to add or remove Recyclable Materials from Program Recyclable Materials, City and Contractor shall in good faith negotiate the proposed addition or removal of Recyclable Materials and any increase or decrease of Processing Fees.

Residue Allowances and Material Audits

There are two common contract provisions that local governments use to ensure the contractor is processing recyclable materials efficiently. The contract provisions are:

- Residue allowance; and
- Material audits.

To assist local governments in determining which one to include in the processing contract, a brief discussion of each is included below.

Residue Allowance

Residue allowance provisions promote efficient processing by limiting the amount of residue allowed. Residue is the portion of recyclable materials that are not marketed to end markets due to inefficiencies associated with the sorting system (not due to contaminated material in the recycling stream). The percentage of residue is typically calculated using the following formula:

(Total Recyclable Material Tonnages Processed - Tons of Materials Sold) / Total Recyclable Material Tonnage Processed) X 100 = Residue Percentage

The challenge with including such a provision is establishing a baseline for contamination of the materials as collected. It is R. W. Beck's experience that it is difficult to practically enforce a residue allowance provision. If a city chooses to include a residue allowance provision in a contract, it should set a fee in the liquidated damages section of the contract in the event the contractor fails to meet the residue allowance requirements.

SAMPLE RESIDUAL ALLOWANCE PROVISION

Contractor shall be solely responsible for ensuring that Residue which is culled from loads of Program Recyclables by Contractor or which is the result of Processing shall not exceed the monthly Residue Allowance of _____ (__) percent. Contractor shall segregate and store all Residue from loads of Program Recyclable and Processing separately from other materials, including Rejects. Prior to removal or disposal of Residue, Contractor shall permit County the right to inspect Residue. Upon notification of County of intent to inspect Residue, Contractor shall not remove or dispose of Residue for twenty-four (24) hours from County's notification of intent to inspect Residue. County shall have the right to inspect such Residue within twenty-four (24) hours from County's notification of intent to inspect Residue.

Material Audits

The phrase “material audit” refers to a recyclable materials characterization of the city’s stream to determine the percent composition of each commodity. Regardless of the collection or processing method, a material audit will provide the city beneficial information as to the composition of the program’s recyclable materials. Material audits are a crucial component to processing contracts that include market-based revenue sharing provisions. The term “audit” is used because that is typically how it is referred to in the industry. In the definitions section of the contract, it will be important to distinguish between a material audit and an audit of financial records to avoid confusion.

It is very important that the contract specify the procedure that will be used to conduct the material audits. If needed, the city may include a detailed description of the audit procedure as an appendix to the contract. Generally speaking, there are two methodologies that are used to conduct material audits.

- **Manual audit:** a process in which material from loads is manually sorted. Any non-recyclable material, including contaminated material and unacceptable material, is combined into one category and all other material is sorted by commodity.
- **Mechanized audit:** a process that involves running material through the mechanized sorting process. Material that is not recovered – whether it is contaminated material, unacceptable material, or residue – is all treated as residue.

Both audit processes will result in accurate data regarding the composition of the recyclable materials stream. The primary difference between the two methodologies is that in a manual

audit, *the city receives credit for the commodities that are delivered* to the facility without accounting for material that is not recovered by the sorting process. In a mechanized audit, *the city receives credit for material that is recovered* by the sorting process. It is important to collaborate with your contractor to determine the most appropriate audit procedure to include in the contract.

The audit will typically take an average of the composition taken from three to five loads from different collection districts or collection days.

Table 5-1 provides more detail in comparing the two audit methodologies.

Table 5-1
Material Audit Methodology

METHODOLOGY	MANUAL AUDIT	MECHANIZED AUDIT
PROCEDURE	<ul style="list-style-type: none"> Involves emptying a recyclable materials load into a designated area and manually sorting the material by commodity. Each commodity is weighed to determine the percent composition by load, including contamination. 	<ul style="list-style-type: none"> Involves running a load of the City's recyclable material through the sorting process. Each commodity is weighed to determine the percent composition by load, including contamination.
LOAD SELECTION	<ul style="list-style-type: none"> Should be randomized Include loads from different collection areas Typically an average of 3-5 loads is adequate 	<ul style="list-style-type: none"> Should be randomized Include loads from different collection areas Typically an average of 3-5 loads is adequate
PROS	<ul style="list-style-type: none"> Process residuals not included in the final composition Provides a sense of the contamination rate 	<ul style="list-style-type: none"> Less labor and space intensive for the processor Provides a sense of the recovery rate of material
CONS	<ul style="list-style-type: none"> Labor and space intensive Does not provide a sense of the recovery rate of material 	<ul style="list-style-type: none"> Includes process residuals in the final composition Requires dedicated sorting time

Audits should be conducted one to two times per year. Conducting multiple audits can account for seasonal variation in the recyclable materials composition. The composition

determined by the audits will be used to estimate the composition of the stream going forward until the next material audit.

Your contract should also stipulate that a city representative will be present for all material audits and/or that the audit shall be performed by a mutually selected independent third party. Listed below are some things for the local government representative to look for or be aware of during a material audit. Local government representatives should also take photos at audits for their own records.

- **Material is kept separate from other communities:** Loads should be tipped in a separate area from other material and material should be kept completely separate from other communities and haulers.
- **Conditions are representative of a typical collection day:** The audit should represent a typical collection day for the local government. For instance, in the case of rain or other inclement weather, audits should be rescheduled because bad weather can significantly affect set out quantities and composition.
- **Material is sorted properly:** Ensure that the processor's staff properly sorts commodities and recovers all material that may be recycled.
- **Procedures established in the contract are followed:** Ensure that all other processes stipulated in the contract are followed.

SAMPLE MATERIAL AUDIT PROVISION

Contractor shall conduct Recyclable Material Composition Analysis, in accordance with Section __ of this Agreement, of the City's Recyclable Materials two (2) times per Contract Year. Contractor shall conduct the first Recyclable Material Composition Analysis during _____ of each Contract Year and the second material composition during _____ of each Contract Year. City shall at its sole discretion select the loads to be sampled and the dates for the Recyclable Material Composition Analysis. Contractor shall be solely responsible for all costs associated with conducting the Recyclable Material Composition Analysis.

Ownership and Risk of Loss

Similar to collection contracts, processing contracts should stipulate what entity, the city or the contractor, has ownership and risk of loss of recyclable materials that are delivered to the MRF. For most cities in North Central Texas that have contracts for processing and

marketing services, ownership (or title) and risk of loss of recyclable materials passes to the processor when the processor accepts the material at the MRF.

SAMPLE OWNERSHIP AND RISK OF LOSS PROVISION

Ownership and risk of loss to Recyclable Materials shall pass to Contractor once the Contractor accepts Recyclable Materials at the MRF. Ownership and risk of loss to Recyclables Materials shall remain with Contractor until the Recyclable Materials ownership and risk of loss is transferred to the end market. After the ownership and risk of loss passes to Contractor, Contractor shall be liable to City for any and all Recyclable Materials lost, damaged, or scavenged for the sum of funds that would have been paid to City in accordance with the provisions of this Contract.

Rejected Loads

The processing contract will detail the processor's rights to reject loads of recyclable material that contain over a certain threshold of material that is not considered acceptable material or recyclable material per the contract. Much like material audits, the contract should be very specific about the procedure required to reject a load. The contract should detail the following:

- The threshold of non-recyclable material (by weight or by volume) in an incoming load that will be considered an unacceptable amount (typically between 15 and 25 percent);
- Whether a city representative must be present to confirm unacceptable loads;
- The procedure for notifying the city of rejected loads;
- Whether the city has the option to pick up and dispose of material from rejected loads;
- Who is responsible for disposal costs for rejected loads (e.g., the contractor will pay for a certain number per month and the city will pay the rest); and
- Fees associated with the rejected loads (e.g., the city will not pay processing fees for material from rejected loads).

SAMPLE REJECTED LOADS PROVISION

Contractor may, at Contractor's sole discretion, reject an entire load of Recyclable Materials delivered by City or City's collection contractor to Recycling Facility only if the load of Recyclable Materials is estimated to contain a combination of Unacceptable Material and Contaminated Material in excess of twenty-five (25)

percent of the total load by weight. If Contractor rejects a load, Contractor shall immediately notify City of the rejected load via email titled “Notice of Rejected Load”. Contractor shall retain the rejected load for a minimum of four (4) Business Hours after notice of rejected load to City. City may at its sole discretion inspect the rejected load at any time during the four (4) Business Hours after notice from Contractor. If City disputes the rejection of the load, Contractor and City shall follow the procedure for disputes of rejected loads as set forth in Section __ of this Contract. If a load is rejected, Contractor and City shall follow the procedure for Disposal and Processing of rejected loads as set forth in Section __ of this Contract.

Responsibility for Contamination Disposal Costs

For a recyclable materials processor, disposing of contaminated material is part of the cost of doing business. However, if the city’s recycling stream reaches a certain level of contamination, the contractor may request that the city share in some of the cost of disposing of that material. The agreement regarding the payment of and responsibility for contamination disposal costs should be explicitly outlined in the processing contract.

Determining the cost of contamination disposal begins with the material audit. The material audit will determine what percentage of the incoming loads consists of material that is not recoverable (i.e., contamination). Of that material, the contract should specify the following.

- **How much of the contaminated material the city is responsible for.** For instance, the contract may specify that the contractor will cover disposal costs for up to 15% of the stream (or a set number of tons per year) but that the city will pay for disposal for any contamination over that amount.
- **The price that should be paid to the contractor to compensate for disposal costs.** For instance, the contract could specify that the city will pay the posted gate fee at a particular area landfill.

Responsibility for Process Residual Disposal Costs

For a recyclable materials processor, disposing of process residuals is part of the cost of doing business. The agreement regarding the payment of and responsibility for disposing of residuals should be explicitly outlined in the processing contract. Because process residuals are an end result of the processor’s sorting process, the contractor should be responsible for the process residuals and the cost to dispose of said residuals.

SAMPLE PROCESS RESIDUAL DISPOSAL COST PROVISION

Contractor shall be solely responsible for any and all costs associated with the handling, Disposal, and any and all other costs related to Residue.

CONTRACTOR ADMINISTRATIVE OBLIGATIONS

In addition to the operational obligations of providing processing service, the processing contractor will also likely have some administrative responsibilities pursuant to the contract. Provided below is a description of contract provisions that are related to the processing contractor's administrative obligations, including the following:

- Reporting and data collection;
- Public education; and
- Administrative fees.

Reporting and Data Collection

It is recommended that the city require the processor to provide reports concerning the recycling program performance and marketing of materials. It is especially important for cities that have revenue sharing agreements to have sufficient reporting requirements. Cities may specify both the frequency and the format of reports from the contractor. The types of information that can specifically be requested from the processor include, but are not limited to, the following:

- Date, truck number, ticket number, net weight for all incoming loads from the city on a daily basis;
- Tons of material received for processing by type of commodity (based on composition resulting from audits);
- Revenues received for materials sold;
- Any rebates or revenue share due to the city;
- Processing and residual payments due to the contractor;
- Record of rejected loads;
- Educational and promotional activities conducted;
- Equipment added or removed to the system;
- Complaints, accidents, incidents, or downtime that occurred; and

- Proof of transfer of materials to end markets (best if provided on request and not in monthly reports).

It is helpful to include a template for monthly and/or annual reports as an appendix to the contract. A sample reporting contract provision is included in Chapter 4 of this guidebook. In addition, sample report formats are shown in Table 5-2 and 5-3 at the end of this section.

Public Education

Local governments may wish to include provisions requiring the processor to participate in public education efforts. In determining public education provisions, it is important to be specific as to exactly what will be expected of the processor. Broad contract language with regard to public education is difficult to enforce. Local governments should establish in the contract the specific frequency and level of effort that is required of the contractor for public education.

Contracts may specify that processors participate in public education in the following ways:

- Appearing at certain public events (e.g., Earth Day, America Recycles Day);
- Conducting a specific number of presentations for community groups and organizations (e.g., Chamber of Commerce, schools);
- Maintain a dedicated website for the city's program;
- Providing printed materials (e.g., utility bill inserts, flyers);
- Writing press releases or newspaper announcements; and
- Respond in a timely manner to the city's requests for technical input into public education materials and efforts.

Your processor should act as a partner and technical advisor in public education and not have complete authority over – or responsibility for – your public education program. In negotiating public education provisions, be sure that the city has the right to review and approve all contractor-provided materials before they are distributed.

The processor is a unique and valuable partner in public education due to their in-depth knowledge of the processing system as well as the quantity and quality of the city's material. It is important to engage your processor in the public education process to take advantage of these important insights.

In addition, local governments may also require contractors to contribute financially to the public education program. Local governments have the option to require funding in either a

lump-sum payment or a per-ton payment. Financial contributions to public education are further discussed in Chapter 6 of this Guidebook.

If requiring your contractor to participate in public education, it is possible that the contractor will also require the city to provide a certain level of participation and documentation. For instance, the contractor may require the local government to provide documentation of how public education funding is spent. In addition, the city may choose to obligate itself to provide a certain level of funding for public education. This can be advantageous to the city in the event of city budget shortfalls.

A sample public education contract provision is included in Chapter 4 of this guidebook.

Administrative Fees

Administrative fees, also known as liquidated damages, are assessed in order to hold the contractor accountable for performance to the contract. These charges are meant to compensate the city for the cost associated with contractor non-performance. Cities may choose to assess administrative fees for the following types of infractions:

- Causing acceptable recyclable material to be disposed;
- Failure to submit reports;
- Failure to maintain a staffed office;
- Failure to notify changes in personnel;
- Wrongfully rejecting acceptable loads; and
- Failure to maintain availability of processing facility to receive material during specified collection hours.

To the extent that the above items are required by the city's contract, administrative fees for non-performance may be included in the contract. It is important that administrative fees are not punitive to the contractor or they will not be considered enforceable by a judge.

There are many options for a local government to collect administrative fees that are rendered, as listed below.

- **Escrow account:** The contractor can maintain an escrow account from which the city may draw in the event that administrative fees are incurred. The city may inform the contractor when the account needs to be replenished.
- **Standard invoicing:** The city may submit a standard invoice to the contractor to collect administrative fees.

A sample administrative fees contract provision is included in Chapter 4 of this guidebook.

DIVERSION INCENTIVES

As discussed previously in this Guidebook, recyclable materials processors have a direct financial incentive to maximize both the quality and the quantity of recyclable materials. If your processing contract allows the processor to retain some of the revenue, then there is a built-in diversion incentive for the contractor.

Incentives to Maximize Sorting Efficiency

Because the processor receives revenue from recovered material, they already have an incentive to minimize process residuals (e.g., recyclable material that is not recovered due to inefficiencies in sorting). However, if there is a need to provide additional financial incentive to improve sorting efficiency, either of the following mechanisms can be used.

- Residue allowance; or
- Material audit.

Incentives to Maximize Volume

Processors are different from collection contractors in that they do not have “front line” exposure to residents for public education purposes. Therefore, a processor’s opportunities to increase volume will likely be limited to the amount of support and funding that they are willing to provide toward the city’s public education program.

The primary mechanism to incentivize processors to maximize volume is revenue sharing, which is further discussed in Chapter 6 of this Guidebook. Revenue sharing provides a direct financial incentive for both the city and the contractor to maximize recycling volume.

Denton, Texas: Public-Private Partnership for Recycling Processing

Since the implementation of its curbside recycling program, the City of Denton's materials have been transported by a contracted hauler to a processing facility that is over 30 miles from the City. In order to lower the cost of residential collection, as well as to expand options for commercial recycling programs, the City sought to develop a public-private partnership with a recyclables processor to construct a MRF within the City. In 2007, Denton entered into a 20-year contract with Pratt Recycling for residential and commercial recycling processing service.

Under the contract, Pratt agrees to build, own, and operate a single-stream MRF within the City of Denton, and the City agrees to exclusively deliver all recyclables to the future facility. The MRF will be built on City-owned land that is leased to Pratt for the duration of the contract. The City will receive a fixed rebate per ton of City residential material that is processed, including residential material from other municipalities, as shown in the table below.

NUMBER OF TOTAL TONS DELIVERED TO THE MRF	TIME PERIOD	PER TON REBATE FOR MATERIAL DELIVERED TO THE MRF BY DENTON
Less than or equal to 1,000 tons	In any one calendar month	\$5.00 per ton
More than 1,000 tons and less than 1,500 tons	In any one calendar month	\$10.00 per ton
More than 1,500 tons	In any one calendar month	\$12.50 per ton

This gives the City and Pratt incentive to source material from surrounding cities. The parties can agree to extend the contract for up to two additional 10-year terms.

Incentives to Develop Markets

In interviews with R. W. Beck, many local governments expressed the desire for their processing contractor to increase market development efforts for certain materials, especially glass. If cities desire greater market development efforts, they can place specific financial incentives in the contract. For instance, if a city wanted the contractor to develop markets for glass, it could include the following measures in the contract:

- Allow the processor to keep 100% of revenue received from the sale of glass; or
- Pay a cash bonus to the contractor for successful development of markets for glass.

Table 5-2
Sample: Monthly Recyclables Revenue Report
For Illustration Purposes Only

MATERIAL	COMPOSITION ¹	TONS	REVENUE BASIS ²	PRICE (PER TON) ³	TOTAL REVENUE ⁴	CITY REVENUE SHARE (%)	CITY REVENUE ⁵
Old Newspaper	40%	400	Sales price	\$80	\$32,000	50%	\$16,000
Old Corrugated Cardboard	14%	140	Sales price	\$60	\$8,400	50%	\$4,200
Mixed Paper	20%	200	Sales price	\$20	\$4,000	50%	\$2,000
Aluminum Cans	1%	10	Sales price	\$1,500	\$15,000	50%	\$7,500
Steel Cans	3%	30	Sales price	\$175	\$5,250	50%	\$2,625
PET	3%	30	Sales price	\$200	\$6,000	50%	\$3,000
HDPE colored	2%	20	Sales price	\$400	\$8,000	50%	\$4,000
HDPE natural	2%	20	Sales price	\$350	\$7,000	50%	\$3,500
Residue	15%	150	N/A	\$0	\$0	N/A	\$0
TOTAL	100%	1000					\$42,825
LESS: Processing fee (\$40 per recyclable ton)							\$34,000
NET Revenue to City							\$8,825

1. Composition used would be based on results of the material audit.
2. Refers to the basis for determining the per-ton price of material; could be sales price or a published index.
3. Refers to the price of the material as determined by the established price basis.
4. Total revenue generated from the sale of material.
5. City share of revenue from material.

Table 5-3
Sample: Monthly Recyclables Tonnage Report
For Illustration Purposes Only

DATE	VEHICLE #	TICKET #	GROSS WEIGHT (LBS)	TARE WEIGHT (LBS)	NET WEIGHT (LBS)	NET WEIGHT (TONS)
1-May	Truck 1	1234	5000	2000	3000	1.5
1-May	Truck 2	1234	5000	2000	3000	1.5
1-May	Truck 3	1234	5000	2000	3000	1.5
1-May	Truck 4	1234	5000	2000	3000	1.5
2-May	Truck 1	1234	5000	2000	3000	1.5
2-May	Truck 2	1234	5000	2000	3000	1.5
2-May	Truck 3	1234	5000	2000	3000	1.5
2-May	Truck 4	1234	5000	2000	3000	1.5
3-May	Truck 1	1234	5000	2000	3000	1.5
3-May	Truck 2	1234	5000	2000	3000	1.5
3-May	Truck 3	1234	5000	2000	3000	1.5
3-May	Truck 4	1234	5000	2000	3000	1.5
TOTAL						18.0

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CHAPTER 6: UNDERSTANDING THE FINANCIAL TERMS OF RECYCLING CONTRACTS

NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS
RECYCLING CONTRACT NEGOTIATION GUIDEBOOK



What are some fees that are typically included in recycling contracts? How do recyclables generate revenue?

CHAPTER 6

UNDERSTANDING THE FINANCIAL TERMS OF RECYCLING CONTRACTS

OVERVIEW

The financial terms of a recycling agreement can be some of the most important provisions in the contract – and some of the most confusing. In this chapter, we will bring some clarity to the financial terms of recycling contracts with a discussion of the following topics:

- The value of recyclable material;
- Collection contract financial terms;
- Processing contract financial terms; and
- Contract fee adjustment.

The content of this chapter was developed with a specific focus on financial terms and contract structures that are common in the North Central Texas region, based on interview findings summarized in Chapter 1.

THE VALUE OF RECYCLABLE MATERIAL

The “bottom line” for many municipal processing contracts – especially contracts that include revenue sharing provisions – depends on the market value of the recyclable material. Even if your contract doesn’t

include any revenue sharing, it can be beneficial to understand the value of the material that your hauler picks up from the curb.

Determining the value of recyclable material can seem intimidating. But, the following section provides some tools and methodology that can simplify an otherwise daunting task.

Commodity Prices and Market Indices

A city's recyclable commodities are worth only as much as a buyer is willing to pay. And, like all commodities, prices fluctuate on a daily basis according to supply and demand in the marketplace. There are various market indices available that track regional and national changes in recyclable commodity prices. Some of the most commonly used indices are listed in the table on the next page.

Table 6-1
Standard Recycling Market Indices

INDEX	FREQUENCY	MATERIALS	GEOGRAPHIES
<p>Official Board Markets (OBM) “Yellowsheet”</p> <p>The Yellowsheet is recognized as the industry standard index for tracking fiber pricing.</p>	Weekly; prices are included in an online or printed publication	<p>Various grades of fiber, including the following:</p> <ul style="list-style-type: none"> ▪ Mixed paper (#1) ▪ Boxboard Cuttings (#4) ▪ Newspaper (#6 and #8) ▪ OCC (#11) 	<p>Cities include: Chicago, New England, Buffalo, New York, Los Angeles, San Francisco</p> <p>Regions include: Southeast, Southwest, Pacific Northwest</p>
<p>Waste News Secondary Materials Pricing</p>	Weekly; prices are published online and subscribers may access	<p>Containers, including the following:</p> <ul style="list-style-type: none"> ▪ Aluminum cans ▪ Steel cans ▪ Plastic containers (#1, #2, #4) ▪ Glass bottles (amber, flint, and green) 	Regions include: Chicago (Midwest/Central); New York (Northeast); Ontario/Western New York; Pacific Northwest; Quebec; Atlanta (Southeast); Los Angeles (Southwest); Houston (Southcentral)
<p>Waste News Secondary Fiber Pricing</p>	Weekly; prices are published online and subscribers may access	<p>Various grades of fiber, including the following:</p> <ul style="list-style-type: none"> ▪ Mixed paper (#1) ▪ Boxboard Cuttings (#4) ▪ Newspaper (#6 and #8) ▪ OCC (#11) 	Same as Secondary Materials Pricing (see above)
<p>PPI Pulp and Paper Week American Metals Markets (AMM)</p>	Weekly Daily (electronic) and monthly (printed)	Fibers Ferrous and non-ferrous metals	Regions in the United States and Canada Includes pricing information for domestic and international markets.

In some cases, a revenue sharing arrangement may be directly tied to index pricing. But, even if a community's revenue isn't tied to the indices, they can still serve as a useful tool for tracking the value of the recyclable material. However, there are some important things to keep in mind when using index pricing, especially when negotiating a contract.

- **Today's index can be yesterday's price** – Sometimes market prices change very drastically and rapidly, such as in the last three months of 2008. In these markets, the pricing reflected in published indices tends to lag the market. In other words, the index may be a better reflection of what was happening in the market last week than what is happening now. For this reason, indices are ideally used to track overall trends rather than to determine the spot value of a commodity at a given time.
- **Regional trends may not be local reality** – Indices are generally organized by region; however, just because your community is in the region specific to the index does not mean that the index is going to reflect the exact value of the commodity in your market. Local brokers or end users may be able to give you a better sense of the market “in your own backyard” than the published indices.

Note: This is especially true for glass. While there are some national indices for glass prices, the local nature of the market makes it difficult to use these indices to assess the value of your material. Develop contacts in your own market to determine the local price for glass.

- **Data can measure your performance** – In the financial world, “index funds” are used to show how certain investments are performing compared to the market as a whole. Recyclable material indices can be used in the same way. Compare the prices that you or your contractor are receiving to the national or regional indices. If the prices differ from the indices – for better or for worse – try and understand the reason (or reasons) why. Many factors can affect the value recyclable material, including volume, quality, distance from end users, and general market conditions.
- **There is a cost associated with index data** – Most indices are subscription services, and they typically charge additional fees to access historical data. But, access to this information can be a good investment for a city. In addition, if the revenue sharing arrangement is based on index pricing, it may be beneficial to have access to the same information as the contractor. One option to consider is to require the contractor to provide the city with copies of index data as part of the agreement.

Historical Commodity Values

As discussed previously, commodity prices fluctuate daily. However, occasionally the markets fluctuate very drastically and rapidly. The recent commodity market plunge at the end of 2008, and the continued slump into 2009, has left many municipal recycling staff wondering if 1) prices have ever gone this low before or 2) will they ever go back up again?

Understanding historical commodity values is important in order to maintain perspective during challenging economic times. Recycling contracting decisions are typically long-term decisions, as contracts can be from three to 20 years in length. While no one can predict what future values will be, understanding commodity fluctuations over time can help in making sound long-term decisions about your recycling program and your contract. **It is critical that you develop financial terms for your contract that will create a win-win for you and your contractor in both strong and weak commodities markets.**

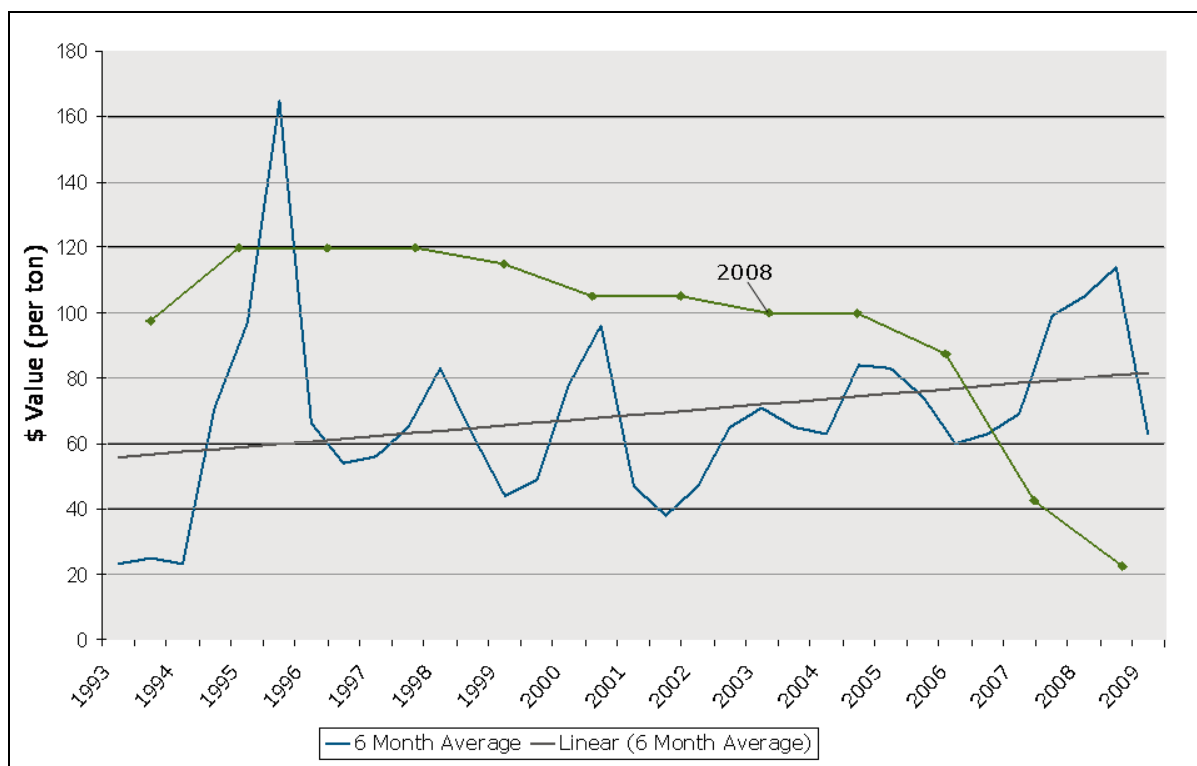


Figure 6-1 OCC #11 1993 – 2008

Figure 6-1 is a graph of the historical price of OCC from 1993 to 2008. The blue line represents the six month average price in the Southwest region of the United States, and the grey line is the trend line. The green line represents the monthly price changes for OCC in 2008. As you can see from the graph, OCC experienced historic high and historic low

pricing in the same year in 2008. This was also the case for most of the major recyclable commodities (e.g., plastics, fibers, aluminum cans). This volatility is unprecedented, with the only similar market event occurring in the early to mid 1990s.

Many cities have scheduled procurements or have contracts that will expire during these challenging times. It may be difficult for local governments to receive competitive proposals due to these drastic market events. To the extent possible, cities should consider developing short-term, interim contracts until the market steadies.

Composition of Single Stream Materials

Commodity prices are only part of the equation in determining the value of your community's recyclable material. The composition of the material is also critical to understanding how much the material is worth.

There is no industry-wide rule of thumb when it comes to determining the commodity mix from curbside residential recyclable materials. The best way to determine your community's composition is to work with your contractor to do an audit (i.e., waste characterization) of loads on an ongoing, seasonal basis. The cost of the audit process will likely be built into the processing fee in the contract. During your procurement, if you cannot provide historical composition data to the potential vendors, you should expect the processor or hauler to use their own, conservative assumptions in developing proposals. Please see Chapter 5 for a more detailed description of material audits, including sample contract language.

Although there is no substitute for historical, accurate composition data, R. W. Beck has included some ranges that can be expected for different categories of commodities in the curbside recycling stream. The ranges presented below are based on survey information gathered in conjunction with the NCTCOG Recycling Rate Benchmarking Study completed in 2007, as well as R. W. Beck industry experience. The numbers presented below represent typical, average ranges for curbside recyclable material, including glass. Notice how the lighter materials – like plastic and aluminum – make up less of the stream by weight while the heavier materials – like paper and glass – comprise more of the stream by weight.

Again, please remember, there is no substitute for your city's actual composition data. While these numbers represent typical ranges, the actual composition of your recycling stream can be much different.

Table 6-2
Typical Curbside Recycling Composition (by weight)¹

MATERIAL	TYPICAL RANGE
Paper	50%-80%
Glass	8%-20%
Plastic	5%-10%
Steel	2%-5%
Aluminum	1%-3%

1. Represents a recycling stream net of contamination.

COLLECTION CONTRACT FINANCIAL TERMS

This section describes the types of fees that are typically included in recycling collection contracts. These fees are:

- Base service fee; and
- Public education payments.

Base Service Fee

Overview

The base service fee is a fee assessed by the hauler on the local government to recover the cost of providing recycling service. In North Central Texas, this fee is typically administered on a monthly, per-household basis. In the case of an integrated collection and processing contract, the base service fee typically includes the cost of collection and processing, including any revenue that the contractor may receive from the sale of recyclable materials.

Calculating the Base Fee

The base fee charged to a city by a collection contractor usually includes both the costs and profit associated with providing the service. Example 6-1 shows a sample calculation of the base fee for an integrated contract as well as a collection-only contract. **Please remember – this is just an example shown for illustrative purposes and is NOT meant to represent any contractor’s actual cost of collection, tax rate, or profit margin.**

EXAMPLE 6-1: BASE SERVICE FEE FOR COLLECTION-ONLY AND INTEGRATED CONTRACTING

The City of Springfield is going through procurement for recycling service for its 100,000 households. In developing the proposal for the base service fee, the contractor, Springfield

Disposal Company, calculated the difference in the base fee with integrated contracting compared to collection-only contracting.

Springfield residents recycle about 1,500 tons per month, net of contamination and residuals. In the base fee calculation, Springfield Disposal estimated that they would generate \$15 per ton for the City’s material, net of processing fees (Springfield Disposal does not operate a MRF). Springfield Disposal made the revenue estimate relatively conservative – they don’t want to base the service fee on high commodity values in case of a downturn in the market.

Table 6-3
City of Springfield Base Service Fee (monthly)

ITEM	COLLECTION-ONLY	INTEGRATED
Labor	\$60,000	\$60,000
Vehicle Repair & Maintenance	\$42,000	\$42,000
Fuel	\$28,000	\$28,000
Debt Service for Vehicles	\$56,000	\$56,000
Subtotal Collection Cost	\$186,000	\$186,000
Profit (10%)	\$18,600	\$18,600
Taxes (35%)	\$6,510	\$6,510
Total Collection Cost	\$211,110	\$211,110
Per Household	\$2.11	\$2.11
Revenue from Recyclables	(\$0)	(\$22,500)
Per Household	(\$0.00)	(\$0.23)
Base Service Fee	\$2.11	\$1.89

As shown in the table, an integrated contract will result in a lower base service fee due to the revenue received by the hauler for recovered material.

Factors that Impact the Base Fee

Generally speaking, requiring a higher level of service from the contractor will result in a higher cost of providing service – which increases the base fee. In addition, other factors can impact the hauler’s cost to provide service, such as contract term and the size of the municipality. Table 6-4 provides lists factors that can impact the base service fee.

Table 6-4
Potential Impact of Contract Factors on the Base Service Fee

FACTOR	INCREASE BASE FEE	DECREASE BASE FEE
Performance standards (e.g., liquidated damages)	Strict	Lenient
Collection frequency	Increased	Decreased
Size of service area	Small	Large
Contract Term	Short	Long
Public education	Payments required	No requirement

SAMPLE BASE SERVICE FEE PROVISION

There are many ways to specify the base service fee in a recycling contract, including in the definitions as well as within an Appendix or Exhibit. R. W. Beck has provided sample language here below for a base service fee that is included as a contract provision referring to an exhibit. As shown in the sample language, your local government may choose to fix the base value through the end of your fiscal year or calendar year regardless of when the contract was commenced.

City and Contractor agree that the Base Service Fee as stated in Appendix _ shall remain fixed from the Execution Date of this Contract through June 30, 20___. City shall adjust, increase or decrease, the Base Service Fee in accordance with Section __ of this Contract.

PUBLIC EDUCATION PAYMENTS

Overview

Another type of fee that can be included in a collection contract is a public education contribution. (See Chapters 4 for more detailed discussion about public education provisions for collection contracts.) These are dollars that are provided by the contractor to the community to support public education efforts for the recycling program. Public education payments can be required on the basis of the following factors.

- **Number of customers:** Contractor pays a certain amount of money per customer serviced. Example: Contractor pays city \$0.50 per household on an annual basis.
- **Amount of material recycled:** Contractor provides an amount per ton of material recycled. Example: Contractor pays city \$2.00 per ton on an annual basis.

- **Lump sum:** Contractor provides a lump sum to the community on an annual basis. Example: Contractor pays city \$50,000 total on an annual basis.

The funds provided to the city by the contractor can be used to fund a variety of items or activities related to the recycling program, including, but not limited to, the following:

- Recycling coordinator/educator salary;
- Educational literature, including magnets, brochures, utility bill inserts, etc.;
- Promotional items;
- Website development and maintenance; and
- Traditional advertising.

It is important to understand that public education contributions will be reflected in the base service fee charged by the contractor. In other words, even if there is no explicit charge for these services, contractors are not providing them for “free”. It can be advantageous for cities to obtain public education funding in this manner because these funds cannot be reallocated or eliminated during city budget shortfalls. In some cases the city may be contractually obligated to spend contractor-provided public education funding in a certain manner, and the contractor may request documentation of how the public education funding is spent.

Example 6-2 illustrates the impact of public education provisions on the base service fee.

EXAMPLE 6-2: IMPACT OF PUBLIC EDUCATION PAYMENTS ON THE BASE SERVICE FEE

The City of Springfield specified in their RFP that the selected contractor will be required to pay \$60,000 annually to the City for public education. The following calculation shows how the public education requirement affects Springfield Disposal’s base service fee proposal.

Table 6-5
City of Springfield Base Service Fee (monthly)

ITEM	COLLECTION-ONLY	INTEGRATED
Net Collection Cost	\$211,110	\$188,610
Public Education Payment	\$5,000	\$5,000
Adjusted Net Collection Cost	\$216,110	\$193,610
Adjusted Base Service Fee	\$2.16	\$1.94

The public education requirement increased the base service fee by \$0.05 per month.

Please see chapter 4 for sample contract language specific to public education requirements for collection contracts.

PROCESSING CONTRACT FINANCIAL TERMS

This section discusses the types of fees that are typically included in recycling processing contracts. These fees are as follows:

- Processing fees;
- Revenue sharing or rebates;
- Disposal costs; and
- Public education payments.

Processing Fees

Recyclables processors provide a valuable service to municipal customers. Without MRFs to sort and market recyclable material, the sophisticated municipal recycling programs in place today would not be possible.

The service provided by MRFs does not come without cost. Recyclers incur significant capital and operating costs in order to process recyclable material. Processing fees paid to recyclers are intended to provide a mechanism for the contractor to recover the costs of providing this service to its customers.

Unlike base fees for recyclables collection, processing fees are typically administered on a per-ton basis. That is, municipalities pay a fee for every ton of material that is processed at the facility. There are many factors that determine the processing fee that the processor ultimately charges a municipality for processing service. Some of the factors that ultimately affect the processing fee are listed below.

- Volume of material
- Level of competition in the marketplace
- Operating efficiency of the MRF
- Term of contract
- Inclusion of materials that are expensive to process (e.g., glass, plastic bags)

Based on interviews conducted by R. W. Beck (summarized in Chapter 1), processing fees in North Central Texas are typically between \$30 and \$50 per ton.

Although uncommon in North Central Texas, there are some processing contracts within Texas that do not include processing fees. Contracts without processing fees, while they may be favorable to the municipality, can be very risky to the contractor if not considered very carefully. If the contractor is not generating revenue from processing fees, it means that they are depending on commodity revenue alone to satisfy capital and operating costs. If the contractor falls on hard times financially and must consider bankruptcy or closing the facility, it could represent a substantial challenge to a municipal recycling program. **Because of these reasons, it is critical for you and your contractor to consider both the best-case and the worst-case commodity price scenarios when developing the financial terms of your recycling contract.**

Revenue Sharing or Rebates

Overview

When municipalities contract for processing service, the ownership of the material and the responsibility for marketing the material is typically transferred to the processor. Revenue sharing is a process by which local governments can participate in the commodity markets through a partnership with the contractor. Generally speaking, there are two categories of revenue sharing, as listed below. These revenue sharing methods are discussed in detail in the following sections.

- Fixed rebates
- Market-based revenue sharing

Since fixed rebate revenue sharing is relatively straightforward, the primary focus of this section is market-based revenue sharing.

Revenue sharing is most appropriate in situations where the municipality contracts directly with the processor of material and can require that cities have separate processing and hauling contracts. Based on discussions with private hauling companies in North Central Texas, if cities would like to have revenue sharing, they would prefer that cities contract directly with processors. It is not practical for haulers to be the “middle man” for revenue sharing arrangements. However, if one company has hauling and processing capabilities, cities may be able to have revenue sharing arrangements with an integrated contract. As discussed in Chapter 2, open-ended contracting can allow a city to evaluate these types of options.

Fixed Rebates

In a fixed rebate arrangement, the processor pays the municipality a fixed amount per ton of recyclable material delivered to the facility. The amount paid to the city will be fixed and will not change as the commodity markets fluctuate. In some cases, the rebate may increase as the volume of recyclables delivered to the facility increases. For instance, for up to 1,000 tons per month the municipality receives \$5 per ton, and for up to 1,500 tons per month the municipality receives \$10 per ton. This type of arrangement provides a direct financial incentive to the city to recycle as much material as possible by increasing the revenue paid as the amount recycled increases.

Generally speaking, rebates for material would provide an offset to the city for processing fees paid to the contractor. However, it is also possible in some fixed rebate scenarios for there to be no processing fees paid to the City by the contractor. As previously mentioned, this is a more risky situation for the contractor. If a city is not paying processing fees, the fixed rebate paid by the contractor will likely be lower to allow the processor greater certainty that they will cover capital and operating costs.

SAMPLE FIXED REBATE PROVISION

For the term of this Contract, Contractor shall pay City a Monthly Recycling Rebate for any and all Recyclable Materials delivered to the MRF by City or City's Collection Hauler for the prior calendar month. If the total Recyclable Materials delivered by City and City's Collection Hauler for the prior month is less than ____ (__) tons, Contractor shall pay City a Monthly Recycling Rebate for any and all Recyclable Materials delivered to the MRF by City or City's Collection Hauler for the prior calendar month a minimum of ____ (__) U.S. dollars per ton delivered. If the total tonnage delivered by City and City's Collection Hauler for the prior month is less is greater than ____ (__) tons and less than ____ (__) tons, Contractor shall pay City a Monthly Recycling Rebate for any and all Recyclable Materials delivered to the MRF by City or City's Collection Hauler for the prior calendar month a minimum of ____ (__) U.S. dollars per ton delivered. If the total tonnage delivered by City and City's Collection Hauler for the prior month is greater than ____ (__) tons, Contractor shall pay City a Monthly Recycling Rebate for any and all Recyclable Materials delivered to the MRF by City or City's Collection Hauler for the prior

calendar month a minimum of ___ (___) U.S. dollars per ton delivered. Contractor shall calculate the Monthly Recycling Rebate using the hundredth of a ton. Contract shall submit Monthly Recycling Rebate payments to City in accordance with Section ___ of this Contract.

Example: City and City's Collection Hauler deliver 4.34 tons to MRF in January 2011. 4.34 x _____ = _____

Contractor shall pay City a minimum of _____ U.S. dollars on or before February ___, 2011 for Recyclable Materials delivered to the MRF by City or City's Collection Hauler in January 2011

Market-Based Revenue Sharing

Overview

Market-based revenue sharing refers to payments that are made to the city from the contractor that are directly tied to the value of the recyclable material in the marketplace.

Based on interviews conducted with private companies and local governments in North Central Texas, market-based revenue sharing is typically incorporated into municipal processing contracts using the formula illustrated in Figure 6-2. The formula shown in the figure is further illustrated in Example 6.3.

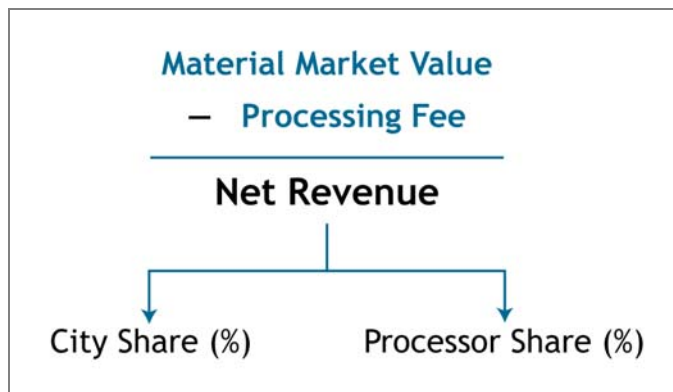


Figure 6-2: Typical financial structure of market-based revenue sharing agreements

EXAMPLE 6.3: MARKET-BASED REVENUE SHARING

As part of its procurement, the City of Springfield is also analyzing proposals to provide processing service from Treehugger Recycling Company. Treehugger has proposed a \$45 per ton processing fee with 50% revenue sharing on all commodities. Based on a recent

characterization analysis of recycling loads, the City knows that it collects about 1,500 tons per month net of contamination and residuals. The collected material has a composition as shown in the table below.

Table 6-6
Value of Recyclable Material (per ton)

MATERIAL	COMPOSITION	WEAK MARKET PRICE	STRONG MARKET PRICE
Aluminum cans	1%	\$1,300	\$1,800
Steel cans	3%	\$120	\$220
Plastic #1	3%	\$150	\$400
Plastic #2 (colored)	2%	\$250	\$450
Plastic #2 (natural)	1%	\$350	\$700
Newspaper	40%	\$40	\$120
OCC	15%	\$20	\$100
Mixed paper	20%	\$5	\$70
Glass	15%	\$0	\$0
Blended Value (per ton)	100%	\$50	\$130

The table also shows the City's analysis of the value of their recyclable material in a strong and weak commodity market. By combining the composition of material with the strong and weak market values, the City determined the blended value per ton for their material.

Based on these material values, the City calculated the expected monthly revenue for the processing agreement in strong and weak markets. The City combined the value of the processing contract with the proposed collection costs from Springfield Disposal to determine the cost of the program on a per household basis. The revenue in the strong market is based on assumed revenue of \$130 per ton and the revenue in weak markets is based on assumed revenue of \$50 per ton.

Table 6-7
City of Springfield Processing Cost Analysis (monthly)

ITEM	WEAK MARKET	STRONG MARKET
Collection costs	\$216,110	\$216,110
Processing fees	\$67,500	\$67,500
Gross Program Cost	\$283,610	\$283,610
Revenue	(\$74,400)	(\$194,400)
Net Program Cost	\$209,210	\$89,210
<i>Per Household</i>	<i>\$2.09</i>	<i>\$0.89</i>

With the analysis of the processing proposal from Treehugger, the City of Springfield can compare the integrated contracting scenario to the separate contracting scenario based on proposals provided by the contractor. In order to provide easy comparison, the City prepared the following matrix.

Table 6-8
Comparison of Integrated and Separate Contracting

	INTEGRATED CONTRACTING	SEPARATE CONTRACTING
Weak Market	\$1.94	\$2.09
Strong Market	\$1.94	\$0.89

Example 6-3 shows a calculation of revenue sharing based on a blended value per ton of single-stream material. It is also common to see revenue sharing on a per-material basis. For instance, processors may propose to share 70% of revenue from fibers and 50% of revenue from containers.

Advantages and Disadvantages

There are many advantages to participating in revenue sharing, including the following:

- Provides a direct financial incentive for the City to increase the quantity of material recycled;
- Provides a financial incentive to educate residents to place the correct materials into the recycling stream. The higher percent of the stream that is not recoverable, the less money that the city will receive;
- Helps to ensure that the city receives detailed data regarding the quantity and composition of material recycled; and
- Allows the municipality to reap the benefits of strong commodity markets and can provide a revenue stream to offset the costs of a program.

Conversely, revenue sharing does have disadvantages, including the following:

- Because it is based on market prices, the revenue stream associated with revenue sharing is unpredictable; and
- The level of effort required for contract administration can be higher with revenue sharing, which can make it challenging to manage, especially in smaller cities.

Methods to Determine the Material Value

In processing contracts, the value of material is typically based on one of the following measures:

- Actual selling price received by the contractor; or
- Specified index.

In some instances in North Central Texas, contract prices for fibers are based on the OBM Yellowsheet while contract prices for containers are based on the actual selling price received by the contractor. In your negotiations, discuss with the contractor what would be the most appropriate method to determine material value. As discussed previously, even if revenue sharing arrangements are not based on index pricing, it can be beneficial to have access to index data for comparison purposes and analysis of market trends.

Role of “Floors” and “Ceilings”

With the current economic downturn, it is both relevant and appropriate to ask what would happen in the case that the market value of material falls below the contractual processing fee. For instance, in the case of the City of Springfield, if the market price of material fell below \$45 per ton, it could result in a net cost to the city rather than net revenue. It is important that your contract specifically define what would happen in this scenario.

There are many provisions that can potentially be included in your contract to mitigate downside risk to the city, including the following:

- Specify that the City will not pay more than a certain net amount per ton to process material, such as your landfill tipping fee; or
- Specify that the City will not pay more than a certain lump sum per year.

The details of determining a “floor” price for your processing contract depends on the outcome of negotiations with your contractor. You should expect that, if you are including provisions to protect the city’s downside risk in bad markets, that the contractor may request a ceiling to limit the city’s upside reward in good markets.

SAMPLE MARKET-BASED REVENUE SHARING PROVISION

For the term of this Contract, Contractor shall pay City a Monthly Recovered Materials Revenues Share for any and all Recovered Materials from Recyclable Materials delivered to MRF by City or City’s Collection Hauler for the prior

calendar month. For any and all Recovered Materials from Recyclable Materials delivered to MRF by City or City's Collection Hauler for the prior calendar month, Contractor shall pay City a Monthly Recovered Materials Revenue Share for any and all Recovered Materials from Recyclable Materials delivered to the MRF by City or City's Collection Hauler for the prior calendar month a minimum of the amount of Recovered Materials times Monthly Market Price for the Commodity, as stated in Appendix __ of this Contract, times the City Revenue Share for the Commodity, as stated in Appendix __ of this Contract per ton of Recovered Materials. Contractor shall calculate the Monthly Recovered Materials Revenues Share using the hundredth of a ton per Commodity. Contract shall submit Monthly Recovered Materials Revenues Share payments to City in accordance with Section __ of this Contract.

Example: City and City's Collection Hauler deliver 1.01 tons of Aluminum Cans, 2.02 tons of Steel Cans, 3.03 tons of PET, 4.04 tons of Colored HDPE, 5.05 tons of Natural HDPE, 6.06 tons of Newspaper, 7.07 tons of OCC, and 8.08 tons of Other Mixed Paper to MRF in January 2011.

$$((1.01 \times \underline{\quad}) \times \underline{\quad}\%) + ((2.01 \times \underline{\quad}) \times \underline{\quad}\%) + ((3.01 \times \underline{\quad}) \times \underline{\quad}\%) + ((4.01 \times \underline{\quad}) \times \underline{\quad}\%) + ((5.01 \times \underline{\quad}) \times \underline{\quad}\%) + ((6.01 \times \underline{\quad}) \times \underline{\quad}\%) + ((7.01 \times \underline{\quad}) \times \underline{\quad}\%) + ((8.01 \times \underline{\quad}) \times \underline{\quad}\%) = \underline{\quad}$$

Contractor shall pay City minimum of _____ U.S. dollars on or before February __, 2011 for Recovered Materials from Recyclable Materials delivered to the MRF by City or City's Collection Hauler in January 2011.

Market-Based Revenue Sharing Frequently Asked Questions

How is the value of material determined?

Either market indices or actual selling prices will work to determine the value of each commodity in the recycling stream. The ultimate structure will depend on what you and the contractor decide is most appropriate for the situation.

The material audit (e.g., recyclables characterization) will provide information as to the percent of each commodity in the recycling stream.

How can I mitigate downside risk in weak markets?

Revenue sharing agreements can contain provisions that limit the city's downside risk in weak markets. However, if you include these types of provisions, your contractor may also request to limit the upside financial reward to the city in strong markets.

Will my recycling program make money?

Because the financial performance of recycling contracts is so closely linked to the commodities market, it may not "pay for itself" in weak or moderate markets. However, your recycling program may still have stronger financial performance than your refuse collection system, making diversion financially viable.

Can market-based revenue sharing work for a small city?

Market-based revenue sharing requires more staff time and administrative oversight than contracts without revenue sharing. Small communities should consider whether they have the staffing resources to be able to manage revenue sharing agreements and/or separate processing contracts.

In addition, it may be more difficult for smaller communities to receive competitive revenue sharing terms due to the lack of volume. Small communities should consider whether they can partner with other communities to cooperatively market their materials. This would consist of aggregating the material from several communities to negotiate one processing contract.

Disposal Costs

This section describes disposal costs for contamination and process residuals. Sample language for disposal cost provisions can be found in chapter 5.

Responsibility for Contamination Disposal Costs

For a recyclable materials processor, disposing of contaminated material is part of the cost of doing business. However, if the city's recycling stream reaches a certain level of contamination, the contractor may request that the city share in some of the cost of disposing of that material. The agreement regarding the payment of and responsibility for contamination disposal costs should be explicitly outlined in the processing contract.

Determining the cost of contamination disposal begins with the material audit. The material audit will determine what percentage of the incoming loads consists of material that is not recoverable (i.e., contamination). Of that material, the contract should specify the following.

- **How much of the contaminated material the city is responsible for.** For instance, the contract may specify that the contractor will cover disposal costs for up to 15% of the stream (or a set number of tons per year) but that the city will pay for disposal for any contamination over that amount.
- **The price that should be paid to the contractor to compensate for disposal costs.** For instance, the contract could specify that the city will pay the posted gate fee at a particular area landfill.

Responsibility for Process Residual Disposal Costs

For a recyclable materials processor, disposing of process residuals is part of the cost of doing business. The agreement regarding the payment of and responsibility for disposing of residuals should be explicitly outlined in the processing contract. Because process residuals are an end result of the processor's sorting process, the contractor should be responsible for the process residuals and the cost to dispose of said residuals.

Public Education Payments

Public education payments for processing contracts are handled in a similar way as collection contracts. For processing contracts, however, it is most common in North Central Texas for the public education fee to be paid on a per-ton basis. As with collection contracts, any public education contribution requirements will likely be reflected in the processing fee.

Please see Chapter 5 for sample contract language for public education contributions for processing contracts.

CONTRACT FEE ADJUSTMENT

Overview

Fee escalation refers to the gradual increase or decrease of a contract fee based on a predetermined formula in order to account for changes in the cost to provide service over time. Since recycling contracts are typically long-term agreements – between five and 20 years – it is important to have a mechanism to fairly compensate contractors for changes in the cost to provide the same service over time. Any fee included in your contract can be subject to escalation – including base service fees for collection, processing fees, and public education contributions – depending on the agreement reached with the vendor.

The most common method of recycling contract escalation in North Central Texas is index-based. Index-based contract escalation utilizes a specific index to determine the appropriate amount that a contract fee should be increased. The following sections describe different aspects of index-based fee escalation.

Selecting an Index

Listed below are some common indices that may be used for recycling contract escalation. In order to identify an appropriate index to use for contract escalation, it is important to discuss with your contractor what would be most appropriate.

Consumer Price Index

The Consumer Price Index (CPI) is an index published by the U.S. Bureau of Labor Statistics (BLS) that measures the average change in prices paid by consumers for goods and services.¹ In other words, the CPI measures changes in price from the perspective of the consumer. Within the CPI, there are many series of indices that can be used to track price changes for different items. When using the CPI as a contract escalation index, it is very important to clearly identify which series you are using by identifying the following.

- **Population Coverage** – The CPI is calculated for two population groups: All Urban Consumers (CPI-U) and Urban Wage Earners and Clerical Workers (CPI-W). For

¹ More information on the CPI can be found at <http://www.bls.gov/cpi/>.

- purposes of recycling contracts, it is better to utilize the CPI-U because of the more extensive population coverage.
- **Area Coverage** – The CPI publishes a “U.S. City Average” as well as separate indices for 26 metropolitan areas. When developing a contract escalation formula, it can be tempting to use the CPI series for the Dallas-Fort Worth Metroplex. However, the metropolitan area CPI series are more volatile due to a smaller sample size. Although it may be slightly less precise, the U.S. City Average is an appropriate area coverage to select for recycling contracts.
 - **Series Title** – The series title refers to the specific piece of the CPI that on which you base your contract (e.g., food and beverages, housing). You may select “all items” as your series title to refer to the CPI as a whole.
 - **Index Base Period** – The CPI measures price changes from a designated reference date. Most series in the CPI-U and CPI-W have a base period of 1982-1984.

Use the following format to correctly identify the CPI index selected. You may choose to identify the index as follows in the definitions section of your contract.

Population coverage, area coverage, series title, index base period

CPI-U, U.S. City Average, All Items, 1982-84

There are some specific series in the CPI that may be useful for recycling collection and processing contracts, including the following.

- **All items** – Represents a straightforward and generally accepted measure of overall inflation and it is commonly used as an escalator in recycling contracts.
- **Water and sewer and trash collection services** – Measures how the cost to consumers changes over time for water, sewer, and trash collection.

Producer Price Indexes

Producer Price Indexes (PPI) refers to a family of indices published by the BLS that measures the average change in the selling prices received by domestic producers for the things that they produce. In other words, PPI measures changes in price from the perspective of the producer.

The producer price indices are organized into three categories: finished goods, intermediate goods, and crude goods. Within each of these categories are different series, much like the CPI, that track price changes for different items. It is important to note that there is no single

index entitled “the Producer Price Index”. When identifying an index in your contract, you should identify it as “the Produce Price Index for...” followed by the exact title and the series code number.

There are some specific series in the PPI that may be useful for a recycling collection contract, including the following.

- **No. 2 Diesel Fuel (commodity code 05-73-03)** – Tracks the prices received by producers of diesel fuel, and could potentially be useful for calculating fuel related adjustments and surcharges. A discussion of fuel surcharges is below.
- **Waste Collection (industry code 5621)** – Tracks the price received for waste collection services and would be extremely appropriate for use as an escalator in hauling contracts.

Developing the Formula

Your contract escalation formula should be simple, transparent, and fair. Below are the steps involved with developing your contract escalation formula. These steps are illustrated in Example 6-4.

- Define the base payment to be escalated.
- Identify which indices will be used to escalate the base payment, including a reference period from which changes will be measured.
- State the frequency of adjustment.
- Determine the formula for the calculation, including any “caps” on escalation increases.

EXAMPLE 6-4: DEVELOPING A CONTRACT ESCALATION FORMULA

The City of Springfield is negotiating a collection-only contract with Springfield Disposal, and they are in the process of determining the method of escalating the base fee. Below are the steps that they went through to determine the contract escalation formula.

1. The base fee to be escalated is the monthly base service fee of \$2.16 per household (see Example 8.2).
2. Based on the outcome of the negotiations, the city and Springfield Disposal have selected the following index by which to escalate the base fee. The reference point for the adjustments will be December 2008.

CPI-U, U.S. City Average, Water and Sewer and Trash Collection Services, 1997

The value of the above index at the reference point was 156.39.

3. The base service fee will be adjusted once per year based on the recorded index price in December. The adjustment will be implemented effective January 1 of each year.

4. The base service fee will increase based on the percent increase in the identified index. However, the total increase will not exceed 5% in any one year period.

For instance, if the value of the index in December 2009 is 160.00, then the base fee increase would be as follows.

Amount of increase: $[(160.00-156.39)/156.39] \times 100 = 2\%$

Adjusted base fee calculation: $\$2.16 \times (1+.02) = \2.20

Fort Worth, Texas: Industry-Appropriate Contract Fee Adjustment

The City of Fort Worth has a service contract with Abitibi Bowater for processing of residential single-stream materials. The City is charged a processing fee per ton of recyclable material delivered to the facility and receives a share of the revenue generated from this material.

Based on the contract, the processing fee may be adjusted upward or downward on an annual basis. The amount of adjustment is determined by dividing the processing fee into different components that are each adjusted by a different index. The contract specifies that the processing fee will not be adjusted by more than 5% in any one year or more than 15% in four years.

COST COMPONENT	WEIGHT	INDEX
Fixed price (not adjusted)	31%	N/A
Equipment	31%	PPI Index for Industrial Handling Equipment (11-44)
Employment	33%	Employment cost index (ECI), South region
Fuels and Power	4%	PPI index for Fuels and Related Products and Power
No.2 Diesel	1%	PPI index for No.2 Diesel Fuel (05730302)

Fuel-Related Adjustments

In 2008, when the price of diesel fuel rose to over \$4.00 per gallon, many municipalities and private haulers began to express concerns about the cost of fuel for their collection operations. Based on interviews summarized in Chapter 1, many haulers began to request fuel-related increases in the contracted base service fee. In many cases, there was no predetermined method to adjust the contract fee based on the changing price of fuel.

As discussed previously, contractors should be compensated for increases in the cost to provide service. Because of this, it is helpful if cities and contractors decide ahead of time how fuel-related price increases should be determined.

One of the most straightforward methods to adjust contract fees based on the price of fuel is the percent-cost method. In other words, the contractor should determine what portion of the base service fee is comprised of fuel cost and adjust only that portion of the base service fee by a fuel index. (The PPI index for No. 2 Diesel fuel is recommended for this method.)

With this method, there could potentially be an incentive for the contractor to overstate the portion of base fee that represents fuel costs. In order to align incentives properly, the contract can also be written such that the base service fee is decreased when the price of fuel decreases.

Because changes in fuel prices can change rapidly and have a dramatic impact on the cost of service, you may consider scheduling fuel-related adjustments more than one time per year, such as every six months.

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CHAPTER 7: MANAGING CONTRACT ADMINISTRATION

NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS
RECYCLING CONTRACT NEGOTIATION GUIDEBOOK



How should contract administration responsibilities be allocated? What are some strategies for contract administration?

CHAPTER 7

MANAGING CONTRACT ADMINISTRATION

OVERVIEW

Once the provisions of the contract have been negotiated and your agreement is in place, it is critical for local governments to closely monitor the performance of the contractor based on the obligations set forth in the agreement. This chapter discusses the basics of contract administration and suggests strategies that can be utilized by contract managers.

Before procuring recycling services, local governments should consider their staff resources for contract administration and management. Cities with limited personnel may wish to not place requirements on the contractor that they will not be able to properly monitor. On the other hand, cities with dedicated recycling staff may be able to effectively manage detailed contracts.

IDENTIFY CONTRACTOR

OBLIGATIONS

To develop a contract administration plan, the first step is to identify all contractor obligations that are specified in the contract and therefore must be monitored. You may choose to monitor all of the obligations that your contract requires of the contractor. Listed below are

some common obligations that should be monitored for compliance.

- Compliance with performance standards
- Completion and timely submittal of reports
- Security and renewal of insurance policies
- Security and renewal of performance bond or letter of credit
- Payment of all fees (e.g., franchise fees, revenue sharing)
- Resolution of customer complaints
- Maintenance and condition of equipment
- Maintenance of customer service call centers and administrative offices
- Conduct of material audits
- Any other obligations set forth in the contract

ALLOCATE ADMINISTRATION RESPONSIBILITIES

Local governments in North Central Texas may not have the staff resources to dedicate one full time employee to recycling contract administration. However, R. W. Beck recommends that local governments dedicate one point person to oversee solid waste contracts. This person would ideally be a solid waste or recycling management employee or any other staff person that has general familiarity with the recycling program and contract.

Although it is helpful to appoint a contract manager, responsibility for overseeing contractor performance can be allocated across city departments as appropriate. Below is a sample of how responsibility for contract administration tasks could potentially be allocated to different city departments.

Table 7-1
Contract Administration Responsibilities

TASK	DEPARTMENT
1. Ensure timely and complete submittal of reports	Solid Waste/Recycling
2. Ensure resolution of customer complaints	Utility Billing/Customer Service
3. Inspect contractor equipment and fleet	Solid Waste/Fleet Services
4. Ensure full and timely payment	Finance
5. Ensure renewal of performance bond/letter of credit	Purchasing
6. Ensure renewal of insurance policies	Purchasing
7. Ensure maintenance of local office	Solid Waste

It is important to note that the individual that is appointed as contract manager must have some measure of authority to oversee other departments that have contract management responsibilities. This authority can be established in whatever manner is most appropriate within the local government.

DEVELOP STRATEGIES FOR CONTRACT ADMINISTRATION

There are many available strategies that can be used for contract administration. Some options for contract administration strategies are listed below.

- **Conduct an annual contract review:** Reviewing the contract on an annual basis is a beneficial practice to ensure contractor compliance. This can coincide with other annual contract activities, such as fee adjustment. It is also beneficial to conduct audits of performance and financial records on an annual basis.
- **Develop a calendar with pertinent deadlines:** An annual calendar with all relevant contract dates will limit confusion and remind the contract manager of deadlines that are not regularly occurring.
- **Review all reports:** Take time to review the reports submitted by the contractor for completeness. If possible, verify the accuracy of data submitted by comparing it against other reports and data.
- **Establish ongoing communication:** Conduct regular meetings and/or conference calls with the contractor. Consistent will facilitate communication, project coordination, and better customer service, and will help establish a strong working relationship between the local government and the contractor.

EXERCISE RIGHTS PROVIDED BY THE CONTRACT

In many cases, a recycling service contract will afford the local government a number of rights that may be exercised during the term of the agreement. Some examples of these rights are as follows:

- Auditing of financial statements and business records;
- Facility and vehicle inspections; and

- Site visits and tours.

It is possible that a simple site visit, inspection, or audit can identify issues before they result in breach of contract. In addition, by auditing financial records or conducting a site visit, you may better understand the issues faced by the contractor in providing service.



CHAPTER 8: RESOURCES AND REFERENCE MATERIALS

NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS
RECYCLING CONTRACT NEGOTIATION GUIDEBOOK



What are some useful resources for recyclable materials contracting?

CHAPTER 8

RESOURCES AND REFERENCE MATERIALS

OVERVIEW

In developing this Guidebook, R. W. Beck conducted a literature review for residential recycling contracting. One of the primary objectives of this literature review was to identify any prior studies similar to this NCTCOG effort in order to leverage the findings of the work. R. W. Beck identified some similar studies as part of this literature review and has provided brief descriptions of each publication in this chapter. In addition, R. W. Beck included other relevant recycling contracting articles and publications in this literature review.

R. W. Beck organized the publications into the following four categories:

- Resource Management contracting;
- Technical articles;
- R. W. Beck resources; and
- Other articles and publications.

The publications referenced in this chapter were not included as an addendum to the Guidebook so as to not make the document too voluminous. However, a compact disk including electronic copies of the publications will be provided to NCTCOG staff and the workshop participants.

In this chapter, R. W. Beck provided abstracts of the most applicable articles and publications identified in the literature review. Additional articles and publications were reviewed by R. W. Beck in the conduct of this work; however, in this chapter, R. W. Beck highlighted the most helpful resources for local governments and private companies in North Central Texas.

METHODOLOGY

For this literature review, R. W. Beck conducted searches using academic and business databases as well as internet search engines. In addition, R. W. Beck searched its internal database of project work completed for other clients and referenced resources provided by the Solid Waste Association of North America (SWANA).

Last, R. W. Beck also searched for relevant articles published in the following trade publications:

- Resource Recycling;
- Recycling Today;
- MSW Management;
- Waste News;
- Waste Age; and
- Biocycle.

RESOURCE MANAGEMENT CONTRACTING

Resource Management (RM) is an innovative contracting strategy that aims to compensate solid waste contractors based on efficient management of resources rather than on the volume of solid waste disposed. The concept was originally pioneered by General Motors Corporation (GM) in working with contractors for chemical purchasing, use, and management. The U.S. Environmental Protection Agency, through its WasteWise program, has partnered with GM to produce resources to help organizations utilize RM contracting strategies.

Table 8-1
RM Contracting versus Traditional Solid Waste Contracts

FEATURES	TRADITIONAL HAULING & DISPOSAL CONTRACTS	RM CONTRACTS
Contractor Compensation	Unit price based on waste volume or number of pick-ups.	Capped fee for waste hauling/disposal service. Performance bonuses (or liquidated damages) based on value of resource efficiency savings.
Incentive Structure	Contractor has a profit incentive to maximize waste service and volume.	Contractor seeks profitable resource efficiency innovation.
Waste Generator-Contractor Relationship	Minimal generator-contractor interface.	Waste generator and contractor work together to derive value from resource efficiency.
Scope of Service	Container rental and maintenance, hauling, and disposal or processing. Contractor responsibilities begin at the Dumpster and end at landfill or processing site.	Services addressed in hauling and disposal contracts plus services that influence waste generation (i.e., product/process design, material purchase, internal storage, material use, material handling, reporting).

Source: U.S. EPA, <http://www.epa.gov/osw/partnerships/wastewise/wrr/rm.htm>

For the purposes of this Guidebook, R. W. Beck has highlighted two RM publications that are directly applicable to residential recycling contracts. Additional RM resources may be found on the EPA WasteWise website.¹

WasteWise Resource Management: Innovative Solid Waste Contracting Methods

U.S. Environmental Protection Agency, WasteWise Program

This publication is the step-by-step manual for RM and is applicable to all organizations, including businesses, municipalities, and other organizations. The concept that drives RM contracting is a paradigm shift on how solid waste management contracts are structured. Currently, most solid waste contracts are structured such that the contractor's compensation increases as the amount disposed increases. RM contracting strategies aim to change the financial incentive structures in such a way that contractors are paid based on efficient management of resources and reducing the amount of waste disposed.

The RM contracting manual is written primarily toward an audience of businesses and organizations. Although the concepts introduced are definitely applicable to municipal residential service contracts, the manual does not explicitly address how the concepts can be applied in this context.

¹ Source: <http://www.epa.gov/osw/partnerships/wastewise/wrr/rm.htm>

Assessing the Potential for Resource Management in Clark County, Nevada

Prepared for U.S. EPA Region IX by Tellus Institute, July 1, 2002

This purpose of this study was to determine the feasibility of integrating RM contracting principles into the existing ordinance and franchise agreements of Clark County, NV.

The results of the study were to provide recommendations and identify barriers to implementing RM contracting concepts in the County. These recommendations and key findings are listed below:

- Provide a financial incentive for raising residential recycling diversion rates over a specified level;
- Emphasize the maximizing cost effective diversion is a County priority; and
- Increase the extent, parameters, and transparency of reporting.

Overall, this publication can be a useful tool to local governments in North Central Texas that wish to explore RM contracting concepts in their municipality.

TECHNICAL ARTICLES

Constance Hornig is an attorney that represents public sector clients in MSW contract development, procurement, and negotiations. Ms. Hornig serves on the board of SWANA as a legal representative. She has developed many articles, including a series of articles for MSW Management magazine on MSW contracting issues. The articles refer to MSW contracting for all types of services, but many of the concepts are applicable to recycling contracts. The articles summarized below, based on R. W. Beck's assessment, are the articles most applicable to residential recycling agreements for North Central Texas.

Trashed Cash: Contractor Credit Risks that can Trash your MSW System

Constance Hornig, MSW Management, September/October 2003

This article describes strategies to avoid and mitigate hauler credit risks through performance assurances, billing practices, and other guarantees. Ms. Hornig provides discussion of

- How to size a performance bond appropriately;
- How to select the most advantageous form of performance bond; and

- Advantages of letters of credit over performance bonds.

In addition, municipalities can mitigate contractor credit risk by handling billing of customers internally. Parent companies can also act as guarantors for municipal contractors to provide additional financial assurance to municipalities.

Sharing and Minimizing Labor Risk

Constance Hornig, MSW Management, November/December 2003

This article describes specific ways to account for labor disputes and strikes in your MSW service contract. Explanation is provided as to the repercussions of including or excluding labor strikes from the definition of force majeure in your contract. The article also details how to secure the right as well as the cash flow to perform substitute service in the event of a labor strike.

Money Talks: Financial (Dis) Incentives for Performance

Constance Hornig, MSW Management, January/February 2004

This piece provides a detailed discussion on the topic of liquidated damages in MSW service contracts. The author includes information on the following topics:

- Advantages and disadvantages of liquidated damages as compared to performance-based compensation
- How to properly structure liquidated damages
- Administrative considerations regarding liquidated damages
- Strategies for reducing the possibility of challenges to liquidated damages

Variable Can Pricing: Generator Diversion/Hauler Generation Incentive

Constance Hornig, MSW Management, May/June 2004

This article provides analysis of the incentive structures that are created by pay-as-you-throw (PAYT) refuse rates. For waste generators, PAYT rates promote diversion efforts by tying disposal volume to the fee paid. However, for haulers, PAYT rates may have the opposite effect. The incremental cost of larger disposal volume per resident is small for the hauler, but, if the fee is much higher (so as to incentivize generator diversion) haulers may generate a greater rate of return on the incremental disposal volume. In other words, the hauler's rate of

return on a 90-gallon refuse container may be greater than on a 60-gallon refuse container because the rates are structured to incentivize generators to divert waste.

In the article, the author advocates PAYT rate structures for residents and generators but not for haulers. The compensation structure for haulers should correspond more closely to the haulers cost and profit and should incentivize the contractor to increase diversion, not disposal.

Preserving the Benefits of Your Bargain: Rate Adjustment Options

Constance Hornig, MSW Management, Elements 2005

In this article, the author provides detailed explanation and description of different rate adjustment methodologies that can be written into contracts. These methodologies include:

- No adjustment;
- Cost-based;
- Index-based;
- Pass-through cost adjustment;
- Hybrid of cost-and index-based; and
- Industry standards adjustment.

In the Beginning is the End: Planning for a Smooth Transition Following the Expiration

Constance Hornig, MSW Management, Elements 2007

In this piece, the author discusses issues that relate to both the expiration and termination of a solid waste service agreement. For instance, the author describes appropriate ways to handle container ownership upon expiration and termination of agreements. In addition, the article provides an understanding of different types of contract termination and how to structure such provisions in your contract. Last, the author describes methods of enforcing contractor performance short of termination, such as liquidated damages

The Written Deal: Ten Top Touchstones of MSW Contracting

Constance Hornig, MSW Management, Elements 2008

This article highlights and provides discussion on ten important principles for MSW contracting, including:

- Term;

- Enforcing service scope and performance standards;
- Excuses for non-performance;
- Performance assurance;
- Indemnification;
- Liability insurance;
- Assignment;
- Contract construction and interpretation;
- Expiration or termination; and
- Obligations that survive expiration or termination.

Although not specifically geared toward recycling contracts, the article describes principles that may be applied to all forms of MSW contracts.

MSW Contract Administration

Constance Hornig, MSW Management, September/October 2008

This article describes both requisite and optional tasks related to contract administration.

Some of the tasks and strategies mentioned are summarized below:

- Develop an annual contract administration calendar;
- Review reports that are submitted by the contractor;
- Audit relevant records allowed by the contract;
- Note time periods specified for exercising rights (e.g., extension of contract);
- Evaluate contract compliance and contractor performance;
- Conduct field visits and inspections;
- Review pertinent items before renewing or extending the contract; and
- Note items for which the contractor is responsible after contract termination.

R. W. BECK RESOURCES

R. W. Beck identified work previously completed for other clients that could be included in the recycling contracting literature review. A summary of the projects identified is provided below.

R. W. Beck would note that although previous studies have been conducted on similar topics that are included in this Guidebook, R. W. Beck did not identify any prior studies that include the same level of detail as this Guidebook.

Recycling Contracting Tools and Tips

Prepared for the Pennsylvania Department of Environmental Protection by R. W. Beck Inc., April 2006

R. W. Beck conducted a presentation and provided a set of tools for recycling contracting for municipalities in Pennsylvania. This effort was a partnership with the Pennsylvania Department of Environmental Protection and the Professional Recyclers of Pennsylvania.

The workshop and toolkit provided an overview of key recycling contracting issues, including the following.

- Description of the procurement process and the six key steps to effective contracting;
- Discussion of alternatives to service contracts, such as ordinances and franchising;
- Overview of revenue sharing concepts; and
- Economic incentives for contractor performance.

Ramsey County Technical Assistance Project

Prepared for Ramsey County, Minnesota by R. W. Beck, Inc., March 2001

R. W. Beck conducted a technical assistance project for Ramsey County, Minnesota. The project consisted of a presentation as well as a revenue sharing white paper.

Presentation: Residential Recycling Contracts Assistance for Select Ramsey County Cities

This PowerPoint presentation provides a high-level overview of the procurement process for recycling services and key issues that must be addressed in recycling contracts.

Revenue Sharing White Paper

This white paper developed by R. W. Beck for Ramsey County, Minnesota provides a comprehensive overview of revenue sharing concepts and methods, including the advantages and disadvantages of participating in revenue sharing. It outlines options for revenue sharing structures with processors. In addition, R. W. Beck provides many case examples of revenue sharing agreements within Ramsey County and in other communities in Minnesota.

In the white paper, R. W. Beck makes recommendations for recycling coordinators that are considering moving toward revenue sharing for their municipality and provides sample contract language for revenue sharing in recycling agreements.

Recycling 202: Procurement and Contract Issues

Prepared for Houston-Galveston Area Council by R. W. Beck, Inc., March 2006

R. W. Beck prepared a one-day workshop for the Houston-Galveston Area Council (H-GAC) to educate local governments in the region on recycling procurement and contracting issues. This workshop represented a high-level overview of many of the topics covered in this Guidebook, including:

- Procurement;
- Collection contract design;
- General contract design;
- Processing contract design, including revenue sharing; and
- Separate versus integrated contracting.

In addition to these concepts, this workshop also provided information and discussion of procurement for drop-off recycling service.

OTHER ARTICLES AND PUBLICATIONS

Below are summaries of other various articles and publications identified by R. W. Beck in conducting the literature review.

Building a Better Contract

Lori Scozzafava, American City and County, February 2004

This article provides a high-level overview of important things to consider when contracting for MSW services. For instance, incentives and disincentives align the goals of the contractor with the goals of the local government. In addition, the author encourages local governments to assess the costs of the procurement process and consider recovering some of those costs from the contractor.

How Local Governments Structure Contracts with Private Firms: Economic Theory and Evidence on Solid Waste and Recycling Contracts

Margaret Walls, Public Works Management and Policy, January 2005

[Abstract provided by author. This article is available for purchase from Sage Journals Online. ²]

Local governments often contract out many public services, including solid waste management. Although waste collection contracting is relatively straightforward, recycling is more complicated. Local governments have to figure out how to achieve multiple objectives: low cost provision of service and a minimum level of service quality, along with attainment of recycling and waste reduction goals. Who should own key assets, how fully to specify ex ante the service to be provided—including exactly what materials to collect and what prices to charge households, and how to compensate contractors are but three of the difficult questions they must address. In this study, the author summarizes the economics literature on incomplete contracts to shed light on current waste management practices. She then shows results from an international City/County Management Association survey of over 1,000 U.S. communities and a detailed analysis of the structure of contracts in seven communities that have achieved high recycling rates.

Incentive Programs for Local Government Recycling and Waste Reduction

California Integrated Waste Management Board (CIWMB), Publication #310—1-008, October 2001

This article provides examples of instruments that can be used to influence marketplace actors to increase recycling, including: contracts, ordinances, franchise fees, garbage collection rates, permits, PAYT programs, and other regulations. This article examines some innovative approaches to creating incentives for increased diversion in the local marketplace. It specifically addresses innovative incentives to residential recycling collection contracts. It also includes incentives directed at commercial haulers. The Cities of Santa Clara and San Jose, California are examples of cities that have implemented innovative approaches to recycling incentives in the residential and commercial marketplace.

² <http://online.sagepub.com/>

Minneapolis' Recycling Program Blazes a Trail through the Marketplace

Robert Craggs and Susan Young, MSW Management, November/December 2004

This article describes the procurement process utilized by the City of Minneapolis, Minnesota processing of its recyclable material. The original processing contract provided the City with between \$27 and \$36 per ton of material. However, the city used the competitive marketplace to their advantage during the procurement process and awarded a contract that resulted in net revenue of \$56 per ton.

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