



Massachusetts
Department
of
ENVIRONMENTAL
PROTECTION

Contracting for Municipal Solid Waste and Recycling Services

This document presents some general guidance on developing effective municipal solid waste and recycling contracts. This document does not constitute, and should not be construed as providing, legal advice. Municipalities should consult with their own legal counsel about local procurement regulations and should carefully consider the needs and conditions specific to their community when engaging in a procurement process for solid waste services.

1. Chapter 30B. Uniform Procurement Act

Under the Uniform Procurement Act (Mass General Laws, or MGL, Chapter 30B) a contract for the collection, transportation, receipt, processing or disposal of solid waste, recyclables or compostable materials is exempt from the public bidding laws of the Commonwealth of Massachusetts (unless a municipality has adopted a bylaw requiring otherwise). See #3 below for further discussion on this topic.

2. Contract Length

Contracts for **collection** of solid waste and/or recyclables generally range from 2 to 7 years. Solid waste **disposal** contracts are often 10 years in length and can be as long as 20 years. Municipal officials generally want relatively short contract terms, while vendors like longer-term contracts. Some factors to consider when determining the length of a contract:

- **Municipal bylaws.** Check with your town/city's legal counsel to determine if contract length is established by local bylaw. Generally, municipalities are limited to three-year contracts unless granted special approval by the appropriate legislative body.
- **Amortizing equipment costs.** If a municipality wants to attract small and medium sized vendors, or is specifying that new trucks be provided by the vendor, then the contract term should be long enough for the vendor to amortize most of the cost of new collection trucks (generally 4-5 years). This can help to reduce the annual cost of service.
- **Change in law provision:** Generally speaking, the longer a contract, the more likely the vendor is to ask for a "change in law" provision.
- **Contractor service and responsiveness.** If vendor performance is of concern, it may make sense to have a 3-year contract and risk paying a little more per year.
- **Disposal or processing contracts.** Massachusetts Law allows contracts up to 20 years in length for disposal of solid waste without legislative authorization, unless required by local bylaw.

3. The Public Bidding Process

Regardless of the 30B exemption, it is often in the best interest of the municipality to publicly bid contracts for solid waste services. Formal procurement options include: Invitations for Bid (IFB) and Requests for Proposals (RFP). Alternatively, a municipality may renegotiate with an existing vendor, or request quotes from multiple vendors through a less formal process (e.g. contact selected vendors by phone to request a price for the service). Renegotiation should occur early enough to allow time for a formal bid process, should the negotiation results be unsatisfactory.

- **Invitation for Bid v. Request for Proposal.** An IFB sets forth the exact specifications and minimum criteria that vendors must meet. After bids have been determined to be responsive, the award must go to the lowest bidder. In an RFP process, technical qualifications and cost are considered separately, allowing an award to the best qualified and not necessarily lowest cost vendor. It is recommended that all procurement documents for solid waste services include a disclaimer to the effect that "the contract is not subject to public bidding and the municipality reserves the right to negotiate with bidders". Because 30B exempts solid waste contracts from public bidding, a municipality may also send an RFP to specific vendors without issuing a public notice. Generally, an IFB or RFP process, conducted according to public bidding laws, is less likely to result in a contested contract.
- **Written contract.** It is critical to have a clear written contract at the end of a formal procurement process or an informal negotiation. A purchase order is not a contract.

- **Annual appropriation.** Multi-year contracts are subject to annual appropriation under MGL (Chapter 30B, Section 12). If the municipality fails to appropriate adequate funds, it may be obligated to cancel the contract.
- **Planning and timeline.** For the best outcome, allow plenty of time for the bidding process. Depending on the size of the contract, it is prudent to begin the process 9-12 months in advance of the contract expiration date. Allow at least 2 months to prepare your RFP or IFB, especially if you are making substantial changes to your previous contract.
- **Vendor Response Time:** Vendors should be given at least 4-6 weeks to respond to a procurement solicitation. Once a contract is awarded, the vendor may need 3-6 months to procure new trucks due to lead time by vehicle manufacturers. If you're anticipating a switch in vendors, and/or the municipality is a large one, be sure to factor this into your procurement timeline.

4. Performance Specifications

A contract should not tell the vendor *how* to collect trash or recycling, but instead specify the *desired outcome* (i.e. performance specifications). Good service will result from having clear expectations and good communication between the municipality and the vendor. Some considerations include:

- The timeframe in which trash/recycling should be collected (i.e. 7 a.m. to 5 p.m.);
- Procedures for when a resident fails to have their trash or recyclables set out in time;
- Definitions of, and procedures for, handling unacceptable materials including materials regulated under MassDEP's solid waste regulations (i.e. "waste ban materials"), per 310 CMR 19.017.
- Acceptable placement of emptied recycling bins or trash barrels on the curb;
- Responsibility for contractor damage to private property or equipment;
- Procedures for the municipality to communicate with the drivers regarding daily problems;
- Procedures for weather emergencies and road access issues;
- Procedures for residents to use to communicate problems or complaints;
- Enforcement role, if any, for a Pay-As-You-Throw program or a mandatory recycling ordinance.

5. Liquidated Damages and Penalties

If there are persistent and unresolved problems with a vendor, liquidated damages or penalty provisions in the contract can provide the municipality some recourse. Liquidated damages are only enforceable if they are not punitive, but reflect the actual costs incurred by the municipality as a result of the vendor's failure to perform. Before applying liquidated damages, the municipality should ensure that the issues are not a result of factors beyond the control of the vendor (road closures, weather emergencies, late set-outs). Liquidated damages should be exercised in conjunction with good communication as in some cases it may be cheaper for the vendor to repeat the behavior and be fined than to change the way the work is completed. Getting at the root of the problem is usually a better course of action. Under most circumstances, the municipality should follow typical disciplinary procedures, such as issuing verbal "warnings" and providing documentation of the problem. Then, if needed, the municipality can deduct the amount of the liquidated damages from a subsequent payment due the vendor.

A contract **penalty** is a specific amount set forth in the contract as a disincentive for the vendor to violate a performance standard. There may be a circumstance where the violations do not rise to the level of a breach that would warrant termination, so the contract specifies a penalty for a particular violation. For example, a typical contract penalty might be a financial penalty for each day the vendor fails to complete a collection route in a timely manner

6. Separate or Combined Contract for Trash & Recyclables Collection

The decision whether to contract separately for collection of trash and recyclables is often a function of the municipality's size, regional market conditions, and the size of bidder pool. There is no right or wrong answer. Some factors to consider include:

- **Simplicity.** Smaller municipalities with fewer staff may find it simpler or more efficient to work with one contractor for all solid waste services.
- **More bidders.** If the bidder pool is small in your region, separate contracts may attract more bidders. For example, a vendor that only provides recycling collection could not bid on a combined contract for trash and recyclables or vice versa.
- **Cost of services.** Requesting separate pricing for trash and recyclables collection enables the municipality to see the true cost of each service, making it possible to have two different contractors if deemed beneficial.

- **Resident complaints.** Some areas have had complaints about haulers picking up recyclables with the trash truck. Separating the contracts for trash and recyclables collection may address that issue.

7. Separate or Combined Contract for Recyclables *Collection & Processing*

Some communities have separated their recyclables collection from the processing contract. Consider the following when making this decision:

- **Volume of materials.** Generally, larger municipalities are better positioned to procure separate processing contracts and thus earn revenue from materials sales. Smaller municipalities can sometimes use cooperative marketing (i.e. joining with neighboring communities) to gain better pricing.
- **Willingness to absorb changes in prices.** Having a separate contract for processing recyclables may place the risk of changing market prices on the municipality, unless the contract has a set price per ton. Unless a recycling program has an enterprise fund (or special revenue fund) that can absorb changes in revenues, the variability of the revenue can be a challenge for municipal budgets.
- **Processing facility ownership.** If a nearby recyclables processing facility is owned by a company that also provides collection service that may limit the interest of other firms to bid on collection.
- **Municipal transfer station.** Municipalities that operate a transfer station where recyclables can be tipped by a collection vendor can be better positioned to bid processing services as a separate contract.

8. Pricing Structure: lump sum, per ton, itemized services

For collection services, the pricing structure most commonly used is an annual lump sum. For disposal of trash or processing of recyclables, pricing is usually set as a fee-per-ton. Other considerations include:

- **Additional services.** Services such as collection of yard waste, bulky waste, CRTs or appliances may be priced separately from basic service. Separate pricing enables the municipality to pick and choose services and/or institute a fee system where residents pay for disposal of bulky items or CRTs. Including a provision in your procurement document that allows the award of multiple contracts can be beneficial.
- **Disincentives.** Lump sum pricing that combines collection and disposal of trash creates a disincentive to recycle. Likewise, fee-per-ton pricing for collection of recyclables may be a disincentive for recycling.
- **Data collection.** Getting accurate tonnage data may be more difficult if the contract uses lump sum pricing for disposal of trash or processing of recyclables.

9. Revenue Sharing from Recyclables

Revenue sharing is defined as the sharing of revenues from the sale of recyclables between the vendor and the municipality. Revenue sharing can be included in a collection contract when the vendor has responsibility for marketing the recyclables or in a processing contract with a MRF operator. Revenues are often split 50/50 when the price received per ton of material exceeds a pre-determined level (usually the cost per ton of processing). A contract could also include a “floor price” (a minimum amount a municipality would receive) or a “ceiling price” (a maximum amount a municipality would receive). The formula can be a rate per ton for one type of material (such as paper) or a blended rate per ton for all materials. Factors to consider in requesting revenue sharing include:

- **Publicity potential.** Municipalities may be able to generate additional public interest in recycling by publicizing that “the more that’s recycled, the more the municipality earns”.
- **Opportunity for additional revenue.** Revenue sharing agreements can help support further waste reduction efforts, especially if the funds go to a special revenue account for this purpose.
- **Variability in budgets.** Most municipalities want to know the fixed cost of their recycling program for budgeting purposes. If a contract includes revenue sharing, it might be better to exclude the revenue projections from your anticipated budget.
- **Market index.** It is common to use a market index such as the “Official Board Markets” when setting a price threshold above which revenue sharing will occur. For example, when the price for #8 newsprint exceeds \$30/ton, the vendor and municipality will split 50/50 the proceeds above \$30/ton.

10. Other Contracting Considerations:

Separate or Combined Disposal Contracts

The current trend for most communities is to contract separately for trash collection and disposal. Factors to consider when making this decision include:

- **Disposal location security.** Having a separate contract for disposal of refuse may provide security in a long term disposal site even if the hauler changes, merges, or goes out of business.
- **Size of community.** Smaller municipalities may be less likely to get favorable pricing for collection without also offering the disposal contract.
- **Pricing.** Entering into separate contracts for processing and disposal enables the municipality to negotiate the best deal without the interference of the vendor. In addition, if the municipality is attempting to attract smaller firms to the bidding process, having defined contracts in place for disposal or processing will allow smaller firms to compete with large firms that have dedicated processing and disposal capacity.

Performance Incentives

Contracts for collection of solid waste or recyclables can include performance incentives to encourage waste reduction and increase recycling. Incentives may be paid to the vendor, or to individual drivers, if agreed to by the vendor. The municipality would designate the base year for comparison, performance goals, and specifics on how frequently and to whom incentives can be paid.

- **Increased Recycling.** A per-ton “bonus payment” for increased recycling tonnage over a baseline amount can be included in a vendor contract.
- **Waste Reduction.** A recycling bonus payment should be utilized in conjunction with a documented decrease in solid waste tonnage. This way, the vendor would only be rewarded for a true increase in recycling or reduction of waste, and not one that results from economic factors (such as increased waste generation and recycling due to an upturn in the economy).

Regional Contracting

Several towns working together on contracting can benefit financially under most circumstances. To evaluate the benefit of regional contracting, bids should be requested both as separate, single-town contracts and as combined, multi-town contracts. The savings may come from:

- **Combined services.** The most likely savings from regional contracts would come from allowing the contractor to combine collection routes, share route supervisors and/or share other program resources between two or more municipalities.
- **Additional bidders.** Regional contracts may attract additional, smaller or more distant firms. Increasing the number of bidders can lead to better pricing.
- **Increased volume of materials.** The greater the volume of trash or recyclables, the greater the economy of scale. This can result in lower costs if two or more communities are willing to have their material collected in the same truck(s) and if they can agree on a cost-sharing formula.
- **Time and effort saved.** Haulers, disposal facilities, or processing facilities can save considerable time and effort if they negotiate contract terms with a group of municipalities once rather than multiple times. As a result, these providers may offer better contract terms.

Contract Service Options

It can be beneficial to request separate pricing for additional services, so long as the list is not so long as to discourage bidders from completing a lengthy bid document. Some considerations include:

- **Additional services:** Additional options can include: Pay-As-You-Throw (with the hauler’s role clearly specified), automated trash collection, automated recycling collection, semi-automated collection, one-day collection, regional collection, or single-stream collection of recyclables.
- **Alternative services.** In addition to bidding on required items, it can be beneficial to allow vendors to propose alternative or additional services. This can result in innovations and program options the municipality may not have considered.
- **Education/Community activities.** Educational programs in schools, printing and/or mailing annual household recycling information, or leaving feedback stickers at the curb when residents place improper items in their recycling bin are just a few of the items that can be included in a trash or recycling contract. Some municipalities include these activities in the collection contract, even if it increases the cost, because it makes these services less vulnerable to budget cuts.