Municipal Contracts for Solid Waste Services

This fact sheet originally appeared as a three part article in the SHWEC Newsletter during 2005. The series addressed the issues communities face when contracting for solid waste and recycling services. This fact sheet explores issues not only with the initial process of negotiating a service contract, but also how deal with problems that may arise during the term of the agreement.

Contracting for Services

Needs Assessment
There are a number of solid waste management services that are available for a municipality to contract for. A key question to ask is “What level of service is needed or demanded by our residents?” Does a community want to provide the basic services of garbage and recycling collection, or are there more services that are needed. Should yard waste materials be included, how will bulky items such as furniture and appliances be handled if at all? What frequency of collection for these materials is desired? A community’s budget for waste services can also influence the process.

Bids vs. Proposals
The bid process traditionally used by a municipality for purchasing functions may not be the best process to use when contracting for solid waste services. Bids are awarded exclusively on price. Proposals are awarded on price and other criteria such as:

- Proposer experience and references
- Proposer’s ability to fulfill the duties under the contract
- Proposer’s financial creditworthiness to fund operations, honor indemnification commitments to the municipality, etc

The Proposal process may also offer flexibility not available in the bid process.

Creating a Request for Proposals (RFP)
A RFP will be the next step in the process. A RFP will encompass services for what is now a clearly defined set of needs. This document will be the basis for the service contract, detailing all

What is a “most favored nation” price guarantee clause?

Many communities have found it advantageous to specify a “most favored nation” price guarantee provision in their contract. The concept allows a community to receive the lowest price for recycling or solid waste services in the event of a price decline during the life of the contract.

Recently, Manitowoc County implemented this provision as part of their solid waste contract. The City of Sheboygan had solicited bids from solid waste vendors for landfill disposal and received a favorable rate from Waste Management, Inc. Since Manitowoc County disposed of waste in the same landfill, they were able to lower their current tipping fee by approximately 30%. Below is an example of the typical language used for the most favored nation price guarantee provision:

“In the event of a price decline, or should you at any time, during the life of this agreement, sell the same materials or service, under similar quantity and delivery conditions, to the State of Wisconsin or legal district thereof, or to any County or Municipality within the State of Wisconsin, at prices below those stated herein, the agreement vendor will immediately extend such lower prices to the Town/Village/City/County of ______.”
elements of the program and who has responsibility to carry out each component. For a more detailed look at creating a RFP see “Contracting for Municipal Solid Waste Collection Services” a SHWEC publication available on the SHWEC website (www.uwex.edu/shwec).

Performance Bonds, Stepped Damages and Financial Incentives
The service agreement will specify the scope of services a contractor provides to a customer in exchange for service fees. But what happens if a contractor is not performing as specified in the agreement? A comprehensive contract may include penalties that can be enforced when a contractor is not performing the services as called for. Many contracts will include a requirement for a “Performance Bond”. The function of a Performance Bond is to cover costs in the case a contractor is unable to provide service and a municipality has to provide an alternate service. Additionally, penalties may be included for missed pick-ups or for mixing recyclable materials with trash. These penalties may be structured on a stepped scale to increase the penalty based upon multiple occurrences. Conversely a municipality may provide financial incentives for meeting recycling or waste reduction goals. A bonus may be awarded to a contractor as certain milestones are reached.

Evaluating Proposals
The process by which proposals will be evaluated should be established when the RFP is written. The RFP should include proposal sheets to be completed by proposers. These sheets can help to standardize responses and streamline the evaluation process. Consider interviewing proposers to clarify any questions about submitted proposals. Be sure to contact a proposer’s references to determine past performance.

Achieving the Full Value of a Contract
Understanding the services that are called for in the service agreement is the first step to maximizing the value of a contract. Take some time to review the service agreement or contract. List the services, their costs as well as their frequencies; then the evaluation of the contractor can begin.

Contractor Evaluation
In most cases there is a direct connection between a service provider and the customer. When a municipality contracts for solid waste or recycling services a barrier may exist between the customer receiving the service and the customer who pays the bill. The residents or homeowners of a community are customers, those directly receiving the service, while the municipality is typically responsible for the payment for these services. In order to evaluate the quality of service a waste hauler is providing a city official must get feedback from these customers.

The feed-back can be in a variety of forms. The most common form is phone calls from residents who have not had there garbage or recyclables collected. Tracking the number of missed pick-ups is a relatively easy method to track the performance of a contractor. A municipality may also choose to survey community residents regarding their satisfaction with the solid waste services they are receiving.
Creative Contracting can lead to improved performance
How does your community pay for solid waste services? Many communities pay a contractor a per stop fee for all services, while others have fees that are segregated by function or by volume/weight. Collection, disposal, processing and marketing, and revenue sharing are some examples of cost centers within a solid waste management program. The segregation of fees will allow a community to gain a more thorough understanding cost of their solid waste management program. With this information in hand a community can take specific actions that may reduce the overall cost of a program.

Revenue Sharing and Risk
In this example a community will receive a percentage of the revenue a contractor receives from the sale of recovered materials. Revenue sharing for recycled materials is a common method of shared risk. As the price paid for recovered commodities such as metal, paper and plastic can vary over time, a certain amount of financial risk results from this variability. If a municipality is willing to take on a portion of this risk, a lower collection and processing fee may result. The term of an agreement can have an impact upon the risk. SHWEC has been monitoring market prices for certain recovered materials in Wisconsin since 1996.

Cooperative Agreements
Cooperative contracting with other communities may also lead to lower collection costs for a community. Collection contracts with more stops may allow more service providers to participate in the RFP process. A cooperative contract that has a higher overall value may allow a service provider to make a capital investment that results in a lower cost to a group of two or more communities than if each municipality contracted on their own. In the case of a processing agreement for recyclable materials economies of scale can be achieved as materials from multiple communities are aggregated into a single contract.

An additional benefit of cooperative contracting for recycling services may be a Recycling Efficiency Incentive (REI) grant from the Wisconsin DNR. The current REI grant program includes a per capita grant that is available to Responsible Units of Government who have jointly contracted for recycling collection or processing.

Renegotiating a contract
There may be a number of reasons a community of service provider may wish to change or renegotiate the terms of an agreement. Some of the common instances that may trigger one of the parties to request new terms are;

- Change in State or Local law
- Change in the cost of fuel
- Change in market conditions for the disposal waste
- Change in market conditions for marketing recyclable materials
- A significant violation of the contract

A contract or service agreement may contain provisions for some of the examples listed above. In this case it will just be a matter of following the procedures provided for in the contract.
In the absence of a contract provision for renegotiating terms, a key to initiating any change in an agreement would be the mutual agreement of all parties to do so. For this process to be successful the outcome will need to be beneficial to both parties. One method for a community to improve the terms of an agreement may be an offer to extend the length of the service agreement or contract. (Note: Municipal officials should contact Corporation Counsel or their municipal attorney to ensure proper procedures are followed during the renegotiation process)

The process of renegotiation maybe handled in any number of ways. In some instances a simple “Addendum” attached to the existing agreement may be sufficient to address the negotiated change. In other instances a Memorandum of Understanding may be the method chosen to enact the change. Additionally in the case where the term of the contract has been extended a new contract or service agreement may replace the existing terms.

**Contract termination**

Contract termination is the last resort and typically can only be used when one of the parties has breached the terms of a service contract or agreement. Most service agreements will have specific references for what can result in the termination of the agreement. If a municipality is considering terminating a contract, a thorough understanding of the intended and unintended consequences of this action must be realized by the parties involved.

In addition to the legal and financial issues that will be associated with terminating a contract, arrangements will need to be made to provide an alternate contractor or method to continue services to residents. Trash and recyclables will continue to be generated within your community and residents will have an expectation that collection services will take place as scheduled. If the contract is for processing or disposal, the collection contractor will need a new facility where the collected materials can be delivered.

As the relationship with a service provider deteriorates it may be wise to develop a contingency plan that will be used should the service provider no longer be able to provide the contracted services. At a minimum a contingency plan would contain contact information for service providers who provide comparable services to the current contractor. Multiple contractors may be needed in the short term, depending upon the size of the community. If services are provided at a higher cost than the original contract, then damages from the original contractor may have to be obtained to cover the added costs.

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