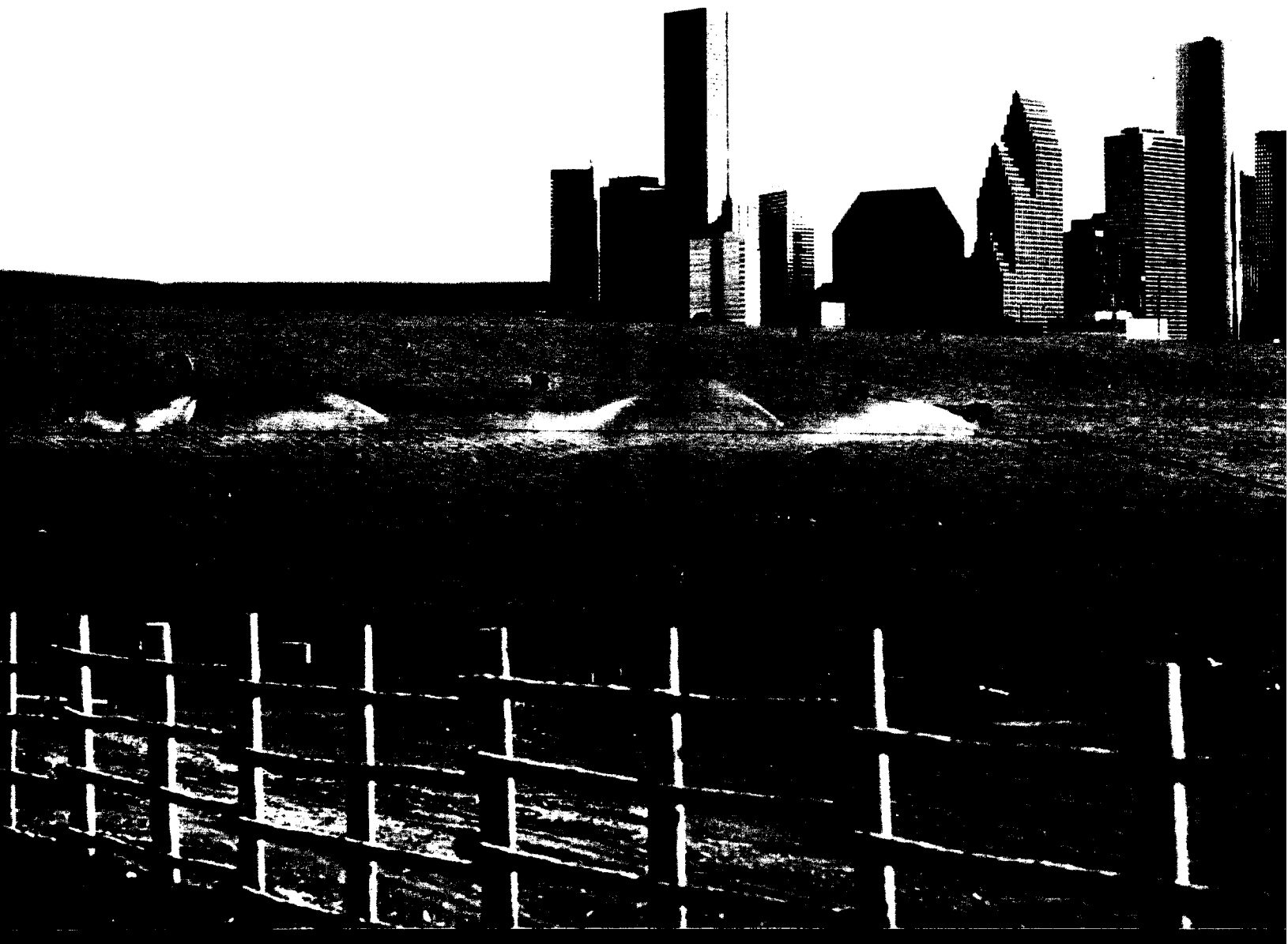


Contracting for Solid Waste Services

A Workbook for Cities and Counties

Houston-Galveston Area Council
Texas Natural Resource Conservation Commission
West Environmental Consulting

June 1999



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Solid Waste Contracting Workbook

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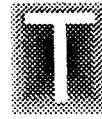
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Ms. Christina West has a background in recycling and solid waste management services which includes local and regional planning, program management, and consulting for the public sector and non-profit organizations. She has served as a member of the Board of Directors of The Woodlands Community Association, which is responsible for providing municipal-type services to community of 60,000 and is the founding president of The Woodlands G.R.E.E.N., a grassroots environmental organization active in the Houston area. She was the recycling and solid waste manager in The Woodlands for six years and served on the Houston-Galveston Area Council (H-GAC) Solid Waste Task Force that developed the regional solid waste management plan. She continues to serve on the Solid Waste Task Force. She is also chairman of the Houston Environmental Foresight Steering Committee, a broad-based stakeholder effort which is in the process of developing recommendations for addressing the region's environmental risks. Ms. West received her B.A. from the University of Chicago in 1973 and will receive an M.A. from the University of Houston in December 1999.



General Overview and Principles

- Goals and Objectives
- Chronology
- Summary of Contents
- Advantages and Disadvantages
- Types of Privatization Available
- Role of the Private Sector and Public Entity in Contractual Relationship
- Procurement Philosophy
- Summary of Procurement Process

Solid Waste Program Opportunities

- Collection, Transport, and Disposal of Solid Waste
- Levels of Service
- Other Services

Procurement Process

- Procurement Process Overview
- Preproposal Phase
- Interest Development Phase
- Request for Proposal Phase
- Proposal Evaluation and Clarification Phase
- Negotiation and Award Phase
- Contract Monitoring Phase

Contract Development

- Contract Document Overview
- Contract Term
- Contract Pricing and Payment Provisions
- Bonds and Insurance
- Performance Enforcement
- Force Majeure

Public Relations

- Public Education
- Planning Phase
- Implementation Phase
- Maintenance Phase

Information Sources

- Federal
- State
- Private
- Local

Appendices

- A Case Studies
- B Sample Contract Outline
- C Reaching the Public
- D Sample RFP Package

References



General Overview and Principles

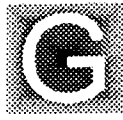
Goals and Objectives

The Houston-Galveston Area Council (H-GAC) authorized the development of this workbook in support of its regional solid waste management implementation activities. The original publication in September 1996 and this updated version are funded by Solid Waste Implementation Grants made possible through the Texas Natural Resource Conservation Commission (TNRCC). The goal of the workbook is to be a practical guide for H-GAC member governments preparing to contract with private companies for solid waste collection, transport, or disposal services. Its intended audience is public entities that have made a decision to privatize waste services or are considering this option. Consequently, issues concerning public operations or managed competition are not addressed. In addition to the workbook, this project includes a 3-hour workshop to present the materials contained herein.

Chronology

H-GAC is the state-designated regional planning agency for solid waste management in the Gulf Coast Region. H-GAC is responsible for implementing its state-approved 20-year regional solid waste plan, *Resource Responsibility: Solid Waste Management Plan for the H-GAC Region, 1992-2012*. H-GAC participates in this statewide program through a contract with the TNRCC, under the authorization of Chapter 363.014, Texas Health & Safety Code and Section 330.569 of the TNRCC Municipal Solid Waste Regulations (30 TAC Chapter 330).

This workbook joins a growing library of H-GAC sponsored solid waste workbooks, including *Establish & Operate a Successful Environmental Enforcement Program* (March 1999), *A Review of Illegal Dumping in Montgomery and Wharton Counties* (December 1997), *Environmental Enforcement Conference Workbook* (February 1997 and April 1996) and *Recycling: A Financial Blueprint for Texas Cities* (June 1994).



Summary of Contents

There has been a marked trend towards privatizing of solid waste services in the 1990s. For example, a national survey of local governments conducted by the International City/County Management Association (ICMA) in 1995, indicated that 37 percent of American cities were contracting for private collection services. Another survey of cities with populations over 100,000 indicates that more than 50 percent of these used some form of privatized solid waste service in 1998. (See "Managing Public/Private Competition", *Waste Age*, October 1998 in References).

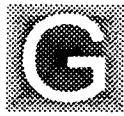
Studies have concluded that privatization has the potential to reduce operating costs and increase program effectiveness and efficiencies.¹ However, there are also drawbacks. Careful consideration needs to be given to the decision to privatize. Legal and financial issues are involved and must be studied. Alternatives like managed competition, in which the local government competes with the private sector to provide waste services, should be explored when feasible. Most importantly, public entities should have in place an objective process for evaluating the decision to privatize. Full-cost accounting is recommended for obtaining a true picture of municipal solid waste management costs and for guiding program modifications, privatization decisions, and information goals. (For information and publications on full-cost accounting see Sources section of this workbook.)

The switch from public to private involves some aspects that may be unfamiliar to local governments. This workbook is designed to guide readers through the development and decision-making processes associated with contracting out for collection, transportation, and/or disposal of solid waste.

Topics to be covered are:

- Advantages and disadvantages of privatization
- Types of privatization available

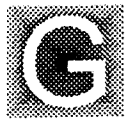
¹*Resource Responsibility: Solid Waste Management Plan for the H-GAC Region 1992-2012*. Houston, Texas: February 1994, p.277.



General Overview and Principles

- Evaluation of public and private sector roles in the contract relationship
- General procurement philosophy
- Solid waste program opportunities:
 - Collection services
 - Transport services including transfer stations
 - Disposal services
 - Recycling and yard waste services
 - Emergency services
 - Facility operation
 - Levels of service
- Contract development process
 - Pre-procurement phase
 - Interest phase
 - Issues commonly encountered during procurement
 - Public relations
 - Preparation of contract documents
 - Project team composition
 - Scheduling and budgeting for the procurement and contracting process
- Preparation of the contract document
- Negotiations during and after selection
- Information sources and references available to public entities

A number of municipalities in the H-GAC region have already some or all of their solid waste services. Case studies are included in Appendix A.



Advantages and Disadvantages of Privatization

Although this workbook is intended for readers who are considering or have already made a decision to privatize, a listing of advantages and disadvantages may offer further guidance. It may also help define issues that need to be addressed in the contracting process.

ADVANTAGES

In general, private companies:

- are focused solely on the business of solid waste management
- are motivated to find innovative cost saving methods
- have greater access to technical expertise and information systems
- have greater flexibility in the bidding and hiring process
- usually serve more than one community, creating regional opportunities
- use smaller, more efficient collection crews
- may be more effective in the operation of recycling programs
- accept the risks associated with waste services
- can sometimes achieve greater economies of scale, leading to cost savings

A private company's sole focus on solid waste may translate into more effective, efficient programs and greater access to specialized services or equipment. As for-profit businesses, privates strive to improve profitability, both by eliminating deficiencies that cut into profits and by creating greater efficiency.

Often public entities are limited to local sources of technical support and information, while private companies often have corporate access to regional, national, or international sources. Further, they can afford to maintain staff with expertise in specialized areas of solid waste management, including recycling.

Private companies may also respond faster to service demands, because they are able to forgo the typical public bidding process. During an emergency, for example,



General Overview and Principles

decisions can be made and services procured quickly. Similarly, private companies may not be subject to the same employment rules required in the public sector, easing their ability to hire crews.

In addition, the overall costs of service may be lower due to economies of scale. Private companies can spread their costs across the region or the country, while public costs must be borne locally. The scale of private sector operations may also allow more efficient utilization of equipment. Privates are also usually well capitalized which permits investment in new equipment. The size and scale of private operations not only lowers costs, it may open up opportunities for regional waste management solutions.

Other cost saving advantages include the avoidance of bond issuance to finance new service costs and increased bonding capacity. Lower salaries and reduced employee benefits also may contribute to lower costs for the private sector.

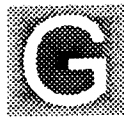
DISADVANTAGES

Privatizing waste services:

- requires a different system for service delivery monitoring to ensure quality is maintained
- may eliminate direct public-sector quality control and contact with customers
- may be more costly and less competitive, if there are too few service providers in the area
- may limit the community's ability to effect service changes during long-term contracts
- requires a strong, well-written contract
- demands that services be clearly defined, those which are not are difficult to contract for
- makes it costly for a public entity to redevelop services, if it becomes necessary

Private companies:

- may be unable to receive low interest financing available to the public provider
- will pass along costs to cover their need to make a profit and to pay taxes
- may have short- and long-term goals that conflict with public goals



General Overview and Principles

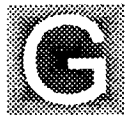
- are removed from the political process, and may not respond to "public mission" agendas
- have little incentive to maintain the public's capital assets
- are subject to financial or other failure

These are the disadvantages. Some may be offset by the advantages of privatizing. For example, unlike the public sector, private companies must make a profit and pay taxes. These costs are passed on to the public. On the other hand, privatizing creates efficiencies that may reduce costs. Likewise, private companies usually pay higher interest rates than public entities do to secure financing, but private financing also means that the public sector avoids the need to issue a bond to underwrite new service.

One issue, which has gained ground in the wake of the recent waste company mergers, is concern about the potential for increased prices. Higher costs can become an issue when there is lessened competition, for example when there are not enough waste companies to choose from in an area. Currently, the Houston region continues to exhibit competitiveness. Some critics have also argued that the waste mergers may reverse the national trend toward recycling. (See *The Atlanta-Journal Constitution*, April 1999 and *Waste News*, June 7, 1999 in References section.)

Public and private short- and long-term goals may conflict. It can be difficult to persuade the private sector to adopt public mission goals typical of government agencies. Once contracts are signed, private companies need not be as responsive to political changes and public pressures as local governments are. Sometimes public goals may even impede the company's ability to make a profit. For example, a public agenda to continually reduce waste going to a privately-owned landfill can reduce the profitability of the operation. In addition, goals that are difficult to define are difficult to include in a contract.

The contracting process itself favors the private sector. Companies often have vast legal resources available for contract development and negotiations usually unavailable to local governments. Since contractual terms can be complex and sometimes unclear, it may be necessary for the public sector to obtain outside legal counsel to review the contract



General Overview and Principles

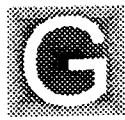
documents and ensure that the public's interest is fairly represented.

Often, private companies require short-term profits. Necessary capital commitments may be sacrificed as a result. In addition, privatization results in a loss of direct control by the local government over various aspects of solid waste management and customer service. This, of course, can be controlled to a certain extent by contract language. On the other hand, when waste services are contracted out, it may require the public entity to develop a different kind of system for monitoring service delivery to ensure quality standards are maintained.

Finally, private companies are susceptible to financial or other failure, which could cause a cessation or interruption of service. Since delays in solid waste service cannot be tolerated, the contract should specifically address the liability and performance concerns associated with such a failure. The contract must also adequately address issues associated with any sale of the private company. The recent spate of acquisitions and mergers among waste companies is likely to continue to affect small, independent providers over the next few years and may also affect the large companies.

In summary, the decision to privatize solid waste services involves many considerations. Once decided upon, your best and most important tool is your contract. It should be a solid, well-crafted, clearly written, and thorough document. Everything else depends on it, including your relationship with the private company and your customers.

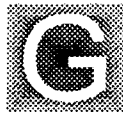
Think of the contract as the foundation of your program. It must be strong enough to protect the entire solid waste management service from collection and disposal to customer complaints, performance bonds, recycling options, routes and schedules, bulky waste handling, and public education. At the same time, it must be flexible enough to let you respond to changing public or legislative initiatives. It must see you through good economic times and bad.



Types of Privatization Available

There are three major types of privatization available for solid waste services. Your jurisdiction will want to determine as early as possible which type best suits your situation.

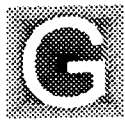
- Contract operations** is the most common type of privatization used by local governments. Here, the public entity contracts for some solid waste services while maintaining control of other services. Contracts can be with one or more companies. For example, a city may collect and transport household solid waste, but contract for disposal. The City of Huntsville is a local example (See Appendix A). Or, a city may collect recyclable items, but transport them to a private company for separation and processing.
- Turnkey contracts** usually involve a waste facility. In this case, a private company is contracted to design, construct, and initiate operations at a facility. Once the facility is "brought on line", the public entity runs it, using the contractor only for periodic maintenance and repair. In the solid waste business, turnkey operations usually involve large facilities such as waste-to-energy, material recovery facilities (MRFs), and landfills. However, it can also be used for collection and transport. For example, a private company may be contracted to develop a collection plan, purchase collection equipment, and even construct a transfer station, but the collection program itself is managed by the local government.
- Full-service or concessions** involves the private company in the full-range of solid waste services. In this case the private sector provides all collection, disposal, recycling, and processing and, if necessary, may design, construct, and operate a facility. The City of Sealy is a local example. (See Appendix A for Sealy case study and article on franchise agreements in References section.)



Role of the Private Sector and Public Entity in a Contractual Relationship

Once you decide what type of contract arrangement you want, your next step is to define your relationship with the private company. How much control and responsibility do you want? How much risk? How many private companies in your area can offer what you want? Consider the following concepts as you make your decision.

- Level of public control desired:** Do you desire a high level of control over the private company, or is it more desirable to allow the private company flexibility and freedom in its operations? Which better serves your needs? Let's say your city wants the private company to maintain current collection routes to prevent inconveniencing residents and to smooth the transition to a new provider. However, the private company wants to reroute the city to achieve greater collection efficiencies. Perhaps you can strike a balance, leaving the operational decisions to the private, but requiring them to provide sufficient notification to your residents and letting you review the proposed route changes.
- Allocation of public and private responsibilities:** In general, privatization means a shifting of primary responsibilities from the public to the private sector. However, you retain some responsibility associated with solid waste services. For example, your contract can stipulate that complaints be handled by the private company, but citizen complaints will often be voiced to public officials in spite of contractual provisions. Decisions regarding allocation of responsibilities, and the costs associated with those responsibilities, must be carefully considered.
- Allocation of risk:** Risk allocation falls in line with the level of responsibility and level of control you desire. As the level of public control increases, risks increase. This is a very important consideration for contractual



General Overview and Principles

negotiations because risks can often be controlled through contract language. Service costs can be significantly affected by the level of risks assumed by the public entity.

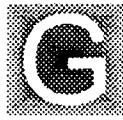
- ❑ **Sufficient competitive field:** Depending on your location and the kind of services you require, how you define the private sector role can have a strong impact on the level of competition available. For example, if you want to contract for all your solid waste services from one vendor, the competitive field will be limited to only those companies that are able to provide a full line of solid waste services. More competition may be available if services are separated into different contracts. One contractor might provide for collection of household garbage, and another for collection of recyclables. On the other hand, if you have several large, full-service companies in your area, you may get more favorable pricing by letting them compete with each other to provide all services.

In summary, a clear delineation of the roles of the public and private sector is essential to developing a successful contract. Include specific language defining roles in the contract's scope of services. Determine public and private responsibilities and risks and levels of control early in the process and include written definitions in the contract to prevent future misunderstandings. All of the above set the stage for a good working relationship between the public entity and the private company.

Procurement Philosophy

Before you procure services from the private sector, you need to develop a procurement process that encourages broad provider participation and responsive bids. Several factors should be considered. Following are the keys to successful procurement process.

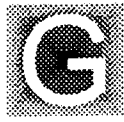
- ❑ **Know what you want.** It is very important to think through the major project issues and decide what you



General Overview and Principles

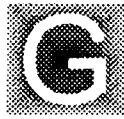
want and how to get it. For example, cost savings may be your primary goal, but you may also want to add new services, like recycling, or explore new collection techniques, like automated service. Prioritize your wants. How do they fit your overall program goals? If waste diversion is your goal, then you might put recycling ahead of cost savings on your priority list.

- Consider facility ownership.** Here, again, issues of control, responsibility, and risks are key. Ownership of a transfer station may increase the competition for disposal services, and reduce your disposal costs. On the other hand, there are risks associated with ownership as well as financial obligations.
- Look at the long-term.** Carefully consider the consequences of long-term municipal commitments in view of potential changes in technology and regulations. In addition, make sure you do not discourage future recycling or yard waste diversion options by guaranteeing waste for disposal.
- Face loss of control.** Retaining control or community visibility in relation to a critical public service such as solid waste may be important to your local government. It is possible to maintain some control by enforcing clear standards for quantity and quality of service and by instituting effective contract administration. Promoting the economic advantages of privatizing may counterbalance the concerns about loss of control and win public acceptance.
- Be aware of risks.** Loss of control does not always mean less risk. Pay attention to the "fine print" in your contract. Remember, there are practical limitations to vendor performance guarantees. Be reasonable about risk allocation. Private companies are willing to assume a great deal of risk, as long as their profits and overhead can absorb the potential costs of those risks. Unreasonable risk allocation can result in a very narrow competitive field or no field at all.



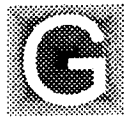
General Overview and Principles

- Choose between technology and performance specifications.** Consider when and why to specify a technology or approach in your contract versus describing a desired outcome or result. If you are too specific, you may limit the private company's ability to respond cost effectively to your needs. Contracts that set forth final outcomes, on the other hand, allow companies the flexibility to develop their own approaches and to choose methods that take advantage of their strengths. The result is often cost savings *and* greater innovation.
- Decide on aesthetics.** Separate what is required to accomplish the basic goals of the project from other desired services or aesthetic considerations that enhance service quality. Put a price on these enhancements. Taking your community's values into consideration, determine how much these heightened aesthetics are worth. For example, some communities may put a high value on curb appeal which argues for backyard or garage door service, however, costs may be considerable.
- Prioritize selection issues.** Will you approach procurement as a low-bid exercise? If not, what are the other factors besides cost that will determine your final selection? Some considerations might be community goals, performance criteria, financial resources, and innovative technologies, among others.
- Be open.** Use the procurement process as an educational opportunity. Ask questions. Use the process to gather data. For example, determine if competition in your area is sufficient to create a healthy negotiating environment. Explore private company backgrounds. Do they have the funds available to provide performance guarantees and remedies? Who are their other clients locally?
- Be clear.** Procurement documents should be clear and detailed about what you are trying to do, what your goals and objectives are, and what limitations you face. Well-written RFPs and contracts are critical for achieving your objectives.



General Overview and Principles

- Be fair.** Do not request the impossible from the private sector. Avoid asking a potential solid waste provider to give you detailed estimates of collection costs if you cannot provide detailed information about the number of customers and routes. However, being fair does not mean compromising your expectations for the best possible service at the best possible price.
- Be reasonable.** Allow sufficient time for vendors to respond. Give the private companies time to carefully prepare their documents and proposals and to identify the best methods and price estimates available.
- Consider managed competition.** Develop a cost proposal for the in-house provision of waste services. Some larger cities have successfully competed this way with private providers. Even if you choose not to compete, you can use your in-house costs as a baseline against which to compare the cost estimates of private companies. (See "Managing Public/Private Competition" in References and pertinent articles in Sources.)
- Invest time in a good RFP.** The request for proposal (RFP) incorporates the procurement design, project intent, competition guidelines, and the basis for award. A good RFP should contain a full description of the project and its intent; a clear definition of the proposer responsibilities, both in proposing and in eventual performance, if selected; and a concise explanation of the proposal process, including selection criteria and methodology. (A sample RFP package is included in Appendix D.)
- Prolong the competition.** In general, it is in the vendor's interest to have the selection made at the earliest point possible in the procurement. Once a selection is made, the fact and value of competition is over. Prolonging competition favors lower and more refined cost estimates. However, be cautious about extending the competition so long that the competing firms lose interest.
- Prepare a well-written contract.** The end of a procurement process is the final contract. It should be well-written and carefully outline the responsibilities,



General Overview and Principles

services, costs, and consequences of non-performance. Most municipalities have standard contract terms for purchase of services or equipment. The effect of these standard terms on cost and ability to enforce the contract must be considered.

- **Plan and budget for contract monitoring.** Monitoring the contract is an important, on-going management responsibility of the local government. It assures that the company is performing with integrity and in accordance with the contract over the long term. Performance monitoring and dispute resolution are critical and need to be included in the contract language.

Program Opportunities



Solid Waste Program Opportunities

Collection, Transport, and Disposal of Solid Waste

Private companies can provide a variety of solid waste services for municipalities and other public entities. One of the more commonly contracted services is *collection*. Solid waste collection includes a variety of potential services, including:

- Household garbage
- Yard or "green" waste
- Recyclables
- Household hazardous waste
- Sludge
- Municipal facility waste
- Bulky waste (furniture, appliances)
- Commercial waste
- Dead animal pickup
- Disaster cleanup

Private companies can also be contracted to handle collections associated with *special events*, such as parades, conventions, and other activities supported by local governments. Some cities may contract for *special waste* collection, for items such as oil and oil filters, tires, medical wastes, and lead-acid batteries, which cannot be disposed of in municipal landfills.

Local governments that maintain their own collection fleets may contract for short- or long-distance solid waste *transport*. When transportation is separated from collection, the solid waste is usually transferred from one type of vehicle to another. This often involves a transfer stations where solid waste is unloaded from smaller collection vehicles and transferred to larger, long-distance hauling vehicles.

Another local government option is to contract for construction, operation, and/or maintenance of *solid waste facilities*. Landfills are probably most commonly involved in contracted services. This may range from a single full-service contract, which covers all operation of the landfill, to several, separate contracts for specific operations within the landfill. Or, local governments may choose to mix public and private operations,



olid Waste Program Opportunities

performing some services and contracting for others. Besides landfill, other solid waste facilities that can be privatized include material recovery facilities, transfer stations, special waste storage and/or treatment facilities, and recyclable storage and processing facilities.

Among the other waste services that can be contracted are *vehicle maintenance* and *emergency service*. Maintenance contracts may cover any and all vehicles involved in the collection, transport, and disposal of solid waste. Emergency services usually entail clean-ups following natural disasters such as hurricanes, tornadoes, and floods. In addition, some contracts will include a provision for *portable toilets* for special events.

Levels of Service

Once you have decided what services to contract for, you will need to determine the level of service you want. Broadly, you will want to look at: collection and transport, disposal, other services (recycling, yard waste), customer education and public information, and reporting.

To decide on the preferred level of service for collection and transport, consider:

- collection schedule
- collection locations
- level of mechanization
- collection containers
- complaint management

Collection schedules involve daily collection times, frequency per week, holiday schedule, and any special collections for bulky items or brush. Collection schedules should be addressed in the RFP and contract. Scheduling can become a major issue for the public. Citizens often have strong feelings about when and how often their waste is collected. Since preferences for collection frequency may affect level of mechanization and vice versa, it is best to decide these issues early, before the procurement phase. For example, a desire for twice-weekly collection frequency usually means standard manual collection rather than automated.



olid Waste Program Opportunities

Collection locations need to be clearly defined for the contractor. For residential collection, include pick-up locations for both single-family residences and multi-family dwellings, townhouses, and condominiums, if applicable. Usual collection options for single-family residences include curbside, alleyway, backyard, and garage door. Multi-family residences usually employ dumpster service. Include locations of dumpsters and sizes in your contract documents.

If you select automated service, your pick-up locations may need to be more specific to permit the specialized collection vehicles good access to the trash containers. Include distances from parked vehicles, curb, and other trash collection containers, as well as exact placement on driveways, if necessary.

Your contract may also designate pick-up from centralized collection centers in rural areas or citizen drop-off centers for recyclable items. Again, list the size and number of containers, their location, and the frequency of collection. Similarly, identify any dumpster service needed for municipal facilities or rural customers.

Levels of mechanization are increasingly a part of today's decisions about solid waste collection. These include: standard manual collection, semi-automated, fully-automated. In general, these options involve differing pick-up equipment, crew sizes, and often, containers. Currently, most local governments prefer standard manual collection, which is often the least expensive option. You may wish to designate one of these methods in your RFP, or you may prefer to leave it open and encourage contractors to propose more than one method, keeping your service needs and budget constraints in mind. Truck size and weight limits may limit mechanization options.

Collection containers may be specified to conform to community standards or service requirements. These may be provided by the contractor. Automated collection, for example, demands a specialized container. Color-coded trash bags or containers are often used to separate various components of the waste stream, including recyclables, yard wastes, and trash. Sometimes, companies favor the use of clear plastic bags when collecting yard waste, so it can be visually inspected before it is loaded into the truck.



Solid Waste Program Opportunities

Complaint management may be handled by the local government or by the private waste company. Either way, effective resolution of customer problems involves both parties and depends on cooperation. If complaints come to you directly, you can better monitor the contractor's activities, but it will use more staff time. If the contractor handles complaints, you will receive far fewer calls, but you probably never be free of them.

Waste contractors often have good customer service programs. Take advantage of them. Request a local telephone number to be used for complaints and advertise it widely. Include how complaints will be handled in your contract. Also include a requirements for the company to provide you with a regular report (weekly, monthly) listing the complaints received and their disposition. Reports may be part of your contract monitoring and administration plan. Spell out the complaint system desired in your contract documents.

Other Services

Besides household garbage collection, many local governments are interested in providing for the collection of recyclables and yard waste. Contracts involving recycling can be complex.

Several recycling service options are available, including automated collection, curbside pick-up of separated recyclables, curbside collection of unseparated recyclables, and collection from recycling drop-off centers. Each method involves a different kind of collection vehicle and may also require a special container(s). Include this information in your contract as well as who will pay for the containers--the local government, the private company, or the resident.

Items to be recycled should be listed in the contract. Recycling programs in the Houston area collect: newspaper, aluminum cans, #1 and #2 plastic bottles, steel cans, clear and colored glass bottles and jars, cardboard, magazines, office paper, and used motor oil. Few cities are able to collect all materials. Where you are located may have a lot to do with what you can recycle locally. Also, local (or national) recycling markets may open up or close down for certain items. Ask



Solid Waste Program Opportunities

contractors what items they are recycling for nearby cities. Call neighboring communities with recycling programs. Build flexibility into your contract to add new materials and a process for dropping materials, if it become necessary.

Recyclables must be processed and sold. Your contractor should provide information about where your materials will be processed how they will be marketed, who will market them, and how the proceeds will be handled. Successful programs depend on high participation levels and high quality of materials. Both take public education efforts. (See the Public Education section in this workbook).

Yard waste is a significant portion of the waste stream in the Houston area with its nearly year-round growing season. Segregating it from other household garbage can greatly reduce the amount of waste that must be landfilled. If you are considering yard waste collection, there are two major options. It can be collected in special bags that are commingled with other garbage and then sorted at a processing center or it can be collected by a separate yard waste truck. Days of collection can be the same as other household garbage or on a designated yard waste day.

As with recyclables, yard waste needs to be processed; usually at a composting facility. Request information about where and how your yard waste will be processed in the contract.

Finally, contracts often provide for information reporting and notification to customers by the contractor. As a minimum, the contractor should report information needed to confirm pay requests, verify contract compliance, and prepare reports required by regulatory agencies. Additional information may be desired for budget planning and public education. Reports may include monthly summaries of the number of units being served and the amount of waste collected, amounts of recyclables and yard waste processed, participation rates, and the number and disposition of all customer complaints received. Notifications to customers may announce route changes affecting days of service, changes to items for recycling, or indication of improper set out of waste or recyclables.



olid Waste Program Opportunities

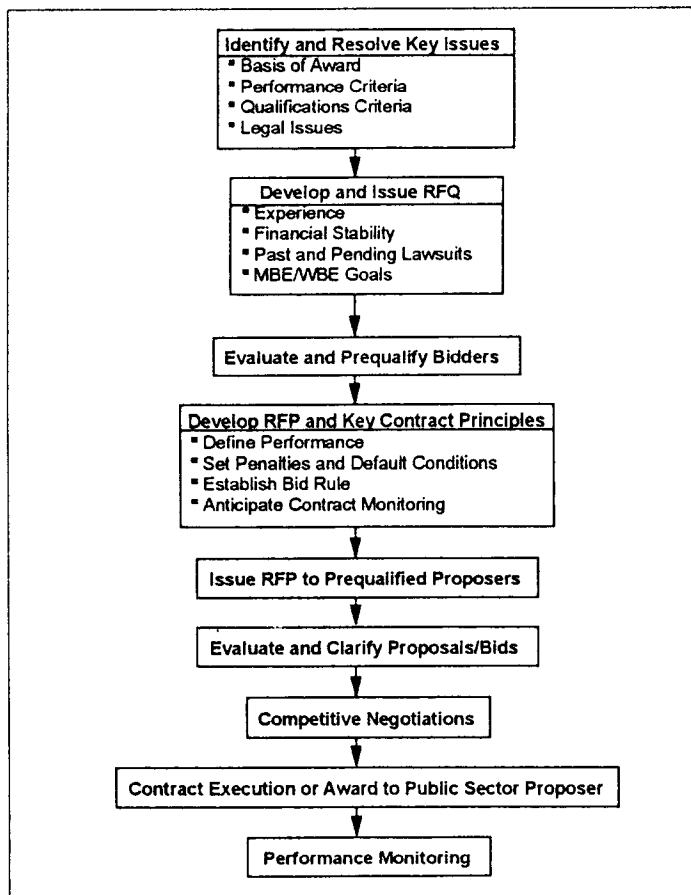
Large municipalities may include partial service area procurement as one of the waste service options. This involves dividing the city (or other jurisdiction) into sections and establishing separate contracts for each section. As a result, several competing waste companies may be providing services within the city. In this way, competition between companies is continuous and the city is able to compare services. The local government may also be one of the service providers. This system can be permanent or may be used to select the best company to provide all services in the future.

Procurement Process

Procurement Process Overview

The objective of the procurement process is to select a qualified firm at a competitive price. This is achieved through a carefully managed process that encourages fair competition among qualified firms in accordance with state and local laws, ordinances, and regulations. The typical procurement sequence, illustrated in the figure below, begins with the pre-proposal step. It is during this first phase that the issues described in previous sections are identified and resolved. Each step follows in sequence and the procurement process ends with contract monitoring.

Typical Managed Competition/Privatization Procurement Process



Procurement Process

The procurement process should be managed to ensure fair competition and responsive proposals from qualified firms. For the purposes of this workbook, the term "proposal" includes bids and cost proposals.

Prior to beginning procurement, it is necessary to identify a project team whose members will manage the procurement process. Potential team members include:

- staff who will be responsible for administering and monitoring the contract
- attorneys
- purchasing personnel
- technical and financial consultants

Depending on the services to be obtained and the complexity of the procurement process, there will be a greater or lesser need for independent third-party participation in the form of technical and financial consultants. In general, however, it is advisable to seek some outside assistance and to take advantage of the information sources listed in this workbook.

An effective procurement process requires sufficient time to assess service needs, develop procurement documents, advertise for proposals, evaluate and clarify proposals, and negotiate and award contracts. Suggested time frames are:

Assess service needs	1 to 3 months
Develop documents	1 to 3 months
Advertise	1 to 2 months
Evaluate proposals	1 to 2 months
Negotiate and award contract	1 to 2 months
TOTAL	5 to 12 months

The longer time frames allow for public participation and careful review of procurement documents. Failure to allow adequate time for this process usually places the governmental entity at a disadvantage and results in higher costs and difficulty in administering the solid waste contract.

Preproposal Phase

The objective of this phase is a clear definition of the services to be contracted, performance expectations, and an understanding of the roles of the governmental and private entities. Key issues to be address during this phase are:

- service needs
- performance requirements
- financial, regulatory, and schedule constraints
- responsibility and risk allocations
- basis for cost comparisons

Many of these issues are discussed in the previous sections. In addition, effective public participation during this phase can be a useful tool in identifying service needs and community expectations. Performance requirements include a number of issues that are included in the contract and request for proposals. These are described below.

Interest Development Phase

The objective of this phase is to assess and develop interest in the project among qualified contractors. Although this phase is optional, it can be especially useful in identifying and prequalifying potential bidders and in stimulating interest among competing firms. If interest in the project appears weak, this phase will allow the public entity time to reassess and redefine the project before investing funds and time in an extensive procurement process.

Two approaches can be used to implement this phase: request for statements of interest and request for qualifications. The request for statements of interest is a simple and cost-effective means of alerting potential bidders of the project and assessing the level of interest. Statements of interest should not require excessive expenditures of time and money on the part of the potential bidders. However, the request for statements of interest should include a clear definition of the project to establish credibility among potential bidders.

P Procurement Process

A request for qualifications is used to prequalify potential bidders. If the resulting statements of qualification will be used to eliminate potential bidders, the request must include a clear definition of the project, as well as a clear definition of the evaluation criteria. Evaluation factors usually include:

- number of years of similar experience
- project performance, confirmed by references
- financial stability
- past and pending lawsuits
- regulatory compliance history, based on notices of violation
- safety history

This information should be readily available from well-established solid waste contractors. It may be more difficult to obtain from other potential providers. The public entity will need to determine the extent to which they wish to encourage competition from newer or smaller contractors.

After statements of qualification are received, the public entity must evaluate them and document the basis for disqualification of any potential bidders. The prequalification criteria must be applied consistently; otherwise, the public entity is open to challenges and protests from disqualified firms. Such protests can delay and disrupt the procurement process, even if the protest is not upheld.

Request for Proposal Phase

The RFP serves a number of important functions, it:

- provides the information needed by the bidder to prepare a responsive bid
- identifies key contract terms
- provides instructions for preparation and submittal of proposals
- describes the services to be provided and performance criteria to be met

A typical RFP for solid waste services will include the following:

rocurement Process

- ❑ **Title Page** - showing the title of the project, the name of the public entity, and the date. The table of contents can also be included.
- ❑ **Notice to Bidders** - typically a one-page notice that briefly describes the project, indicates where a complete RFP can be obtained, provides the date and time for submittal, and contains other critical information such as dates and times for preproposal conferences.
- ❑ **Request for Proposal** - including complete proposal submittal requirements. The contents of this section might include:

- *Purpose of Proposal*

- *Scope of Work*

- *Proposal instructions, including:*

- proposer's certification that proposal is genuine and submitted without collusion with any other proposer
- requirements that proposers familiarize themselves with the project and with applicable laws and regulations
- information on distribution of addenda
- proposal preparation requirements, such as requirement to use proposal forms included in the RFP, proposal signature requirements, submittal of addenda receipt certifications
- proposal submittal requirements including date, time, and location of submittal, requirements for sealed submittals, proposal envelope labeling requirements
- policies or prohibitions on proposal modifications
- proposal holding time, indicating period during which proposals remain valid, usually 90 to 180 days
- statement that public entity is not responsible for any costs incurred by proposer in the preparation of the proposal
- contract award procedures and schedule
- public entity contact and procedures for submitting questions on RFP proposal security (bid bond) requirements
- public entity tax exempt status, if appropriate
- contractor qualification requirements, if not already addressed in a prequalification phase
- acceptability of alternative proposals

Procurement Process

- Proposal Cost Forms** - the proposal cost forms that are to be completed and signed by the proposer and returned with the bid. Make certain that space is provided for the proposer to include their company's name. The proposal cost forms should include certifications that the proposal will remain open for the length of the proposal holding time, that the proposal will not be withdrawn, that the proposer has read, understands and accepts all terms and conditions of the RFP, and any other certifications required by the public entity.

- Contract, General Conditions, and Special Provisions** - these are the contractual requirements that will govern the performance of the services to be provided. Key contractual issues are discussed in the Contract Development section of this workbook.

- RFP Attachments** - these provide any other information the proposer may require in developing a bid. This information could include population estimates, historic solid waste generation information, service area maps, population and development projections, land use information. The RFP must state that these materials are provided for information only and that the public entity makes no warranty or guarantee regarding the accuracy of the information.

After the RFP has been prepared and carefully reviewed for completeness and consistency with local ordinances and procurement policies, the Notice to Bidders can be advertised. For municipal governments, local ordinances and Texas law normally require publication of the notice in a newspaper of general circulation. The notice should be published for three consecutive weeks on the same day of the week. This sets a minimum advertising and proposal preparation period of three weeks. However, in the interest of receiving complete and responsive proposals, at least one month should be allowed between the first advertisement date and the proposal submittal date. Depending on the complexity of the services provided and the level, of interest, six weeks to two months may be appropriate.

Proposal Evaluation and Clarification Phase

The proposal evaluation process consists of reviewing submittal responsiveness, tabulating bid prices, noting exceptions to contractual requirements, and considering alternatives. The evaluation process must be well documented and consistent with the evaluation criteria described in the RFP. If the information in the proposals is not clear, it is permissible during this phase to request clarification. However, it is generally not advisable to allow a proposer to modify his proposal.

Negotiation and Award Phase

Municipal service contractors and construction contractors are usually selected on the basis of the lowest responsive bid. If alternatives to a base bid are allowed, the selection is usually based on the lowest base bid. Alternatives are then considered during negotiations with the selected bidder. Negotiations usually center on contract terms, since the scope and pricing have been established in the bid.

Such an approach is appropriate for selection of solid waste service contractors. However, because of the range of service options available for solid waste collection, transportation, and disposal, it may be advantageous to engage in competitive negotiations with two contractors. This approach involves clarification of the proposed scope of work and consideration of alternative proposals to obtain a "best and final offer" from the two contractors. Selection is then based on the best and final proposals.

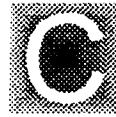
Negotiation sessions should be documented, and agreements promptly confirmed in writing. The negotiation team should include staff members, attorneys, and technical and financial consultants depending on the issues to be negotiated.

Once negotiations have been completed and the contract awarded, the other proposers should be notified.

Contract Monitoring Phase

Regardless of the level of responsibility allocated to the solid waste service provider, the public entity must plan to monitor the contractor's performance. The extent and methods of monitoring should be determined during the preproposal phase. Information and reporting requirements should be incorporated into the contract. These requirements are very difficult to impose after a contract has been negotiated; therefore, prior planning for the contract monitoring phase is essential.

Contract Development



Contract Document Overview

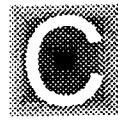
The contract documents generally include the actual contract, general and special conditions, and pricing forms. These documents together will describe the work to be performed by the contractor, performance requirements, and the cost to be paid by the public entity. Most city and county governments have standard contract provisions and general conditions that apply to any service or construction contract. Most of these would also apply to a solid waste service contract. A sample contract outline is included in Appendix B and a sample contract is included in the RFP Package in Appendix D. Important contract provisions for a solid waste contract are discussed below.

Contract Term

The length of the contract must be clearly established. The major considerations in setting the contract term are pricing stability and flexibility to adjust to changing service area conditions, regulations, and technology.

The most common advantages cited for a long contract term are pricing stability and avoided cost of administering the procurement process. While these advantages can be realized, a long contract term also reduces a public entity's ability to take advantage of technology advances and other factors that may improve solid waste service. Most long term contracts will include provisions allowing a solid waste service provider to increase costs resulting from regulatory changes and other factors; therefore, the pricing stability hoped for may not be realized. A long-term contract also reduces the public entity's ability to deal with service issues unless these service requirements and enforcement provisions are clearly established.

Unnecessarily short contract lengths, less than three years, also have disadvantages, especially if the service provider must buy new equipment to service the contract. These disadvantages include a higher cost and less incentive to optimize performance and customer satisfaction.



Option years can be an effective means of avoiding the disadvantages described above. However, the contract must clearly state the mechanism for exercising the option. Automatic contract extensions should be avoided. The contract should allow the public entity to make its decision about exercising the option within three to six months of contract expiration.

Contract Pricing and Payment Provisions

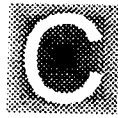
The contract must provide a clear basis for payment to the solid waste service contractor. The contract should also provide a mechanism for adjusting the cost based on changes in service area or in services provided. In most cases, unless the contract length is very short, the contract should also allow the contractor to adjust its prices based on increases in the contractor's costs.

Pricing based on unit costs provides the most flexibility for the public entity and the contractor. For example, a solid waste contract covering collection, hauling, disposal, and processing may include a number of unit costs:

- Cost per month per household for refuse collection
- Cost per month per household for recyclables collection
- Cost per month per household for yard waste collection
- Cost per month per household for disposal
- Cost per month per household for recyclables processing
- Cost per month per household for yard waste processing

This type of cost breakdown provides a means to adjust the contract cost based on growth or shrinkage of the service area.

Pricing adjustments benefit both the public entity and the contractor, as long as the basis for adjustments is clear and reasonable. If reasonable pricing adjustments are allowed, the contractor can reduce the amount of contingency built into its pricing. Therefore, the public entity can gain the advantage of lower costs during the early portion of the contract, with manageable increases in the later contract years.



Pricing adjustments are usually based on a regularly published price index, such as the Consumer Price Index. On an annual basis, the contract cost can be adjusted based on changes in the index over previous twelve months. Most contractors will agree to a cap on the percentage increase, so costs from one year to the next will not increase more than the cap percentage. This provision provides the public entity some pricing stability.

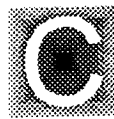
Pricing adjustments may be allowed for other reasons, such as regulatory changes, closure of solid waste disposal sites, and changes in haul distances. In much of the H-GAC region, solid waste disposal sites are readily available; therefore pricing adjustments should not be necessitated by change of disposal site. In general, disposal rates should only be increased when tipping fees are increased. For any allowable rate adjustments, the contract must provide a clear basis for documenting the need for the adjustment and for calculating the amount of adjustment.

Bonds and Insurance

Most city and county procurement policies require that contractors be bonded and carry appropriate insurance. These requirements should also be incorporated into solid waste service contracts. Payment and performance bonds are usually in the amount of the annual contract price. Insurance coverage should include automobile liability, comprehensive general liability, and worker's compensation and employer's liability.

Performance Enforcement

The contract must describe performance requirements and provide the public entity the means to enforce contractor performance. Missed collections, spillage, and property damage are common performance issues for solid waste contractors. The collection times, routing, conduct of contractor employees, condition of equipment, and noise levels should also be included as contractor performance requirements.



The contract must clearly establish remedies and penalties for performance failures. Remedies may include requirements that the contractor correct the problem the same day. For example, if a collection is missed, the contractor would be required to return the same day. The municipality may correct the problem with its own crew, then charge the contractor for labor and materials. Penalties can range from fines to contract termination.

Force Majeure

Most city and county contracts contain standard force majeure clauses. These clauses are appropriate in solid waste contracts as well. However, strikes and labor disputes should not be listed as force majeure events. In addition, while adverse weather may prevent or delay collections, the contract should include requirements for reasonable resumption of service. (See sample contract in Appendix D.)

Public Education

Public education can be the difference between a smooth or bumpy ride on the way to a new solid waste service. When you are considering shifting from public to private providers, or just adding a new service option, like recycling, or changing the day on which waste is collected, public education needs to be part of your plan. Whatever you change, you will want to involve the public before, during, and afterwards.

Managers who work with solid waste issues everyday may not need to be reminded that garbage can be an emotional issue for residents. A Houston-area official recounting his experience with a change to his city's existing solid waste services summed up the public's response this way, "You can shoot my dog, but don't mess with my garbage." If, however, you decide that it is in the public's best interest to "mess" with their garbage, involve them in the process. Success depends on public cooperation and participation.

It's not just the public at large who have a heightened concern about waste services. Within local government, and especially within your public works or sanitation departments, privatizing the delivery of solid waste services may mean reorganizing traditional structures of funding, responsibility, and oversight and raises issues of job security among employees.

The terms public education and public involvement encompass a broad scope of activities and techniques designed to help citizens participate in decisions, convey information, solicit citizen concerns, heighten public awareness, and motivate participation in programs.¹

HOW DO YOU BEGIN?

First, create a simple timetable for public education. Take into account your local planning or budgetary cycle and any other pertinent seasonal events. For example:

¹US Environmental Protection Agency, *Decision Maker's Guide to Solid Waste Management*, November 1989, p.125.

- Planning**
(12+ months before proposed change)
- Implementation**
(1-2 months before change and continuing 1-3 months after)
- Maintenance**
(From point of change forward)

Next, define your "publics". A general list might include: residents, community leaders, business leaders, civic organizations, environmentalists, local government officials, and staff. Then, choose a message and a method to best reach each group. Suggestions for ways to communicate with the public during each phase are shown in Appendix C. Remember, a single method can reach multiple audiences. News releases, for example, reach anyone who reads the local paper, as well as employees who read in-house publications, and business leaders who read the Chamber of Commerce newsletter. Sometimes, where the information is printed can be as important as what it says.

An outline of what you are going to tell who, when, is your basic public education plan. Involve your private waste provider in the plan as soon as it becomes practical. Be clear about what your needs and expectations are and discuss how the company can support your efforts.

Planning Phase

Involve the public in decision making throughout the planning process. By recognizing and addressing public concerns early, it will be easier to gain acceptance and support for your program once it is defined.² In addition, as people become involved they are educated about the issues and often become your best advocates, acting as ambassadors for the new program, speaking to other groups, and representing the program in the community at large.

²Local Government Guide to Solid Waste Competitive Service Delivery, Public Technology, Inc., June 1995, p.44.

Suggestions about how to involve community members in the planning process are offered in a recently published, comprehensive guide for local governments. (See Appendix C). Not all communities will use all methods to reach their public. However, most communities will want to include public meetings, news releases, and community advisory groups in their public education plan.

Your best allies and your strongest opposition can come from your local government staff and policy makers. Good communications and an opportunity to participate in the planning process will help you create a smooth transition to the new program.

Among the issues you are likely to face among employees are concerns about:³

- Job security
- Retention of benefits (especially retirement)
- Seniority status

Informing employees and providing a forum for them to participate in the planning process may save you vocal resistance at the implementation stage. Approaches to involving employees include: special briefing sessions, staff meetings, weekly or monthly discussion forums (e.g., brown bag lunches), special forum for employee input, employee newsletter, and employee committees.

Key staff may serve on the community advisory committee or task force.

City council members or county commissioners, will likely raise issues concerning voter preferences and the economic impact of the proposed changes. Local government budget reductions may provide the initial impetus to study the feasibility of privatizing waste services. Consider holding special council sessions to discuss privatization issues. Include interested members on the advisory committee or on special study committees.

³ibid., p48.

Perhaps the most important outreach tool during the planning phase is the community advisory committee or task force. Among the committee's goals are to:⁴

- Provide feedback on community priorities
- Define public concerns or issues and develop means to address them
- Educate community segments and secure early "buy-in" for the plan
- Promote the value of the proposed privatization program

The advisory committee can also help evaluate the proposals received for waste services and act as spokespersons for the new program once it has been adopted.

Community involvement during planning and development can help anticipate and address public concerns and minimize criticism of the proposed changes. An advisory group provides an organizational framework for citizen participation. The group can be educated about the local waste management situation, the full costs and liabilities involved, and the available alternatives. Providing a forum for open and honest communication during the planning process helps build community support and increases the chance of successful implementation. (For other suggestions see the ICMA publication *Privatization: Involving Citizens and Local Government Employees* listed in the Sources section of this workbook.)

Consider including a broad spectrum of the public on the advisory committee or arrange for forums to gather community input. Minority community leaders and environmentalists can make valuable contributions to the development of the program and their support can help ensure a smooth implementation. Privatization can be a response to public desire for recycling or yard waste collection services. Environmental groups may suggest innovative approaches to achieving waste reduction goals.

⁴Public Technology, Inc., *Local Government Guide to Solid Waste Competitive Service Delivery*, June 1995, p.44.

Solid waste programs also need to take environmental justice issues into consideration - - for example, assuring that waste processing, transfer, or disposal facilities do not adversely or disproportionately affect minority neighborhoods. (For more information on environmental justice, visit the EPA website at www.epa.gov or see Sources section for how to contact .)

Advisory groups are important during the implementation phase as well, when feedback from members can be invaluable in making any necessary adjustments or changes to the program. A local example of a successful advisory group is provided by the City of Conroe (See Appendix A).

IDEAS FOR INVOLVING COMMUNITY MEMBERS		
Community Segment or Audience	Potential Concerns	Outreach Methods
Residential Customers and Community Leaders	Service quality Employment and the local economy Costs of services Impact on Taxes Neighborhood environment (public health, traffic, litter)	Opinion surveys Public meetings News releases Informal contact Community advisory groups Radio and TV forums Public service announcements
Business Community	Service quality Impact on their own customers Opportunities for competition Fair, competitive procurement process Impact on local economy	Meetings with business organizations Distribution of information targeted to businesses Special workshops to educate business community about the new program
Source: <i>Local Government Guide to Solid Waste Competitive Service Delivery</i> , Public Technology Inc., 1995, P45. To order, 800/852-4934 or FAX 202/626-2498.		

Other outreach methods are shown in Appendix C and are briefly outlined below. It is unlikely that any program will use all these public education methods, choose those that work for your needs and budget. All methods listed are appropriate for use in the planning phase of your education program. If the method is useful in another phase it is so noted at the end of the entry.

- Opinion Surveys** - Surveys can be used to gauge public support for a proposed waste program, to measure the

effectiveness of current services, or to determine interest in new service options such as recycling. Surveys can be conducted by mail or by phone and may include a broad range of issues or just a few. To obtain good data, it is suggested that a survey professional be used to help develop questions and analyze results. The TNRCC is developing a how-to manual for conducting community surveys. See the Sources section of this workbook. (Planning, Maintenance)

EXAMPLE: HOUSTON

The City of Houston conducted a survey of customer satisfaction in January and February 1995 as part of a study on the effectiveness of its solid waste management services. Questions addressed garbage collection, heavy trash, special services, recycling, and complaints. In addition, the questionnaire asked residents, when applicable, to compare the city's delivery of waste services with that of private providers.

Source: Public Technology, Inc., *Local Government to Solid Waste Competitive Service Delivery*, June 1995, Appendix B.

- Public Meetings** - Meetings provide a valuable opportunity to test your program ideas on the public and to gather feedback. Even though public meetings are often poorly attended, among those who are most likely to attend are those who strongly support or strongly oppose change to your waste services. Listen to what is said, even if how it is said may be confrontational. The ideas gathered here can help guide your public education program by helping to identify areas where you are likely to get resistance or support. Write down the ideas expressed. Include both positive and negative responses. Have a sign-in sheet which includes space for addresses, phone numbers, and group affiliations. You may wish to invite some of those present or the organizations they represent to sit on your advisory committee.

- Community Meetings** - It is often easier to reach community and business leaders at their regularly scheduled meetings. Examples include the Chamber of Commerce, homeowner associations, Rotary Club, Sierra Club, etc. Arrange to be included on their meeting agenda. Keep your remarks short. Give a brief

description of the proposed change, listen to feedback, and offer opportunities to participate in the planning process. (Planning, Maintenance)

- News Releases** - News releases are versatile tools that can be used often in every phase of your program. Include the basics of journalism: who, what, when, where, why, and how. Keep releases short and simple. Emphasize what you want the public to remember. Two excellent reasons "why" you are looking at privatizing are cost savings or increased services. Be positive. Don't forget to use releases in community and employee newsletters. (Planning, Implementation, Maintenance)
- Radio and Television** - Electronic media outlets should receive all news releases. In addition, you may wish to schedule a knowledgeable proponent of privatization as a guest on local radio or television interview programs. During implementation a valuable public education tool can be a video information tape that can be aired on local access cable stations and shown at small meetings. (Planning, Implementation)

Implementation Phase

When the planning is over and the program has taken shape, it's time to go public. How much and how often you choose to communicate with the public will depend on several factors, including:

- available resources
- extent of the proposed changes
- cooperation with private waste provider
- successful planning

As a rule of thumb, the more you change, the more you need to educate. An effective education program is tailored to fit your community but you don't need to start from scratch. Instead of "reinventing the wheel", check out the public education materials from other communities. Consult both local and national sources. Try to find communities similar to yours. Then, adapt what you like to suit your needs. Some larger cities may also have materials that have been translated



into Spanish. Also see the Sources section for pertinent publications.

Work with your private waste company. Many waste companies have developed public education materials and have helped promote waste programs in other communities locally and nationally. You may want to meet informally to discuss the company's willingness to participate, and then include what you have mutually agreed upon in your contract. Consider including a public education section in your waste contract. Be as clear as possible about who is responsible for what. For example, you may agree that the waste provider will handle advertising of the proposed program, but the community will retain the right to approve the materials before they are run.

Be realistic. There are many ways to reach the public during implementation. Not every one needs to be used. Assess your situation and choose those methods that will work best in your community. Other commonly used options are shown in Appendix C.

Maintenance Phase

Communication with the public needs to be ongoing. Think of it as a continuing education program for your residents. It has several goals:

- inform new residents about your program
- reinforce the message about your community's waste management program
- evaluate the success of your program

As with other phases of your program, the ongoing activities should be designed to meet your community's needs, satisfy the public's right and responsibility to understand the costs and benefits of your waste management program, and fit your budget and resource limits (funding, volunteers, and community support). This phase includes any involvement you expect from your solid waste service provider.

Many communities in the Houston area have developed characters or mascots to help promote their programs. Characters can help build an identity for your program and can

be designed to reflect your community's image of itself. Costumed characters can also be used at special events or in conjunction with school programs. Private companies often have mascots that can be scheduled for programs in your community.

Perhaps the most important part of the Maintenance Phase is simply not to forget about it.

Budget sufficient funds and make a commitment to support ongoing education efforts. One of the truths about waste reduction, is that its success is directly related to public outreach efforts. "After all, recycling is not a natural act. It needs to be constantly reinforced," quips John Tires, a public relations manager with the City of Seattle, which boasts one of the country's most successful waste education programs. It's no accident. Seattle's ongoing efforts include creative radio and television spots, attractive brochures, waste newsletters, special events, and a commitment from the residents and the local government to make the program work.

More recently, the recycling rate in the State of Washington has been declining for two years, as fact associated with reductions in funding for public education. (*Waste News*, December 14, 1998).

Evaluation of your program is also important. It includes monthly reports from the private waste company concerning customer complaints as well as monthly data reports on the quantity of waste and recyclables collected.

In addition, you may choose to conduct opinion surveys to help monitor the public's acceptance and satisfaction with waste services and to provide an opportunity for the public to provide input or direction for program improvements.

Information Sources

A great deal of information is currently available for solid waste issues. These information sources can assist in the preparation of all documents used in the procurement process. In addition, they may provide concepts for approaches to solving solid waste issues. The following is a basic list of resources.

Federal

US Environmental Protection Agency (US EPA)

401 M St SW
Washington, DC 20460
202/260-2090
www.gov.epa

US EPA Publications at RCRA Hotline
800/424-9346

Division of Resources Management. *Public-Private Partnership Case Studies: Profiles of Success in Providing Environmental Services*. EPA/20M-2005. Washington, DC: EPA, September 1990.

Office of Administration and Resource Management. *Solid Waste Contract Negotiation Handbook*. EPA/220-B-92-004. Washington, DC: EPA, May 1992.

Office of Policy Planning and Evaluation. *Sites for Our Solid Waste: A Guidebook for Effective Public Involvement*. EPA/530-SW-90-019. Washington, DC: EPA, March 1990.

Office of Solid Waste and Emergency Response. *Full Cost Accounting for Municipal Solid Waste Management: A Handbook*. EPA 530-R-95-041. Washington, DC: EPA. September 1997. Available online at www.epa.gov/epaoswer/non-hw/fullcost/pubs.

_____. *Rate Structure Design: Setting Rates for a Pay-As-You-Throw Program*. Spring 1999. Available online at www.epa.gov/epaoswer/non-hw/payt/tools.

Information Sources

_____. *Joining Forces on Solid Waste Management: Regionalization is Working in Rural and Small Communities.* October 1994. EPA530-K-93-001. Available online at www.epa.gov/epaoswer/.

_____. *Decision Maker's Guide to Solid Waste Management, Volume II.* EPA1600. Washington, DC: EPA, 1995. Available online at www.epa.gov/epaoswer/non-hw/muncpl.

_____. *Waste Prevention, Recycling, and Composting Options: Lessons Learned from 30 Communities.* EPA/530-R-92-015. Washington, DC: EPA, February 1994.

State

Texas Natural Resource Conservation Commission (TNRCC)

P.O. Box 13087
Austin, TX 78711-3987
www.tnrcc.state.tx.us

512/239-1000 Austin Offices
512/239-6809 Comprehensive Waste Planning
713/767-3500 Region 12- Houston
512/239-0028 Public Information and Publications

TNRCC Publications:

How to Conduct a Community MSW Services Survey. Helps to determine preferences for garbage collection services and willingness to pay for such services. DRAFT--In development as of June 1999.

How to Plan, Design, and Finance Citizens' Collection Stations. Contains practical information for how to evaluate and provide convenient, affordable garbage services. DRAFT--In development as of June 1999.

Municipal Solid Waste Management in Texas. (SFR-042). Strategic plan. March 1997.

Municipal Solid Waste Management in Texas. (SFR-042A). Status report. April 1997.

MSW Services Full-Cost Accounting Workbook. (RG-127). Gives municipalities a system for collecting data and establishing rates that reflect the full cost of solid waste services. April 1995.

Municipal Solid Waste Plan for Texas. (SFR-17 and 17A). January 1995.

Private/Non-Profit

International City/County Management Association (ICMA)
777 N Capitol St, NE, Suite 500
Washington, DC 20002-4201

Publications: 800/745-8780

Alternative Service Delivery Methods and the Competition Process. Clearinghouse Report. 1997. Report on alternative service delivery methods and trends including profile of San Jose, California. Includes framework for establishing a competitive process.

Cimittle, Carole J., and Gary Foinland. "Cost Factors in Local Government Solid Waste Management." *Baseline Data Report*, Vol. 25, No. 3. Washington, DC: ICMA, 1994.

Contracting for Service Delivery: Local Government Choices. Special Report. 1999. Explores the complex issues involved in making decision to privatize. Recommended for finance directors and solid waste managers. Includes 12 case studies which detail process and outcome of privatization.

Costs and Financing of Solid Waste Collection. Special Data Issue. Vol. 24. Washington, DC: ICMA, 1991.

Employee Issues in Privatization. MIS Report. 1995. How to anticipate and minimize negative impact of privatization on employee

Guidelines for Services Contracting. Clearinghouse Report. 1998. Charlotte, North Carolina's policy, goals, and guidelines applied to public services managed competition.

Harney, Donald F. *Service Contracting: A Local Government Guide.* Washington, DC: ICMA, 1992. How to plan, develop and maintain a contracting program.

Information Sources

Privatization: Involving Citizens and Local Government Employees. Baseline Data Report 1994. Using ICMA survey results looks at local governments that have identified citizen and local employee opposition to privatization and offers case descriptions.

Promoting a Municipal Recycling Program. Special Report. Washington, DC: ICMA, 1990.

Public Works: Alternative Service Delivery Choices, 1997. Special Data Issue. 1998. Describes how local governments deliver services for residential and commercial solid waste collection and disposal and other services. Includes case studies.

National Solid Waste Management Association (NSWMA)

4301 Connecticut Ave, NW
Washington, DC 20008
202/244-4700

Publications online catalog: www.envasns.org/eii/catalog

Privatizing Municipal Waste Services: Saving Dollars and Making Sense. Washington, DC: NSWMA

Public Technology, Inc. (PTI)

1301 Pennsylvania Ave, NW
Washington, DC 20004
800/852-4934
www.pti.nw.dc.us

Local Government Guide to Solid Waste Competitive Service Delivery. Washington, DC: PTI, 1995.

PTI, Columbia University, and ICMA. *Evaluating Residential Refuse Collection Costs: A Workbook for Local Government.* National Science Foundation No. APR-74-02061. Washington, DC: PTI, 1978.

PTI, ICMA, and the PTI Urban Consortium Environmental Task Force. *Recycling Lessons Learned.* Special Report. Washington, DC: PTI, 1991.

SWANA (Solid Waste Association of North America)

1100 Wayne Avenue, #700
Silver Spring, MD 20910
301-585-2898
www.swana.org

Current readings(See copies in References):

France, G. (1995). *Financial Considerations in Privatizing Solid Waste Activities*.

Gershman, G. (1995). *Contracting for Solid Waste Collection Services*. Paper presented at Municipal Waste Management Association meeting, March 25, 1995.

Hornig, C. (1996). *Municipal Collection Privatization: Cash Cows or Fire Sales?* Paper presented at SWANA Waste Conference, September 25, 1996.

_____. (1998). *Consents to Assignment of Franchise Agreements*. Paper presented at SWANA Western Regional Conference, April 29, 1998.

Local

Houston-Galveston Area Council (H-GAC)

P.O. Box 22777
Houston, TX 77227-2777
713/627-3200
www.hgac.cog.us

H-GAC Publications
713/627-3200

H-GAC and Texas Natural Resource Conservation Commission. *Resource Responsibility: Solid Waste Management Plan for the H-GAC Region 1992-2012*. Houston, TX: H-GAC, February 1994.

H-GAC and Clean Houston. *Recycling: A Financial Blueprint for Texas Cities*. Houston, TX: H-GAC, June 1994.

Appendix A
Case Studies

Area Case Study: SEALY

Population: 6,000
No of Units: 1,356 residential; 184 commercial
Budget for Waste: \$437,000
Private Contract: Collection and disposal;
operation of city-owned transfer station
Recycling: Citizen drop-off center
Contract Term: 5 years

The City of Sealy owned and operated a landfill which was closed in October 1993 in response to Subtitle D regulations. In preparation for this eventuality, the city looked at its solid waste options and chose to build a transfer station. The city council wanted to continue municipal waste collection and to own and operate the facility. It would contract with a private company to haul waste from the transfer station and to provide disposal at a privately-owned landfill. The facility opened in April 1994.

Subsequently, the city contracted with the private waste company to operate the transfer station and recently the city extended its contracted services to include residential and commercial collection. Reasons for the decision to privatize collection services were economic. In particular, the cost of replacing aging waste collection vehicles was becoming prohibitive.

Public education about the change in solid waste operations included newspaper advertisements, news releases, articles in the city's quarterly newsletter, and open discussions at city council meetings.

City contact: John Maresh, Director of Public Works, 409/885-3511

Area Case Study: LIBERTY

Population: 7,500
No of Units: 2,788 residential ; 411 commercial
Budget for Waste: \$808,353
Private Contract: Collection and disposal
Recycling: City provides curbside recycling and yard waste
Contract Term: 3 years

The City of Liberty began to look for alternatives to providing municipal waste collection and disposal when it became clear the city could not afford to keep operating their landfill under Subtitle D. The city's Solid Waste Committee, made up of members from council and staff, were the first to consider how the city would meet the coming challenge. Costs were the primary consideration.

After considering a range of available options, including modular incinerators, the city moved to privatize the garbage collection and disposal. The city retains a small public works staff to manage weekly curbside recycling collection and yard waste composting, as well as collection of cardboard from commercial accounts. During the transition to private waste collection, some city staff were transferred to other departments and some were hired by the private company.

The change in service was designed to create as little disruption as possible for customers. "What was most important to the residents was that we picked up their garbage in a timely manner," says a key decision maker. The City works closely with the private provider to assure customer service needs are met. A common concern when cities contract for waste services is that the private company will not be as "customer friendly". In some cases, Liberty has found itself frequently collecting heavy trash missed by the private hauler in order to meet immediate customer needs. A good contract should provide for reimbursement of such public expenditures and penalties for this and other performance failures.

City contact: Harvey Joiner, Public Works Department, 409/336-7361

Area Case Study: EL CAMPO

Population: 10,500
No of Units: 3,800
Budget for Waste: \$950,000
Private Contract: Twice weekly garbage; once weekly brush
Recycling: Citizen drop-off center at Wharton County
Contract Term: 5 years

El Campo faced privatizing their solid waste service three years ago, when it became too expensive to keep their city-owned landfill open under the new Subtitle D regulations. Although they had an estimated 150 years of landfill life available, they were facing a tripling of disposal costs. The city considered a transfer station, but received attractive bids for direct hauling their waste 60-65 miles. Their bid package included a requirement for private companies to look at several options: collection only, collection and disposal at the city's landfill, collection and disposal at the landfill of the private company's choice. The successful bidder proposed collection and disposal at a private landfill.

The city renewed its contract with the private waste company in September 1998 for another five years. Both staff and city council expressed satisfaction with privatization.

During the planning phase, the city held public meetings to listen to citizen concerns. Among the issues raised was a fear that waste trucks would tear up the city streets. To help protect against potential problems, contracts should include any city ordinances restricting vehicle weights and require the company to list all equipment to be used, and to detail the proposed routes, including entrance and exit routes.

The city used a consulting firm to help draft the waste contract.

City Contact: Mindi Snyder 409/543-5361

Area Case Study: HUNTSVILLE

Population: 34,500
No of Units: 6,000 residential, 300 commercial
Budget for Waste: \$3,279,628
Contract: Disposal only.
City collects, owns and operates transfer station, hauls to and from transfer station.
Recycling: Citizen drop-off centers
Contract Term: 5 years

The City of Huntsville opted to close its landfill in response to Subtitle D regulations. With no other landfill available in the county, the city chose to build a transfer station which opened in 1994. Huntsville was determined from the outset to own and operate its own facility as it had in the past. However, it carefully considered the economics of doing so and of continuing to collect residential and commercial waste.

In order to make an informed decision, Huntsville administrators looked at the full cost of providing waste services by the city and compared it with the prices charged by private companies. They also considered the advantages of maintaining city control of waste services into the future. Their analysis showed that Huntsville was providing competitively priced waste services and achieving high customer satisfaction. The decision was made to privatize only waste disposal.

For the first several years, Huntsville contracted for disposal at a privately-owned landfill. Subsequently, in light of the mergers within the private sector, the city opted to contract with another public entity for disposal. Currently Huntsville disposes of waste at a publicly-owned landfill in an adjacent county.

City contact: Cindy Blaylock, Sanitation Supervisor, 409/294-9300

Area Case Study: CONROE

Population: 40,000
No of Units: 7,000
Budget for Waste: \$663,000
Private Contract: Twice weekly garbage; once weekly curbside recycling
Contract Term: 10 years

Conroe's landfill met Subtitle D regulations, but was nearing capacity in October 1993. In 1994, the Mayor appointed a citizens advisory committee to look at future options for the city's solid waste disposal and transport. At the time, the City provided garbage and yard waste collection and a private contractor provided curbside recycling services by subscription.

Committee members included the mayor, private citizens, representatives from civic organizations and the local business community, including real estate, and key staff persons, including the city manager and the director of public works. The mayor was actively involved and kept city council informed throughout the process.

Among the committee's tasks was to evaluate the pros and cons of privatizing waste services and to recommend service levels (automated, manual) and service options (waste, recycling, yard waste). Committee members compared the benefits of various alternatives, made site visits to other Texas cities, reviewed local examples of privatized service, developed a Request for Proposal for waste services, met informally with private waste companies to determine interest and feasibility of their proposal, and then made their final recommendation to the city council.

The Committee recommended privatizing waste services and providing job security for as many city employees as possible. City-wide curbside recycling and central drop-off facility management was also included.

The city conducted informal negotiations with interested waste companies using an RFP that clearly outlined what the city wanted (twice weekly garbage collection, curbside recycling, drop-off center) but did not specify how it was to be achieved. In the end, the best proposal offered automated curbside collection at an annual cost savings over current operations of \$100,000.

City contact: Dean Towery, Director of Public Works, 409/760-4690

Appendix B
Sample Contract Outline

**SAMPLE
CONTRACT DOCUMENT CONTENTS**

THE CONTRACT

- Work Scope
- Contract Documents Defined
- Contract Time
- Indemnification
- Contract Price and Payment
- Contractor's Representations
 - Familiarity with work, locality, and regulations
 - Pricing complete and based on contractor knowledge of project
 - Acceptability of terms and conditions
- Miscellaneous
 - No assignment without consent
 - Binding of successors and assigns

GENERAL CONDITIONS

- Definitions
- Contract Documents: Intent
- Bonds and Insurance
 - Payment bond
 - Performance bond
 - Insurance requirements
 - Automobile Liability
 - Comprehensive General Liability
 - Worker's Compensation and Employers Liability
- Contractor's Responsibilities
 - Disclosure and approval of subcontractors
 - Specific Performance
 - Responsibility for subcontractors actions
 - Responsibility for taxes and fees
 - Safety and protection
 - Compliance with laws, regulations, and ordinances
 - Continue work pending resolution of disagreements
 - Equipment storage
 - Responsibility for permits and licenses

**SAMPLE
CONTRACT DOCUMENT CONTENTS
(continued)**

- Change of Contract Price
- Termination
- Performance Remedies and Penalties
- Dispute Resolution
- Human Resource Provisions
 - Character and conduct of employees
 - Non-discrimination
 - M/WBE participation (if applicable)
- Independent Contractor Status
- Force Majeure
- Miscellaneous
 - Contacts for notices
 - Notice of claims
 - Change orders and modifications
 - Governing law
 - Severability
 - Successors and assigns
 - Transfer of title for materials collected

SPECIAL PROVISIONS

- Schedule and Routing Submittal
- Public Education
- Provisions for Holidays
- Collection Vehicle Requirements and Prohibitions
- Noise Limitations
- Non-residential Collections
- Time of Collection
- Disposal/Processing Requirements
- Responsibility for Materials Collected
- Emergency Plan
- Reporting Requirements
- Materials to be Collected
- Containers
- Collection Locations
- Collection Impediments
- Bulky Waste Collection
- Customer Complaints and Non-Performance

Appendix C
Reaching the Public

HOW TO REACH THE PUBLIC DURING IMPLEMENTATION

COMMUNICATION METHODS	WHAT & HOW TO USE	SOME CONSIDERATIONS
<i>PREPARATION (4-8 WEEKS PRIOR TO CHANGE)</i>		
NEWS RELEASE	<p>News articles or features sent to press Use to announce start date & key components Develop "feature" articles Profile advisory committee members Include hotline or info number Send to all local media outlets</p>	<p>Mainstay of communication programs No guarantee articles will appear No costs involved if story runs</p>
NEIGHBORHOOD/ ASSOCIATION MEETINGS	<p>Speaker presentations Given by staff and/or advisory committee Develop outline for speakers Provide audio-visuals, handouts Opportunity to use video infomercial</p>	<p>Speaker preparation needed Provide for limited Q&A Avoid lengthy debates in public Invite opponents to call or visit</p>
COMMUNITY EVENTS	<p>Booth at community events Distribute information about new program Opportunity for informal discussions</p>	<p>Pro: Wide mix of residents Event organized by others Con: May strain staff resources</p>
HOTLINE/ VOICEMAIL	<p>Telephone Information and Message Center Advertise number widely Provides 24-hour information Include all key information to reduce callbacks Voicemail or message machine provides Opportunity for public feedback</p>	<p>May need to dedicate phone line Message must be kept up to date Need to designate staff to return calls</p>
<i>ALERT (2-3 WEEKS PRIOR TO CHANGE)</i>		
DIRECT MAIL	<p>Letters or postcards Mail directly to all residents Distinguish from other mail Use non-white paper Mark envelope "Important" Be brief, focus on essentials</p>	<p>Costs may be high Calculate postage, addressing, printing Used successfully <u>with</u> other direct methods like hangers Consider when major changes made</p>
DOOR HANGERS	<p>Printed cards or packets of information Hung on front doors or garage doors Packets may include other items, such as: Magnets with day(s) of service List of most commonly asked ?s</p>	<p>Delivery labor intensive Must be well secured to avoid litter May be seen as unattractive May be tossed as unwanted items</p>
CAN HANGERS	<p>Printed cards or packets of information Hung or secured to trash cans Packets may include other items, such as: Magnets with day(s) of service List of most commonly asked ?s</p>	<p>Public easily understands packet contains important trash info Delivery is by private waste provider Must be well secured to avoid litter</p>

HOW TO REACH THE PUBLIC DURING IMPLEMENTATION *(Continued)*

COMMUNICATION METHODS	WHAT & HOW TO USE	SOME CONSIDERATIONS
ALERT <i>(Continued)</i>		
ADVERTISEMENTS	<p>Paid advertisement in newspaper Use to announce start date & key components Include hotline or info number prominently Keep design visually attractive Avoid crowding; make readable</p>	<p>Guaranteed to appear in paper Control over when it runs Run more than once: Sunday and weekday in daily Two consecutive weeks in weekly Costs involved in buying space</p>
NEWS RELEASE	<p>News articles or features sent to press Use to announce start date & key components Develop "feature" articles Profile advisory committee members Include hotline or info number Send to all local media outlets</p>	<p>Mainstay of communication programs No guarantee articles will appear No costs involved if story runs</p>
LETTERS TO THE EDITOR	<p>Letter to the Editor sent to local paper Support letters for proposed change Draft for advisory committee members Request from supporters who call voicemail</p>	<p>Helps build community support No costs to run</p>
UTILITY BILL INSERTS	<p>Printed information inserted in utility bills Separate from utility bill Include hotline or info number Design for attractiveness and easy readability Must fit into utility envelope</p>	<p>Reaches all residents May be tossed as unwanted item May be costs for inserting</p>
VIDEO INFOMERCIAL	<p>Informational video Developed to air on television Provides visual information about new program</p>	<p>Can be formatted for other uses Production experience needed Consider collaboration with: Private waste provider TV station or college video dept</p>
POSTERS/FLYERS	<p>Printed notices using graphic design Posted in the community or handed out at community events/sites Use bold design Keep information short; large print Alerts residents that changes coming soon</p>	<p>Costs can be contained Design on office computer Use copier to print Can be produced as needed Labor involved in posting Reinforces other announcements</p>
PHONE SUPPORT	<p>Customer service representatives Phone answering staff to handle calls Expect dramatic, temporary increase in calls Train staff to handle "difficult" customers Provide phone staff with key information Develop list of most commonly asked ?s</p>	<p>Consider supplementing regular staff with trained temporaries Cooperate with private provider</p>

HOW TO REACH THE PUBLIC DURING THE MAINTENANCE PHASE		
COMMUNICATION METHODS	WHAT & HOW TO USE	SOME CONSIDERATIONS
<i>ONGOING (FROM POINT OF CHANGE AND BEYOND)</i>		
NEW RESIDENT PACKETS	Introductory information for new residents Duplicates materials announcing program Includes any updates Includes any informational brochures Distributed as soon as new resident moves in	Determine who will distribute Provide mechanism for updates
NEWS RELEASE	News articles or features sent to press Use to highlight, update program efforts Cost savings Successes in waste reduction Include customer service phone number Send to all local media outlets	Mainstay of communication programs No guarantee articles will appear No costs involved if story runs
BROCHURES	Informational brochure(s) Printed brochures that promote desired public behavior regarding waste issues Topics may include: Solid waste management program Recycling and waste reduction issues Yard waste management/composting how-tos Use attractive design and color(s)	Printing costs can be high Consider ways to reduce Brochures can be adapted from: Local, state, and national sources Develop list of display sites City/county offices Libraries Utility districts
SCHOOL PROGRAMS	Waste education programs for students In-school education programs Available from public and private sources Work with interested principals, teachers After-school programs Reading programs at libraries Scout meetings or merit badge activities Church youth groups Cooperate with private provider	Need school district okay for curriculum use Consider using private provider waste education curriculum/materials Develop network of volunteers Scout leaders Environmental groups Keep Texas Beautiful
SPECIAL EVENTS	Events to encourage participation Button or poster contests Recycling drives Composting classes Booths at other community events	Usually focus is on waste reduction, recycling, yard waste management
OPINION SURVEYS	Phone or mail surveys of public opinion Used to evaluate ongoing effectiveness Identifies areas that need improvement Provides opportunity for public feedback	Waste questions can be included on survey of all services

Appendix D
Sample RFP Package

REQUEST FOR PROPOSAL PACKAGE

**SOLID WASTE COLLECTION
AND
DISPOSAL SERVICES
FOR
THE WOODLANDS COMMUNITY ASSOCIATION, INC.
THE WOODLANDS ASSOCIATION, INC.
THE WOODLANDS, TEXAS**

CONTENTS:

**Notice To Proposers
Request For Proposal
Proposal Cost Form
RFP Attachments
Contract
Contract General Conditions
Contract Special Conditions**

June 23, 1995

LEGAL NOTICE

PUBLISHED ON JUNE 23, 1995

FOR INFORMATION: MARJORIE WEISS
713/367-5647

**NOTICE TO PROPOSERS
SOLID WASTE COLLECTION AND DISPOSAL
FOR THE WOODLANDS, TEXAS**

The Woodlands Association, Inc. and The Woodlands Community Association, Inc. are jointly requesting the submission of qualifications and proposals for services to be rendered for the collection and disposal of solid waste for The Woodlands, Texas. The Request for Proposals (RFP) package may be only obtained by written requests from:

By Mail: The Woodlands Community Associations
P. O. Box 7859
The Woodlands, TX 77387-7859
Attn: Solid Waste RFP

By Fax: (713) 364-7957
Attn: Solid Waste RFP

A mandatory pre-proposal conference will be conducted at The Woodlands Community Association offices at 9450 Grogan's Mill Road in The Woodlands on Thursday, July 6, 1995 at 2:00 to 4:00 PM. Proposals submitted by proposers not attending the pre-proposal conference will not be accepted. All proposals will be due on July 28, 1995 at 4:00 PM.

REQUEST FOR PROPOSAL
Solid Waste Collection and Disposal Services
for The Woodlands, Texas

The Woodlands Community Association and The Woodlands Association, hereinafter called "THE WOODLANDS" will receive sealed Proposals for the following project:

PROJECT:	Solid Waste Collection and Disposal Services for The Woodlands
PROPOSAL DUE DATE AND TIME:	Friday, July 28, 1995 4 p.m.
PRE-PROPOSAL CONFERENCE DATE AND TIME:	Thursday, July 6, 1995 2-4 p.m.
PRE-PROPOSAL LOCATION:	Offices of THE WOODLANDS 9450 Grogan's Mill Road The Woodlands, Texas 77380
DEADLINE FOR INQUIRIES:	
TYPE OF WORK:	Collection, transport, and Disposal or Processing of all residential solid waste including Refuse, Yard Waste, Bulky Waste, and Recyclables from the Contract Area to a Disposal or Processing site identified by the Contractor. The Proposal shall include the cost of Disposal, Processing, or treatment of solid waste and all such residues byproducts of such disposal processing and treatment.

TABLE OF CONTENTS
REQUEST FOR PROPOSAL

PURPOSE..... 3

GENERAL INFORMATION FOR THE PROPOSAL 4

 REQUIREMENTS AND RESPONSIBILITIES OF THE CONTRACTOR 4

 GENERATION OF MATERIALS 4

 QUALIFICATION OF PROPOSER..... 4

 PROPOSER'S CERTIFICATION..... 5

 NOTICE TO PROCEED..... 5

 POST-AWARD CONFERENCE..... 5

DETAILED INFORMATION..... 6

 COMPLIANCE WITH LAWS..... 6

 PRE-PROPOSAL CONFERENCE..... 6

 ADDENDA TO THE RFP..... 6

 PROPOSAL PREPARATION 5

 SUBMISSION OF PROPOSAL..... 6

 CHANGES OR ALTERATIONS 7

 CLARIFICATION OF SUBMITTAL 7

 PROPOSAL HOLDING TIME 8

 PROPOSAL RESERVATIONS AND EVALUATION OF PROPOSALS . 8

 LIABILITY..... 8

 AWARD OF CONTRACT..... 8

 PROPOSER QUESTIONS AND INQUIRIES..... 9

 PROPOSAL SECURITY..... 9

 QUALIFICATION OF SECURITY COMPANIES AND BANKS ACCEPTABLE TO
 THE WOODLANDS..... 9

 BONDS AND INSURANCE 10

 USE OF NAME.....

 BRIBERY CLAUSE..... 9

 TAXES..... 10

PURPOSE

The Woodlands Association and The Woodlands Community Association, herein referred to as "THE WOODLANDS", jointly prepared a request for interested and qualified contractors to provide solid waste collection, transport and disposal or processing for their citizens. This Request For Proposal (RFP) process, for convenience, is a joint effort, but separate Contracts will be awarded for each community association. However, both associations intend to make Awards to the same contractor(s). In addition, THE WOODLANDS intends to award separate contracts for Designated Non-Residential Locations to the same Contractor(s) engaged for Residential Solid Waste services.

This is a detailed Proposal package for solid waste collection and disposal services for THE WOODLANDS as publicly advertised in the Houston Chronicle and Conroe Courier. All information required for preparing this Proposal is included in this Proposal package.

Careful attention must be paid to all requested items contained in this "**Competitive Sealed Proposal**" hereinafter referred to as RFP. Vendors are invited to submit Proposals in accordance with the requirements of this RFP. Please read the entire package before preparing your Proposal. PROPOSERS shall make the necessary entry in all blanks provided for the responses in the Proposal Cost Form attached to the RFP (use N/A if not applicable to your Proposal).

The RFP, Proposal Cost Form, RFP Attachments, Contract, General Conditions and Special Provision constitute the entire set of documents of the RFP. A submission of a Proposal by PROPOSER shall constitute an acknowledgement by PROPOSER that all such documents were received by RPOPOSER. The PROPOSER must return this document with all additional information required for proper analysis of the PROPOSER's response. All documentation shall be returned in total and in the same numerical order in which it was issued.

The Woodlands Community Association and The Woodlands Association are not subject to municipal laws and regulations, especially those pertaining to procurement of services.

Proposers are requested to provide any or all of the following services for single family and multi-family units and designated non-residential locations:

1. Refuse and bulky waste collection and disposal.
2. Recyclables collection and processing.
3. Operation and maintenance of the current recycling drop-off center.
3. Yard Waste collection and processing.

Proposers are expected to provide estimates based on both once-per-week and twice-per-week Refuse collections.

THE WOODLANDS is using this RFP as a vehicle to describe the services required to fulfill their needs and not to describe or limit the technologies used by CONTRACTOR to provide such services. PROPOSER represents, by submitting a Proposal, the PROPOSER has the tools, expertise, technology and capacity to provide these services, and the PROPOSER is encouraged to propose innovative and environmentally safe procedures to implement the requirements of the Contract. Alternate bids are allowed for this RFP but are outside the limits of the RFP cost forms. THE WOODLANDS will expect and demand quality service from the successful CONTRACTOR at all times.

The Woodlands is a rapidly growing, environmentally aware community with a population currently in excess of 40,000. It is estimated that, in 1994, the community produced 18,120 tons of solid waste, of which nearly 2,000 tons was recycled. Recycled materials are currently collected at a Recyclables drop-off center and 2,000 households subscribe to a curbside program for weekly collection. Use of the drop-off center has kept up with or exceeded the growth rate of the community. Overall, the waste generation rate for The Woodlands has been approximately 2.44 lbs. per person per day. THE WOODLANDS has no control over the growth rate of The Woodlands or generation of solid waste and any opinions or statement regarding such matters are based on THE WOODLANDS best judgement and information; but THE WOODLANDS cannot and does not guarantee any information pertaining to such matters, and PROPOSER specifically recognizes that the amount of solid waste and number of households may vary.

GENERAL INFORMATION FOR THE PROPOSAL

REQUIREMENTS AND RESPONSIBILITIES OF THE CONTRACTOR

Requirements and responsibilities of the CONTRACTOR as well as a detailed Scope of Work are documented in the Special Provisions of the Contract Documents attached to this RFP.

GENERATION OF MATERIALS

Because future increases or decreases in the population, number of Units, or volume of Residential Solid Waste and other materials in the Contract Area cannot be accurately predicted or guaranteed, it is expected that PROPOSERS will project the volume or weight of materials to be generated and collected for the purposes of the Proposal, based on information provided with this RFP or derived from any other public information sources.

QUALIFICATION OF PROPOSER

To demonstrate qualifications to perform the services required in the Contract Documents, each PROPOSER shall include, as a separate attachment to the Proposal Cost Form, the following items:

- List of PROPOSER's experience with similar projects in Texas;
- List of the addresses and phone numbers of at least 10 municipal or community customers of CONTRACTOR, and name of contact persons for each;

- PROPOSER's current financial statement;
- List of PROPOSER's proposed management staff plus resume of the proposed project leaders;
- Organizational chart for the Project;
- Descriptions of innovative projects and environmentally safe methodologies recommended by PROPOSER;
- Evidence of PROPOSER's authority to conduct business in the State of Texas; and
- If PROPOSER is a corporation, furnish a copy of the corporate resolution authorizing PROPOSER to enter into this transaction.

PROPOSER'S CERTIFICATION

By the submission of the Proposal, the PROPOSER certifies that the Proposal is genuine and is not made in the interest of or on behalf of any undisclosed person, firm or corporation; a that the PROPOSER has not directly or indirectly induced or solicited any other PROPOSER to put in a false or sham Proposal; that the PROPOSER has not solicited or induced any person or corporation to refrain from proposing, and that the PROPOSER has not sought by collusion or otherwise to obtain any advantage over any other PROPOSER or over THE WOODLANDS.

NOTICE TO PROCEED

Since no interruption of the existing service is permissible, service transition must be coordinated and executed on the Starting Date set forth in the Notice to Proceed. The Starting Date is projected to be January 1, 1996. THE WOODLANDS intends to issue the Notice to Proceed within sixty (60) days after Award of Contract, however such period of time is not binding on THE WCA and that failure to so issue the Notice To Proceed shall not constitute a breach of the Contract by THE WCA. This time period supersedes any other time period discussed or disseminated prior to the RFP.

POST-AWARD CONFERENCE

A post-award conference will be scheduled as soon as practical after the award of the contract. The CONTRACTOR shall attend the conference along with the prospective job superintendent and any anticipated major subcontractors. A proposed implementation schedule shall be submitted to THE WOODLANDS Environmental Services Manager or his designee in a form satisfactory to the Manager or designee. The CONTRACTOR shall also provide at least two (2) local telephone numbers which may be used to contact the CONTRACTOR or his authorized representative in the event of an emergency after normal business hours. Upon receipt of the documentation identified as required during that conference, a Notice to Proceed will be issued by the General Manager or his designee.

DETAILED INFORMATION

COMPLIANCE WITH LAWS

Each PROPOSER shall examine the Contract Documents thoroughly and familiarize himself with all federal, state and local laws, ordinances, and regulations, including but not limited to all rules, regulations and the restrictive covenants governing the land within the jurisdictions of THE WOODLANDS, which may in any manner affect cost, progress or performance of the herein described services.

PRE-PROPOSAL CONFERENCE

A pre-Proposal conference will be held on the date and place specified in this RFP. The purpose of the conference will be to provide interested PROPOSERS with an oral presentation of the Contract requirements, and to allow the presentation of questions. Therefore, it is **mandatory** that all parties wishing to submit Proposals attend this important function. **Proposals received from vendors who did not attend the pre-Proposal conference will not be accepted.**

ADDENDA TO THE RFP

Any information provided for Proposals is not official unless it is prepared and distributed in writing by Malcolm Pirnie, Inc. on behalf of THE WOODLANDS. Copies of the official changes will be provided in the form of an **addendum** to all vendors who received the RFP and who attended the pre-Proposal conference.

PROPOSAL PREPARATION

The Proposal Cost Form provided by THE WOODLANDS shall be used and shall not be taken apart or altered, unless otherwise prescribed. The forms shall be typewritten or completed with pen and ink and signed. Proposals submitted by corporations must be signed by the president, vice-president, or other authorized officer and accompanied by the affixed corporate seal and secretary's attestation. Proposals by partnerships should be executed in the partnership's name and signed by a partner whose title must appear under the signature. All erasures or corrections should be initialed and dated by the official signing the Proposal.

PROPOSERS are encouraged to carefully review all provisions and attachments of this RFP prior to completion. Each Proposal constitutes an offer and may not be withdrawn or amended except as provided herein. Any or all written statements contained in the Proposal and any written clarification of same requested by THE WOODLANDS and delivered to the Houston office of Malcolm Pirnie, Inc. will become part of the final Contract for equipment and/or services.

SUBMISSION OF PROPOSAL

1. Providers are not required to bid on the basic service of refuse collection in order to be considered for one of the other services.
2. All PROPOSERS must submit Proposals for the removal of waste on the basis required for the Proposal Cost Forms .
2. Proposals shall be submitted in a sealed, opaque envelope with the title "PROPOSAL FOR SOLID WASTE COLLECTION AND DISPOSAL SERVICES FOR THE WOODLANDS" and the name, address, and telephone number of the PROPOSER clearly printed on the outside of the envelope. One original should be enclosed in each envelope.
3. Proposals not received by the time and date specified will not be opened or considered, unless the delay is a result of the negligence of THE WOODLANDS, its agents or assigns, or unless only one Proposal is received before the Proposal due date.
4. Mailed or delivered as follows in sufficient time to ensure receipt by the Houston Office of Malcolm Pirnie, Inc. on or before 4:00 p.m. on the date specified. PROPOSERS shall be responsible for the actual delivery of Proposals during business hours to the address indicated in this RFP. It shall not be sufficient to show that the Proposal was mailed in time to be received before the scheduled Proposal submittal due date.

Mailing Address:

Malcolm Pirnie, Inc.
520 Post Oak Blvd. - Suite 400
Houston, Texas 77027-9405

Hand Delivery Address:

Malcolm Pirnie, Inc.
520 Post Oak Blvd. - Suite 400
Houston, Texas 77027-9405

5. At the Proposal submittal due date, no additional documentation will be accepted unless requested by THE WOODLANDS. The PROPOSER shall include all documents necessary to support its Proposal.

CHANGES OR ALTERATIONS

PROPOSER may change or withdraw Proposal at any time prior to the Proposal submittal due date unless agreed to by The Woodlands . **However**, no oral modifications will be allowed. Only formal written requests for modifications or corrections of a previously submitted Proposal shall be accepted and must be submitted as a complete, new Proposal superseding and replacing the original Proposal which will be considered withdrawn. The revised Proposal shall be addressed in the same manner as the Proposal and must be received by THE WOODLANDS prior to the scheduled Proposal submittal due date.

CLARIFICATION OF SUBMITTAL

THE WOODLANDS reserves the right to obtain clarification of any point in a respondent submittal or to obtain additional information from a respondent.

PROPOSAL HOLDING TIME

Proposals may be held by THE WOODLANDS for a period not to exceed one hundred and eighty (180) days from the Proposal submittal due date for the purpose of reviewing Proposals and investigating qualifications of PROPOSERS. Proposals shall be deemed valid for one hundred and eighty (180) days from Proposal opening.

PROPOSAL RESERVATIONS AND EVALUATION OF PROPOSALS

THE WOODLANDS reserves the right to reject any or all Proposals, to Award any portion or all of the CONTRACT separately to any CONTRACTOR, and to waive minor defects in Proposals. THE WOODLANDS may consider any alternative Proposal that meets its basic needs.

The cost Proposals submitted in response to this RFP will be evaluated using the Proposal Cost Form attached to this RFP. Discrepancies between words and figures shall be resolved in favor of words. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the corrected sum.

Award of the Contract will also be based on the qualifications of the PROPOSER and innovative and environmentally safe technologies proposed by the PROPOSER to meet the requirements of the RFP.

Prompt payment discounts may be considered in determining cost. A minimum of fifteen (15) days must be allowed and offered for a prompt payment discount in order to be considered in making an Award. Standard payment terms will otherwise be NET thirty (30) days after services are rendered.

LIABILITY

THE WOODLANDS is not responsible for any cost incurred by a PROPOSER in the preparation of a Proposal.

AWARD OF CONTRACT

The Award of a Contract, if made, shall be made to the PROPOSER whose Proposal, in THE WOODLANDS sole discretion, furthers the best interest of THE WOODLANDS. The Contract may be awarded to one provider for all Work or to several providers for separate identifiable parts, based upon the Proposals received. No Award shall be made until all necessary investigations have been made to determine the eligibility and responsibility of the PROPOSER under consideration, and the validity of the Proposal. Award of a Contract, if made, shall be made by the appropriate Board of Directors of THE WOODLANDS.

After an Award by THE WOODLANDS, The Woodlands Community Association, Inc. and The Woodlands Association, Inc. will provide properly prepared separate Contract documents to the

CONTRACTOR. After proper execution of the Contract, the CONTRACTOR shall return all documents required to THE WOODLANDS.

Failure to enter into a Contract at the terms and conditions set forth in this RFP and at the prices quoted in the Proposal Cost Form shall be cause for forfeiture of the Proposal Security.

PROPOSER QUESTIONS AND INQUIRIES

PROPOSERS having questions and inquiries must direct them to:

Malcolm Pirnie, Inc.
520 Post Oak Blvd.
Houston, Texas 77027-9405
Attention: J. Mac Hall
(713) 840-1511

All questions about the meaning or intent of the RFP or related documents shall be in writing. Answers to such inquiries shall be by formal, written addenda, and will be binding. Other interpretations or clarifications shall be of no effect.

No PROPOSER questions or inquiries will be allowed after **July 25, 1995, 4 p.m.**

PROPOSAL SECURITY

A Proposal Security for the amount of thirty thousand dollars (\$30,000) shall be submitted with each Proposal. The Proposal Security shall be in the form of a cashier's check on a bank or trust company insured by the Federal Deposit Insurance Corporation and shall be made payable to the order of The Woodlands Community Association, Inc./The Woodlands Association, Inc. In lieu of making a cash deposit, the PROPOSER may submit a Proposal Security in the amount of thirty thousand dollars (\$30,000) executed by a corporate surety licensed in Texas to execute such sureties. Proposal Security will be returned immediately after a Contract is negotiated and awarded. An irrevocable letter of credit on a bank or trust company insured by the Federal Deposit Insurance Corporation and shall be made payable to the order of The Woodlands Community Association, Inc./The Woodlands Association, Inc. for the amount of thirty thousand dollars (\$30,000) is also acceptable.

QUALIFICATIONS OF SECURITY COMPANIES AND BANKS ACCEPTABLE TO THE WOODLANDS

To be acceptable to THE WOODLANDS as a surety for Proposal Security, Performance and Payment Bonds, a surety company shall comply with the following provisions:

- The surety company must be admitted to do business in the State of Texas.
- The surety company shall have been in business and have a record of successful continuous operation for at least five (5) years.
- Best's policyholder's ratings of "A" (which signifies A= excellent, based upon good underwriting, economic management, adequate resources for undisclosed liabilities, net resources for unusual stock investments) or an equivalent rating from the insurance commissioner if not rated by Best's.

The surety company shall not expose itself to a loss on any one risk of an amount exceeding ten percent (10%) of its surplus to policyholders, provided that any risk or portion of any risk shall have been reimbursed (in which case these minimum requirements contained herein also apply; to the insuring carrier) assuming that the insurer authorized or approved by the insurance commissioner to do such business in this state shall be deducted in determining the limitation of risk prescribed in this section.

In the case of a surety insurance company, there shall be deducted in addition to the deduction for reinsurance, the amount assumed by any co-surety, the value of any security deposited, pledged or held subject to the content of the surety and for protection of surety.

BONDS AND INSURANCE

The General Conditions of the Contract Documents require Payment and Performance Bonds and insurance certificates to be furnished with the executed Contract. All bonds shall be signed by a Texas licensed resident agent who holds a current power of attorney from the surety company issuing the bond. All PROPOSERS shall submit an "*Affidavit of Bonding Limits*" documenting that they are in accordance with the requirements in the attached Contract Documents.

USE OF NAME

THE WOODLANDS is not engaged in research for advertising, sales promotion, or other publicity purposes. No advertising, sales promotion or other publicity materials containing information obtained from this Proposal are to be mentioned, or imply the name of THE WOODLANDS, without prior express written permission.

BRIBERY CLAUSE

PROPOSER certifies that no employees of theirs, any affiliate or Subcontractor has bribed or attempted to bribe an officer or employee of THE WOODLANDS.

TAXES

The Woodlands Community Association, Inc. and The Woodlands Association, Inc. are tax exempt, non-profit organizations (501(c)(4)), not subject to state sales tax.

PROPOSAL COST FORM

PROPOSAL FROM:

(Print or Type Name of PROPOSER)

(/A Corporation/A Partnership/An Individual/A Joint Venture/
[PROPOSER to strike out inapplicable form.]

Ladies/Gentlemen:

The undersigned PROPOSER offers and agrees, if this Proposal is accepted, to enter into a Contract with The Woodlands Community Association, Inc. and/or The Woodlands Associations, Inc ("THE WOODLANDS") to complete all services and perform all Work in strict conformity with the terms and conditions set forth in the Contract Documents and any laws, statutes, ordinances, rules, or regulations of any governmental agencies or public authorities relating thereto and the restrictive covenants of THE WOODLANDS.

PROPOSER declares that no person (s) or entity(ies) other than those named herein are interested in this Proposal; that this Proposal is made without collusion with any other person, firm or corporation; and that no person or persons acting in any official capacity for or employed by THE WOODLANDS are directly or indirectly interested in this Proposal, or in any portion of the profit to be derived thereof, or employed by or in any way an owner of any interest in Proposer.

This Proposal is not required by law to be awarded to the lowest responsible PROPOSER. Therefore, THE WOODLANDS retains the right to Award this Contract based upon the Proposal which is determined to be in the best interest of THE WOODLANDS. THE WOODLANDS reserves the right to accept the Proposal in whole or part. The term for the operations agreement is three (3) years with two (2), one-year optional extensions.

In submitting this Proposal, PROPOSER represents, as more fully set forth in the RFP, that PROPOSER has:

1. Examined the Notice to Proposers, RFP, Proposal Cost Form, RFP Attachments, RFP Addenda, and the Contract Documents, including the General Conditions and Special Conditions;
2. Examined the actual site and locality where the services are to be performed;
3. Familiarized himself with the legal requirements (federal, state and local laws, ordinances, rules and regulations) and restrictive covenants of THE WOODLANDS;
4. Made such independent investigations as he deems necessary;

5. Has satisfied himself as to all conditions affecting cost, progress or performance of the Work and all difficulties that may arise or be encountered in the performance of the Work; and
6. Has made this bid on the basis of the above examinations, and not on the basis of any representations or promises made to him by THE WOODLANDS, or any agent of THE WOODLANDS.

PROPOSER agrees as follows:

1. that this Proposal shall remain open and may not be withdrawn for the time period set forth in the RFP;
2. that he accepts all of the terms and conditions of the RFP, including, without limitation, those dealing with the disposition of his Proposal Security;
3. and that, upon acceptance of the Contract, he will execute a Contract and will furnish the required Performance Bond, Payment Bond and insurance certificates as set forth in the attached Contract Documents.

In accordance with the above understandings and agreements, PROPOSERS will complete the Work for the following in the Contract Area consisting of single and multi-family residential and designated non-residential customers. Prices shall include all applicable federal, state, and county taxes for the following:

1. Refuse Collection including Bulky Waste Collection
2. Recycling Collection
3. Operation and Maintenance of the Recycling Drop-Off Center
4. Yard Waste Collection
5. Disposal or processing fees

Additional Collection Units and hourly work made part of the Contract after Contract execution shall be at the cost per unit in the Proposal Cost Form, adjusted for any approved cost increases since Contract execution. THE WOODLANDS may choose not to utilize any or all of the Additional Work.

ADDITIONAL WORK

Three (3) Man Crew and Truck

Provided Within 24 hours of Request

\$ _____/Hour

Provided More Than 24 Hours After Requested

\$ _____/Hour

Eight (8) Cubic Yard Dumpster, including delivery,
pick-up, and disposal

\$ _____/Each

Roll-Off Container, including delivery, pick-up,
and, disposal

\$ _____/Each

Indicate Size: _____ Cubic Yards

Portable Toilets

\$ _____/Each

Once-per-Week and Twice-per-Week Residential Solid Waste Collection & Disposal/Processing Single Family Residences

Note: All of the spaces must be filled in with numerals or "N/A" (Not Applicable) according to your proposal

Item No.	Item Description	(A) Est. Number of Units	Once-per Week Refuse Collection		Twice-per-week Refuse Collection	
			(B) Cost per Unit	(AxB) Cost per Month	(C) Cost per Unit	(Cx D) Cost per Month
			(A x B x 12) Estimated Annual Cost	(C x D x 12) Estimated Annual Cost		
1	Refuse Collection, Curbside	12900				
2	Refuse Disposal	12900				
3	Recyclable Collection & Processing Curbside	12900				
4	Yard Waste Collection & Processing Curbside	12900				
Total Annual Gross Proposal (Annual Contract Sum) (Sum of Items 1 - 4 cost per year)						
Less 1.5 day prompt payment discount of _____ % (Enter discount % offered)						
Net 30 days (no discount offered)						

On the next page, please describe the method of Collection to be used for single family residences, the proposed disposal and/or processing facility(ies), and proposed exit routes from the community.

**Once-per-Week and Twice-per-Week Residential Solid Waste
Collection & Disposal/Processing**

Describe the method of collection to be used for single family residences, the proposed disposal and/or processing facility(ies), and the proposed exit routes from the community.

Solid Waste Collection and Disposal/Processing Multi-Family Residences and Designated Non-Residential Locations

Note: All of the spaces must be filled in with numerals or "N/A" (Not Applicable) according to your proposal. Refer to Attachments B and C of the RFP for listings of Multi-Family Units and Designated Non-Residential Locations and current service levels

Item Description	Size of Dumpster (CY)	Number of Dumpsters	Frequency of Collection (per week)	Monthly Cost (\$)	Annual Cost (Monthly Cost X 12) (\$)
Refuse Collection and Disposal	8	2	1		
Refuse Collection and Disposal	8	46	2		
Refuse Collection and Disposal	8	8	3		
Refuse Collection and Disposal - One (1) Additional Collection per Week	8				
Recyclable Collection and Processing			1		

Please describe the method of collection to be used for Multi-Family Residences and Designated Non-Residential Locations, the proposed disposal and/or processing facility(ies), and proposed exit routes from the community.

Recycling Drop-Off Center

Note: All of the spaces must be filled in with numerals or "N/A" (Not Applicable) according to your proposal.

Item Description	Monthly Cost (\$)	Annual Cost (Monthly Cost X 12) (\$)
Operations and Maintenance of the Recycling Drop-Off Center		

Please describe the method of operations for the Recycling Drop-Off Center, the proposed processing facility(ies), and proposed exit routes from the community.

PROPOSER acknowledges receipt of the Addenda listed below and further acknowledges that the provisions of each Addendum have been included in the preparation of his Proposal.

<u>Addendum No.</u>	<u>Date Received</u>	<u>Addendum No.</u>	<u>Date Received</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

The following documents are attached to and made a condition of this Proposal.

1. Proposal security in the amount of thirty thousand dollars (\$30,000).
2. A list of Subcontractors and other persons and organizations required to be identified in this Proposal.
3. Qualifications of PROPOSER.

The terms used in this Proposal, which are defined in the Request for Proposal, have the meanings assigned to them in the Request for Proposal.

Respectfully submitted on _____, 19__.

If PROPOSER is:

An Individual

By _____
(Individual's Signature)

(Printed or Typed Name of Individual)

Doing business as _____

License or Registration Number: _____

Business Address: _____

Phone No.: _____

If PROPOSER is:

A Partnership

By _____
(Firm Name)

(Partner's Signature)

(Printed or Typed Name of Partner and Title)

License or Registration Number: _____

Business Address: _____

Phone No.: _____

If PROPOSER is:

A Corporation

By _____
(Corporation Name)

(State of Incorporation)

By _____
(Signature of Officer Authorized to Sign)

(Printed or Typed Name and Title of Officer Authorized to Sign and Title)

(CORPORATE
SEAL)

Attest _____
(Secretary)

License or Registration Number: _____

Business Address: _____

Phone No.: _____

If PROPOSER is:

A Joint Venture

By _____
(Signature)

(Printed or Typed Name and Title)

(Address)

By _____
(Signature)

(Printed or Typed Name and Title)

(Address)

(Each joint venture must sign. The manner of signing for each individual, partnership and corporation that is a party to the joint venture should be in the manner indicated above).

RFP ATTACHEMENTS

Attachment A - Description of The Woodlands

Attachment B - Multi-Family Residences in The Woodlands

Attachment C - Designated Non-Residential Locations

Attachment D - Residential Solid Waste Weights for The Woodlands

Attachment E - Projected Development of The Woodlands Community Association
and The Woodlands Association in Number of New Household
Units Per Year

Attachment F - Recyclables Collected in The Woodlands
1994 and 1995

Attachment G - Description of the Recycling Drop-Off Center

Attachment H - Map of The Woodlands

Description of The Woodlands

The Woodlands is a forested, 25,000-acre, master-planned community governed by restrictive covenants. Located 27 miles north of downtown Houston on Interstate 45, The Woodlands has a current year population of 43,000.

Homeowner Associations

The community consists of five villages which are served by two non-profit homeowners associations: The Woodlands Community Association, Inc. (WCA) and The Woodlands Association, Inc. (TWA). The Villages of Grogan's Mill, Panther Creek, Indian Springs, and Cochran's Crossing belong to The WCA and the Village of Alden Bridge belongs to The TWA.

Both associations provide for trash collection, recycling, community recreation, neighborhood pools, parks, pathways, and fire and police protection. In all these areas, The Woodlands residents have come to expect high levels of service at reasonable rates.

Planning & Design Standards

Since its inception, The Woodlands planners have given careful attention to the environment and the aesthetics of the community. Special emphasis is placed on preserving natural vegetation not only along roadways in open space reserves and the many parks, but on every piece of residential property as well. Comprehensive design standards are strictly enforced to insure that the associations' Covenants are enforced.

Villages are designed to create smaller "neighborhoods", often built around amenities like tot lots or parks and served by winding hike and bike paths. Streets are predominantly cul-de-sacs, which helps reinforce the neighborhood concept, limits the number of entrances into each neighborhood, and reduces traffic speeds along residential streets.

Housing

The community has a full range of housing, from patio homes to custom estate homes and includes a range of multi-family units from housing for the elderly to condominiums, townhomes and apartments. More than 80 percent of the housing units are single family residences. New homes are priced from the \$90's to more than \$1 million. Currently, most new home building is taking place in the Villages of Cochran's Crossing and Alden Bridge.

Description of The Woodlands

Selected Statistics as of April 1995

Population	43,000
Number of single-family residences	12,400
Estimated population by year 2000	60,000
Miles of streets	200
Width of streets	24'-28'

Multi-Family Residences in The Woodlands

(NOTE: ALL ARE LOCATED IN THE WCA)

Multi-Family Units	Estimated # Units	Number of Dumpsters	Size (Cu Yds)	Collection Frequency (Per Week)
Tamarac Pines 10510 Six Pines	297	4	8	2
Fawn Ridge 12420 Sawmill Rd	115	2	8	2
Grogan's Landing 12000 Sawmill Rd	318	10	8	2
Village Square 2301 S Millbend	217	5	8	2
Parkside 10600 Six Pines	212	5	8	2
Timber Mill 1481 Sawdust Rd	21	4	8	3
Creekwood 3500 Tangle Brush	129	5	8	2
Wood Glen 3451 Tangle Brush	141	3	8	3
Copperwood 4407 S Panther Creek	299	4	8	2
Holly Creek 333 Holly Creek Ct	278	9	8	2
The Forum (formerly Chambrel) 5055 W Panther Creek	252	1	8	3

Designated Non-Residential Locations

Designated Non-Residential Location	Company Name Tax Status	Number of Employees	Number 8 CY Dumpsters	Collection Frequency (Weekly)
Recreation Center 5310 Research Forest	Woodlands Recreation Center (WRC) 501-c(3) Tax-exempt	10	1	2
Fire Department Station #1 9951 Grogan's Mill Rd	Woodlands Fire Dept (WFD) 501-c(3) Tax-exempt	26	1	1
Fire Department Station #2 9303 Gosling	Woodlands Fire Dept (WFD) 501-c(3) Tax-exempt	12	1	1
Maintenance 1442 Lake Front Circle (New location 1/96 8203 Millenium Forest)	Woodlands Community Service Corp (WCSC) Non-profit Taxable	34	1	2

Residential Solid Waste Weights for The Woodlands*

Date Weights Taken	Tons/Week	Estimated # Households	Pounds/Household Per Week
November 1993	326.00	10,950	59.5
July 1994	300.45	11,600	51.8
December 1994	359.14	12,050	59.0
June 1995	586.86	12,400	94.7

*The residential solid waste weights listed here are estimates only and is intended solely for planning purposes. This data is not to be construed as official records of the community's waste generation rates.

Projected Development
The Woodlands Community Association (WCA)
and
The Woodlands Association (TWA)
Number of New Household Units Per Year*

Year	WCA Single Family	WCA Apartments	TWA Single Family	TWA Apartments
1996	454	366	495	0
1997	313	0	849	256
1998	289	0	911	150
1999	206	0	994	150
2000	92	0	995	0

*The household data listed here is estimates only and is intended solely for planning purposes. This data is not to be construed as official records or projections of the community's population growth.

Recyclables Collected in The Woodlands 1995

(Pounds)

Materials	January	February	March	April	May	1994 Annual Total
Aluminum	12,160	8,650	13,000	8,540	9,865	106,321
Steel Cans	4,260	1,360	2,580	2,920	3,600	46,079
Newspaper	234,860	182,620	216,066	177,940	203,620	2,854,066
Mixed Magazines	10,360	22,120	12,160	17,700	3,600	59,200
Plastic	10,940	7,990	12,500	10,720	5,125	137,810
Cardboard/ Paperboard	69,120	33,940	34,080	43,760	37,920	376,300
Mixed Paper	4,440	4,220	9,680	6,900	8,460	49,338
White Ledger			10,940	1,200	9,960	
File Stock			1,420	2,680		
Glass	36,440	16,220	20,820	28,580	27,320	690,110
TOTAL LBS	382,580	277,120	333,226	300,940	309,470	4,319,224
Total Curbside	117,300	88,060	102,686	87,160	92,880	
Total Drop-Off	265,280	189,060	230,540	213,780	216,590	
# Curbside Subscribers	2,093	2,095	2,084	1,980	1,987	

DESCRIPTION OF THE RECYCLING DROP-OFF CENTER

The Woodlands Recycling Drop-Off Center is located on Research Forest Drive near The Woodlands Recreation Center. Built in part with funds provided by a solid waste management grant from the Houston-Galveston Area Council, it is open to residents of The Woodlands and surrounding areas.

CURRENT HOURS OF OPERATION

Tuesday	8:00 A.M. - 2:00 P.M.
Wednesday	8:00 A.M. - 2:00 P.M.
Thursday	8:00 A.M. - 7:00 P.M.
Friday	8:00 A.M. - 2:00 P.M.
Saturday	8:00 A.M. - 2:00 P.M.

RECYCLABLE MATERIALS CURRENTLY ACCEPTED

- Aluminum cans
- Steel or bi-metal cans
- Glass containers (clear, green, blue, brown)
- Plastic containers (PETE, HDPE, colored and natural)
- Newspaper (with inserts)
- Corrugated cardboard and paperboard
- Kraft bags
- White paper
- Mixed paper
- Magazines and catalogs
- Phone Books

All materials are accepted every day of operation.

DESCRIPTION OF THE RECYCLING DROP-OFF CENTER

CURRENT NUMBER OF CONTAINERS

- 11 Roll-off containers
(4 containers provided by The Woodlands)
- 2 Dumpsters, 8 cu yd
- 1 compactor for corrugated cardboard

OTHER

The WCA/TWA manage several Yard Waste activities at the Recycling Center including :

- A compost demonstration area where compost clinics are offered in the spring and fall.
- A roll-off container for yard waste provided at no cost by the community's solid waste collection contractor; the collected materials are transported off-site for composting.
- A xeriscape landscape garden at the exit of the facility.

**SOLID WASTE COLLECTION AND DISPOSAL SERVICES
FOR THE WOODLANDS COMMUNITY ASSOCIATION, INC.
THE WOODLANDS, TEXAS**

CONTRACT

THIS Contract is dated as of the _____ day of _____ in the year _____, by and between The Woodlands Community Association, Inc. (hereinafter called The WCA) and _____ (hereinafter called CONTRACTOR).

WITNESSETH: WCA and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - WORK

1.1 The CONTRACTOR shall furnish all labor, equipment, materials, tools, insurance, supervision and all other items incidental thereto and perform all work necessary to provide all solid waste collection services to all Units in the Contract Area in accordance with the Contract Documents, except as may be specifically indicated in the Contract Documents to be the responsibility of others.

"Solid Waste Collection Services" shall include:

- a. Collection of Residential Solid Waste from Single Family Residences, Multi-Family Residences, and Designated Non-Residential Locations
- b. Collection of Yard Waste
- c. Collection of Recyclables using containers provided by the CONTRACTOR
- d. Operation and maintenance of the Recycling Drop-Off Center
- e. Collection of materials Monday through Friday according to a consistent schedule for each Unit, unless service is interrupted by a designated holiday
- f. Other services detailed in the General Conditions and Special Provisions

ARTICLE 2 - CONTRACT DOCUMENTS

2.1 The Contract Documents, all of which are attached hereto and made a part hereof, are defined in the General Conditions and comprise the entire Agreement between The WCA and CONTRACTOR with respect to the transactions and services hereby contemplated. No other representation, promise, inducement, statement or intention has been made by any party hereto which is not embodied in the Contract Documents. The Contract Documents shall not be construed to create a contractual relationship of any kind between

any persons or entities other than The WCA and CONTRACTOR. Execution of this Contract is a representation that CONTRACTOR has become familiar with all laws, rules, regulations, ordinances and restrictions applicable to, governing or affecting the services to be provided by CONTRACTOR hereunder.

ARTICLE 3 - CONTRACT TIME

- 3.1 The initial term of the Contract is for three (3) years and The WCA may at its sole option, renew the Contract for two successive one-year terms (extensions) under the conditions set forth in the Contract Documents. The WCA shall give the CONTRACTOR written notice of its intention to extend the Contract a minimum of ninety (90) days before the expiration of the Initial Term or applicable extension.

This Contract may be modified, superseded or cancelled, and any of the terms, provisions, covenants, representations, warranties or conditions hereof or of the Contract Documents may be waived, only by a written Change Order or Modification as provided in the General Conditions, attached hereto as Exhibit A, and incorporated herein.

The parties hereto agree that the Starting Date for which CONTRACTOR shall begin providing the services required hereunder must be coordinated with the termination of the existing services utilized by The WCA. CONTRACTOR acknowledges and understands that service transition must occur without interruption or delay of any kind, and CONTRACTOR shall commence Work on the Starting Date set forth in the Notice to Proceed.

ARTICLE 4 - INDEMNIFICATION

- 4.1 To the fullest extent permissible by law, CONTRACTOR shall save, indemnify and hold harmless The WCA, its agents, employees, consultants, officers, directors, affiliates, subsidiaries, insurers, and assigns from and against all claims, demands, causes of action, damages, suits, losses, costs, fines, penalties and assessments of every kind and character, including but not limited to attorney's fees, asserted by any person (including without limitation, The WCA's employees) or entity that is in any way attributable to or arising out of or in connection with:
- a. any failure, by CONTRACTOR, its agents, employees, officers, directors, subcontractors and assigns to comply with any federal, state or local law, ordinance, rule, regulation or restrictive covenant applicable to the Work including, but not limited to, those promulgated or enforced by the United States Environmental Protection Agency (USEPA), the Texas Natural Resource Conservation Commission (TNRCC), or any court or governing entity exercising appropriate jurisdictions:

- b. any bodily injury, illness, sickness, disease, or death or loss of or damage to property, real or personal, in any way attributable to, arising out of or in connection with, in whole or in part, any act or omission of CONTRACTOR, its agents, employees, officers, directors, subcontractors or assigns:
 - c. operation of law as a consequence of any other act or omission of CONTRACTOR, its agents, employees, officers, directors, subcontractors, or assigns or any person or entity directly or indirectly employed by them, for whose acts any of them may be liable, regardless of whether or not any of them has been negligent.
- 4.2. In any and all claims against The WCA or any of its agents, employees or consultants by any employee of CONTRACTOR, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 5.8.A shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.
- 4.3 The CONTRACTOR shall be held responsible for any damage to Customer's property, real or personal, which occurs by the CONTRACTOR or the CONTRACTOR's agent in the performance of the Contract. If The WCA, upon an independent investigation, finds that the CONTRACTOR has failed to completely reimburse the Customer for the damaged property, The WCA may pay the customer any monetary amount it deems necessary to make the Customer whole and deduct the same from the CONTRACTOR's monthly payment. The WCA also reserves the right to pay all fines, penalties, costs and assessments by any governmental authority and withhold such amounts from any payments becoming due to the CONTRACTOR from The WCA hereunder.

ARTICLE 5 - CONTRACT PRICE & PAYMENT PROCEDURES

- 5.1 On or before the 25th day of each month after the Work has been performed, CONTRACTOR shall submit to The WCA an Application for Payment accompanied by (a) the monthly report form attached hereto as Exhibit "____"; (b) an acknowledged, written statement by CONTRACTOR certifying that CONTRACTOR has fully and properly performed all Work described in and covered by the Application for Payment, that all insurance and Bonds required hereunder are in full force and effect, that all subcontractors and suppliers have been paid from previous requests, and the CONTRACTOR is not in default under any provisions of the Contract; and (c) any other data as in The WCA's sole opinion is necessary.
- 5.2 CONTRACTOR'S rate of compensation shall be determined based upon the Unit Prices stipulated in CONTRACTOR'S Proposal attached hereto as Exhibit "____". Within thirty

(30) days of The WCA's receipt of a complete Application for Payment containing all supporting data requested by The WCA, The WCA shall pay to CONTRACTOR the sum of the following:

- A. Monthly Unit Price proposal for curbside Refuse collection, including Bulky Waste and any applicable federal, state, or local taxes and solid waste fees, times the number of Units in the Contract Area, as defined in Article 5.3 herein.
- B. Monthly Unit Price proposal for curbside Yard Waste collection times the number of Units in the Contract Area, as defined in Article 5.3 herein.
- C. Monthly Unit Price proposal for curbside Recyclables collection times the number of Units in the Contract Area, as defined in Article 5.3 herein.
- D. Monthly price proposal for operation and maintenance of the Recycling Drop-Off Center.
- E. Monthly price proposal for Disposal of Refuse.
- F. Any approved additional services performed during the payment period.
- G. Monthly price proposal to provide services to Multi-Family Units and Designated Non-Residential Locations based on the following:
 1. Cost per Dumpster for Refuse times the number of Dumpsters required times the frequency of collection.
 2. Cost for centralized Recyclables pickup based on number of families or employees served.

Any such payments by The WCA shall be reduced by such amounts as The WCA may otherwise withhold or retain as provided in the Contract Documents.

- 5.3 Information regarding the number of Units in the Contract Area shall be obtained from the monthly report (the "Report") of occupied dwelling units prepared by Interfaith in The Woodlands, Texas, or such other data provider as the parties may hereafter agree in writing. Each party hereto shall be entitled to fully rely on information contained in such Report. The WCA shall have no liability for inaccuracies in such Reports and shall have no duty or obligation to independently verify information therein contained.

For purposes of calculating the amount of compensation which may be payable to CONTRACTOR in connection with CONTRACTOR'S Applications for Payment, the number of Units in the Contract Area shall be determined as follows:

- A. The number of Units for purposes of calculating compensation which may be due to CONTRACTOR in connection with CONTRACT'S first Application for Payment shall be the number of occupied dwelling units in the Contract Area as of December 31, 1995 as set forth in the Report.
- B. The number of Units for purposes of calculating compensation which may be due to CONTRACTOR in connection with all other Applications for Payment shall be the number of occupied dwelling units in the Contract Area according to the Report for the month immediately preceding the month for which the Application for Payment is submitted. By way of example, an Application for Payment received by The WCA in March 1996 for Work performed by CONTRACTOR in February 1996 will be paid, if payments are due, utilizing the number of occupied dwelling units indicated in the Report for January 1996.

After the award of the Contract, but prior to the Starting Date, The WCA will obtain and provide to CONTRACTOR the Report showing the number of Units in the Contract Area as of September 30, 1995. Thereafter and within ten (10) days after the end of each month, The WCA will obtain and provide to CONTRACTOR an updated Report showing the adjusted number of Units in the Contract Area. All Applications for Payment submitted by CONTRACTOR to The WCA shall refer to the proper number of Units as provided above.

- 5.4 The CONTRACTOR shall notify The WCA in writing within ten (10) days, of any discrepancy based on a CONTRACTOR audit of the number of Units. This notice shall include the nature of the disagreement, the address of the Unit in question, the type of service being provided, and the date such service began or ended.
- 5.5 If The WCA disputes any portion of the payment request, it shall, within thirty (30) days, furnish a detailed itemized explanation of such objection, which cites its authority under the Contract Documents to withhold such payments. If CONTRACTOR objects to such withholding within ten (10) days of its receipt of such written explanation, such disputed amounts shall be promptly submitted for resolution according to the Dispute Resolution Procedures. All undisputed amounts requested in an Application for Payment shall be timely paid as provided in Article 5 herein.

ARTICLE 6 - CONTRACTOR'S REPRESENTATIONS

- 6.1 As part of the incentive for The WCA to enter into the Contract, CONTRACTOR makes the following representations:
 - A. CONTRACTOR has familiarized himself with the nature and extent of the Contract Documents, Work, locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations, including but not limited to all rules, regulations, and

the restrictive Covenants governing the land within the jurisdiction of The WCA, that in any manner may affect cost, progress or performance of the Work.

- B. CONTRACTOR has made or caused to be made examinations, investigations and tests and studies of all reports and related data as he deems necessary for the performance of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are or will be required by CONTRACTOR for such purposes.
- C. CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.
- D. CONTRACTOR has given The WCA written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by The WCA is acceptable to CONTRACTOR.

ARTICLE 7 - DRAWINGS AND ADDENDA

7.1 The Addenda to the Contract includes the following:

ARTICLE 8 - MISCELLANEOUS

- 8.1 Terms used in the Contract which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.
- 8.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

- 8.3 The WCA and CONTRACTOR each binds himself, his partners, successors, assigns and legal representatives to the other party hereto, and his partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 8.4 The CONTRACTOR will be provided with one (1) set of Contract Documents. Additional sets may be obtained at the cost of printing.

IN WITNESS WHEREOF, the parties hereto have executed the Contract on the day and year first written above.

The Contract will be effective on _____, 19 ____.

ATTEST:

BOARD OF DIRECTORS,
THE WOODLANDS COMMUNITY ASSOCIATION,
INC., THE WOODLANDS, TEXAS

(Title)

(Title)

ATTEST:

CONTRACTOR:

(Title)

By _____

(Title)

By _____

(Title)

(Seal if bid is by a
Corporation)

APPROVED AS TO FORM

APPROVED BY:

**SOLID WASTE COLLECTION AND DISPOSAL SERVICES
FOR THE WOODLANDS COMMUNITY ASSOCIATION,
THE WOODLANDS, TEXAS**

GENERAL CONDITIONS

Table of Articles

1. Definitions
2. Preliminary Matters
3. Contract Documents
4. Bonds and Insurance
5. CONTRACTOR's Responsibilities
6. Change of Contract Price
7. Termination of Work
8. Dispute Resolution
9. Human Resource Provision
10. Independent Contractor Status
11. Force Majeure
12. Miscellaneous
13. Not to Sublet or Assign
14. Title Transfer
15. Attorney's Fees

ARTICLE 1 - DEFINITIONS

1.1 Wherever used in these General Conditions or in the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof.

A. Defined Terms:

1. **Addenda:** Written or graphic instruments issued prior to the Proposal submittal due date which clarify, correct, or change the Request for Proposal or the Contract Documents.
2. **Annual Contract Sum:** The total annual Proposal amount for all forms of collection (Refuse, Recyclables, Yard Waste), transport, and disposal or processing, calculated using the number of Units in the Contract Area. Prices shall include all applicable taxes and fees.

a. Total Monthly Single Family Residence Unit Price shall be the sum of:

1. Monthly Unit Price, curbside Refuse and Bulky Waste collection multiplied by total curbside Units in Contract Area
2. Monthly Unit Price, curbside Recyclables collection multiplied by total curbside units in Contract Area
3. Monthly price for operation and maintenance of the Recycling Drop-Off Center
4. Monthly Unit Price, Yard Waste collection multiplied by the total curbside Units in Contract Area
5. Monthly Unit Price, disposal, processing, or treatment of waste

b. Other Unit Price (Monthly Cost) shall be the sum of:

1. Multi-Family Residences
2. Designated Non-Residential Locations

c. Annual Contract Price shall be:

(Total Monthly Unit Price + Other Monthly Unit Price) multiplied by 12 months

3. **Application for Payment:** The form accepted by THE WCA which is to be used by CONTRACTOR in requesting progress or final payment and which is to include such supporting documentation as is required by the Contract Documents.
4. **Bonds:** Performance and Payment Bonds and other instruments of security.
5. **Bulky Waste:** Furniture, appliances, other household items too large for a Refuse container.
6. **Change Order:** A written order to CONTRACTOR signed by THE WCA authorizing an addition, deletion or revision in the Work, or an adjustment in the Contract Price issued after the Effective Date of Contract.
7. **Collection Schedule:** The days of collection as authorized by THE WCA.
8. **Contract:** Shall be the signed, written agreement between THE WCA and CONTRACTOR covering the Work to be performed by CONTRACTOR and other Contract Documents, Addenda, attachments and exhibits to the Contract and made a part thereof as provided therein.
9. **Contract Area:** The geographic boundaries of THE WCA within which services will be provided by the CONTRACTOR.

10. **Contract Documents:** The Contract, Addenda, Proposal (including any post-Proposal documentation submitted prior to the Notice of Award) when attached as an exhibit to the Contract, the Bonds, the General Conditions, the Special Provisions, together with all Modifications and Change Orders issued after execution of the Contract.
11. **Contract Price:** The moneys payable by THE WCA to CONTRACTOR under the Contract Documents as stated in the Contract.
12. **Contractor:** The person, firm or corporation with whom THE WCA has executed the Contract.
13. **Customer:** A resident of a Single Family Residence, or the manager of a Multi-Family Residence or Designated Non-Residential Locations, or their designees.
14. **Day:** A calendar day of twenty-four hours measured from midnight to the next midnight.
15. **Designated Non-Residential Location:** A non-residential location in the Contract Area specifically designated by THE WCA to receive collection and other solid waste services from the CONTRACTOR.
16. **Disposal:** Placement of solid waste into a properly permitted landfill or other facility used for final disposition of solid waste.
17. **Disposal Facility:** That facility identified by the CONTRACTOR in the Proposal for the acceptance of solid waste from THE WCA for the duration of the Contract.
18. **Effective Day of Contract:** The date indicated in the Contract on which it becomes effective, but if no such date is indicated, it means the date on which the Contract is signed and delivered by the last of the two parties to sign and deliver.
19. **Hazardous Waste:** Any solid waste identified or listed as hazardous waste by the USEPA but also any other item, pollutant or contaminant under any applicable federal, state, or local statute, regulation, rule, ordinance or amendments thereto, as amended, including household hazardous waste.
20. **Modifications:** (a) A written amendment of the Contract Documents signed by both parties or (b) a Change Order. A modification may only be issued after the Effective Date of the Contract.

21. **Multi-Family Residences:** Apartment buildings constructed to house more than one family; may also include townhouses and condominiums which do not receive curbside solid waste collection.
22. **Notice of Award:** The written notice by THE WCA to the apparent successful Proposer stating that upon compliance by the apparent successful Proposer with the conditions precedent enumerated therein, within the time specified, THE WCA will sign and deliver the Contract.
23. **Notice to Proceed:** A written notice to the CONTRACTOR issued and signed by THE WCA or its authorized agent stating the date on which the CONTRACTOR is to begin Work. The date set forth in this notice shall be considered as the official Starting Date.
24. **Payment Bond:** The security furnished by the CONTRACTOR which meets the requirements set forth herein to ensure that the resources are available to pay all subcontractors and other accounts payable in connection with provision of collection, transport, and disposal or processing services for THE WCA.
25. **Performance Bond:** Shall be defined as security furnished by the CONTRACTOR which meets the requirements set forth herein to ensure faithful performance of each and every term, provision and condition of the Contract.
26. **Processing:** Changing the nature of solid waste or separating solid waste to facilitate its re-use in lieu of disposal.
27. **Project:** The total scope specified in the Contract Documents of which the Work to be provided under the Contract Documents may be the whole or a part as indicated elsewhere in the Contract Documents.
28. **Proposal:** A properly signed and guaranteed written offer of the Proposer to perform the Work and to furnish the labor and materials at the unit prices quoted on the Proposal Form, under the terms and conditions set forth in the Contract Documents.
29. **Proposal Cost Forms:** That section of the Proposal Documents which the Proposer is required to complete as part of the Proposal submission, which includes the proposed Unit Prices, describes the Work, lists subcontractor, and Proposer qualifications.
29. **Proposal Documents:** Request for Proposal and advertisement, if any, instructions to Proposers, other Proposal information and requirements, Proposal

Cost Forms and Attachments, Contract and Bond forms, and the proposed Contract Documents, including any Addenda issued prior to receipt of Proposals.

30. **Proposer:** The individual, firm, partnership, corporation, association, or joint venture who prepares a Proposal in response to the Request for Proposals.
31. **Proposal Security:** Shall be defined as security furnished by the Proposer, which meets the requirements set forth herein, with its Proposal, as a guarantee that the Proposer will enter into a Contract for the work at the unit or lump sum price quoted in its Proposal, at the terms and conditions set forth in the Request for Proposals, and all attachments.
32. **Recyclables:** Newsprint, inserts, glass food and beverage containers, No. 1 Plastic including soft drink and liquor bottles, aluminum, bi-metal and steel or tin cans, No. 2 Plastic including milk jugs, corrugated cardboard and other items determined to be recyclable by THE WCA, and as further defined in the Recycling Special Provisions section of the Contract Documents.
33. **Recyclables Container:** Is defined as only that container designated and authorized by THE WCA based upon the container's depth, size, and material and identified solely for the purpose of Recyclables. It shall be subject to the collection guidelines pertaining to Recyclables.
34. **Recycling Drop-Off Center:** Current location in The Woodlands where recyclable materials may be dropped-off by citizens for transport to processing facilities.
35. **Refuse:** That portion of Residential Solid Waste, including Bulky Waste, that is discarded at the curb in or next to a Refuse container but which may exclude Recyclables and Yard Waste, if applicable.
36. **Residential Solid Waste:** Garbage and trash, including glass jars, bottles, aluminum cans, steel cans, plastic soda and liquor bottles, newspapers and inserts, plastic soda, milk and water bottles and other solid waste including yard waste. Residential solid waste shall not include Household Hazardous Waste (for example, paints, solvents, pesticides, acids, fuels); other hazardous wastes; used oil and oil filters; tires; medical waste; discarded building materials, trees, brush and other material resulting from the activities of building contractors; large quantities of sod, dirt and trash from land clearing; and other materials requiring special handling according to Texas Municipal Solid Waste Regulations (30 TAC 330).
37. **Single Family Residences:** Homes, townhomes, and condominiums which receive curbside solid waste collection.

38. **Special Wastes:** Any solid waste or combination of solid wastes that because of its quantity, concentration, physical or chemical characteristics, or biological properties requires special handling and disposal to protect the human health or the environment. Special wastes include household hazardous waste, grease and grit, used oil and oil filters, medical wastes, dead animals, lead acid batteries, tires, and any other materials listed in 30 TAC 330.2 under the definition of special wastes according to the Texas Municipal Solid Waste Regulations.
39. **Starting Date:** The first day on which Work is to be commenced by the CONTRACTOR, as set forth in the Notice to Proceed.
40. **Subcontractor:** An individual, firm or corporation having a direct Contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work.
41. **THE WCA:** The Woodlands Community Association, Inc., and its authorized agents.
42. **Unit:** Shall be defined as a Single Family Residence, a Multi-Family Residence, or a Designated Non-Residential Location unless otherwise specified by THE WCA.
43. **Unit Price:** The amount quoted on the Proposal Cost Forms to provide solid waste services to Single Family Residences, Multi-Family Residences and Designated Non-Residential Locations, which shall include Refuse, Yard Waste, and Recyclables Collection services, as indicated therein.
44. **Work:** All of the services, labor, equipment, and materials to be performed, provided, or furnished by CONTRACTOR as required by the Contract Documents.
45. **Yard Waste:** Grass, weeds, leaves, tree trimmings, plants, shrubbery prunings, and such other similar materials which are generated in the maintenance of yards and gardens, and are separated from other solid waste materials and placed in a designated collection area as defined in the Special Provisions. Yard Waste is further defined in the Yard Waste Special Provisions section of the Contract Documents.

ARTICLE 2 - PRELIMINARY MATTERS

2.1 Delivery of Bonds and Insurance Certificates

- A. When CONTRACTOR executes Contract with THE WCA, CONTRACTOR shall deliver to THE WCA such Bonds as CONTRACTOR may be required to furnish in accordance with Article 4.
- B. When CONTRACTOR executes Contract with THE WCA, CONTRACTOR shall deliver to THE WCA certificates (and other evidence of insurance requested by THE WCA) which CONTRACTOR is required to purchase and maintain in accordance with Article 4, and THE WCA shall deliver to CONTRACTOR certificates (and other evidence of insurance requested by CONTRACTOR) which THE WCA is required to purchase and maintain in accordance with Article 4.

2.2 Commencement of Contract & Notice to Proceed

The Contractor shall commence Work on the Starting Date without delay, and no work shall be performed by Contractor prior thereto.

2.3 Starting the Project

CONTRACTOR shall start to perform the Work on the date when the Contract Time commences to run, but no Work shall be done prior to the date on which the Contract Time commences to run.

ARTICLE 3 - CONTRACT DOCUMENTS: INTENT AND REUSE

3.1 Intent

- A. The Contract Documents comprise the entire Contract between THE WCA and CONTRACTOR concerning the Work. They may be altered only by a Modification.
- B. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. If, during the performance of the Work, CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, he shall report it to THE WCA in writing at once and before proceeding with the Work affected thereby; however, CONTRACTOR shall not be liable to THE WCA for failure to report any conflict, error or discrepancy in the Contract Documents unless CONTRACTOR had actual knowledge thereof or should reasonably have known them.
- C. It is the intent of the Contract Documents to describe a complete Project. Any Work that may reasonably be inferred from the Contract Documents as being required to

produce the intended result shall be supplied whether or not it is specifically called for, at no additional cost to THE WCA.

D. When words in the Contract Documents, which have a well-known technical or trade meaning, are used to describe Work, materials or equipment, such words shall be interpreted in accordance with such meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the code of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual or code in effect (on the effective date of the Contract), except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall change the duties and responsibilities of CONTRACTOR or THE WCA, or any of their agents or employees from those set forth in the Contract Documents. Following is the order in which the Contract Documents will be interpreted in the event there is a discrepancy or contradiction:

1. The Modification and Change Orders have precedence over
2. The Contract, which has precedence over
3. Special Provisions, which have precedence over
4. General Conditions.

E. The Contract Documents will be governed by the law of the place of the Project.

3.2 Re-use of Documents

Neither CONTRACTOR nor any Subcontractor, manufacturer, fabricator, supplier or distributor shall have or acquire any title to or ownership rights in any of the Contract Documents (or copies of any thereof); and they shall not re-use any of them on extensions of the Project or any other project without written consent of THE WCA and specific written verification or adaptation by THE WCA.

ARTICLE 4 - BONDS AND INSURANCE

4.2 Payment Bond

Upon Contract execution, the CONTRACTOR shall furnish to THE WCA a Bond with a corporate surety in the amount equal to 100 percent of the Annual Contract Sum, which shall be to ensure that the resources are available to pay all subcontractors and other accounts payable in connection with the Work. The Bond will not suffice for purposes of the Contract until the terms, conditions, and provisions of the Bond are approved by legal counsel for THE WCA. The CONTRACTOR shall pay all premiums chargeable for the

Bond. The Bond shall be valid and non-cancelable for the period of the Contract and shall be renewed annually upon Contract renewal or extension.

4.3 Performance Bond

Upon Contract execution, the CONTRACTOR shall furnish to THE WCA a Bond with a corporate surety in the amount equal to 100 percent of the Annual Contract Sum. The Bond will not suffice for purposes of the Contract until the terms, conditions, and provisions of the Bond are approved by legal counsel for THE WCA. The CONTRACTOR shall pay all premiums chargeable for the Bond. The Bond shall be valid and non-cancelable for the period of the Contract and shall be renewed annually upon Contract renewal or extension.

4.4 Insurance Requirements

A. CONTRACTOR shall purchase and maintain such comprehensive general liability and other insurance as will provide protection from claims set forth below which may arise out of or result from CONTRACTOR's performance of the Work and CONTRACTOR's other obligations under the Contract Documents, whether such performance of the Work is by CONTRACTOR, by any Subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

1. Claims under worker's or workmen's compensation, disability benefits and other similar employee benefit acts;
2. Claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees;
3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees;
4. Claims for damages insured by personal injury liability coverage which are sustained (a) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (b) by any other person for any other reason;
5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
6. Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle; and
7. Claims for damages because of bodily injury or death of any person arising out of operation of law.

4.5 Insurance Coverage

A. The CONTRACTOR further agrees to purchase and maintain during the life of the Contract, with an insurance company rated not less than "A" by A.M. Best,

acceptable to THE WCA, and authorized to do business in the State of Texas, the following insurance:

1. *Automobile Liability* - Bodily injury and property damage liability covering all owned, non-owned and hired automobiles for limits of not less than \$5,000,000 combined single limit - bodily injury and property damage.
2. *Comprehensive General Liability* - Contractual liability, bodily injury and property damage liability, as shall protect the CONTRACTOR and any subcontractor performing work under the Contract, from claims of bodily injury or property damage which arise from operations of the Contract whether such operations are performed by CONTRACTOR, any subcontractor or anyone directly or indirectly employed by either. The amounts of each insurance shall be not less than \$5,000,000 bodily injury and property damage combined single limits each occurrence/aggregate. This insurance shall include coverage for products or completed operations, personal injury liability and contractual liability.
3. *Worker's Compensation and Employers Liability* - The CONTRACTOR shall meet the statutory requirements of the State of Texas with limits of employer's liability coverage for accident and/or disease of not less than \$500,000 for any one employee/\$1,000,000 for any one accident under all policies except workers compensation.

The Woodlands Community Association, Inc. shall be named as an additional insured for operations or services rendered under the Contract. All policies shall further include a waiver of subrogation in favor of The Woodlands Community Association, Inc. The CONTRACTOR's insurance shall be primary of any self funding and/or insurance otherwise carried by THE WCA for all loss or damages arising from the CONTRACTOR's operations under the Contract.

4.6 Other Insurance Requirements

- A. THE WCA's Liability Insurance: THE WCA shall be responsible for purchasing and maintaining THE WCA's own liability insurance and, at THE WCA's option, may purchase and maintain such insurance as will protect THE WCA against claims which may arise from operations under the Contract Documents.
- B. The CONTRACTOR is advised that if any part of the work under the Contract is sublet, the subcontractor shall be required to meet all insurance requirements as listed above. However, this will in no way relieve the CONTRACTOR from meeting all insurance requirements or otherwise being responsible for the subcontractor.

- C. The CONTRACTOR shall not commence any work in connection with the Contract until it has obtained all of the required types of insurance and such insurance has been approved by THE WCA. Nor shall the CONTRACTOR allow any subcontractor to commence work on its subcontract until all similar insurance required of the subcontractor has been obtained and approved.
- D. THE WCA shall be exempt from, and in no way liable for any sums of money which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the CONTRACTOR and/or subcontractor providing such insurance.
- E. In case any class of employees engaged in hazardous work under the Contract at the site of the Project is not protected under the Worker's Compensation Statute, the CONTRACTOR shall provide, and cause each subcontractor to provide, adequate insurance satisfactory to THE WCA, for protection of their employees not otherwise protected.
- F. All certificates of insurance required to be purchased by CONTRACTOR pursuant to Article 4 shall be filed in accordance with Paragraph 2.1.B. Certificates shall be acceptable to THE WCA and shall contain a provision that coverages afforded under the policies will not be canceled, materially changed or renewal refused until at least thirty (30) days' prior written notice has been given to THE WCA by certified mail.

ARTICLE 5 - CONTRACTOR'S RESPONSIBILITIES

5.1 Concerning Subcontractors

- A. CONTRACTOR shall disclose to THE WCA any and all subcontractors planned to be used under the Contract and shall not employ any Subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom THE WCA may have reasonable objection. A Subcontractor or other person or organization identified in writing to THE WCA by CONTRACTOR prior to the Notice of Award and not objected to in writing by THE WCA prior to the Notice of Award will be deemed acceptable to THE WCA. If THE WCA after due investigation has reasonable objection to any Subcontractor, other person or organization proposed by CONTRACTOR after the Notice of Award, CONTRACTOR shall submit an acceptable substitute and the Contract Price shall be increased or decreased by the difference in cost occasioned by such substitution, and an appropriate Change Order shall be issued. CONTRACTOR shall not be required to employ any Subcontractor, other person or organization against whom CONTRACTOR has reasonable objection.

- B. CONTRACTOR shall be fully responsible for all acts and omissions of his Subcontractors and of persons and organizations directly or indirectly employed by them and of persons and organizations for whose acts any of them may be liable to the same extent that CONTRACTOR is responsible for the acts and omissions of persons directly employed by CONTRACTOR. Nothing in the Contract Documents shall create any contractual relationship between THE WCA and any Subcontractor or other person or organization, except as may otherwise be required by law. THE WCA may furnish to any Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to CONTRACTOR on account of specific Work done.
- C. All Work performed for CONTRACTOR by a Subcontractor will be pursuant to an appropriate Contract between CONTRACTOR and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of THE WCA.

5.2 Taxes and Fees

- A. The CONTRACTOR shall pay all taxes and fees which may be chargeable against the performance of the work or incident to the Contract by any government agency, including, but not limited to F.I.C.A., social security, and disposal fees, directly to the appropriate governmental agencies. THE WCA shall not be liable in any way for CONTRACTOR's failure to pay such taxes and fees and CONTRACTOR shall save, indemnify and hold THE WCA, their affiliates, agents, officers, directors, employees, and assigns free and harmless from and against all claims, demands, causes of action, suits or other litigation in connection with CONTRACTOR's failure to report or pay such taxes and fees. No additional compensation will be paid to CONTRACTOR for taxes or fees.
- B. Patent Fees and Royalties: The CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work.

5.3 Safety and Protection

- A. CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The Contractor shall appoint a qualified, experienced safety representative whose duties shall be the prevention of accidents and the maintaining and supervising of the safety precautions and programs.
- B. CONTRACTOR shall comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss.

5.4 Compliance with Laws and Ordinances

- A. The CONTRACTOR shall give notice and comply with all applicable, local, state and federal ordinances, statutes, laws, rules and regulations applicable to the work or governing the collection, transportation and disposal of Refuse, Yard Waste and Recyclables as well as other regulations and restrictive covenants of THE WCA. No plea of misunderstanding will be considered on account of ignorance thereof.
- B. The CONTRACTOR shall be in compliance with all applicable federal, state and/or local laws regarding employment practices. Such laws will include, but shall not be limited to workers' compensation, the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA) and all OSHA regulations applicable to the work.
- C. If the CONTRACTOR discovers any provisions in the specifications or Contract Documents which are contrary to or inconsistent with any law, ordinance or regulation, they shall immediately report it in writing to THE WCA.
- D. Except where otherwise expressly required by applicable laws, ordinances, rules and regulations, THE WCA shall not be responsible for monitoring CONTRACTOR's compliance with any laws, ordinances, rules or regulations.

5.5 Assignment

- A. The obligations of the CONTRACTOR pursuant to the Contract Documents are not to be transferred, sub-contracted or assigned to any person or organization without the express written consent of THE WCA.
- B. In the event of any such assignment, the assignee shall comply with any conditions that THE WCA may reasonably require for assignment of the Contract, and shall accept such assignment and perform all work and other obligations of the CONTRACTOR as fully as if the Contract were originally made by the assignee. Any such assignment shall not relieve or excuse the CONTRACTOR from responsibility for performance to THE WCA in the event the assignee does not fully perform all work and other obligations of the CONTRACTOR under the Contract.

5.6 Continuing the Work

CONTRACTOR shall carry on the Work and maintain the performance of the Work during all disputes or disagreements with THE WCA. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as CONTRACTOR and THE WCA may otherwise agree in writing.

5.7 Equipment Storage

The CONTRACTOR shall be responsible for locating and providing storage areas for all collection equipment. The equipment storage shall comply with all local and state ordinances throughout the Contract period. Storage areas shall not be located in the Contract Area. Equipment shall not be stored in the Contract Area overnight.

5.8 Permits

CONTRACTOR shall obtain and pay for all permits and licenses.

ARTICLE 6 - CHANGE OF CONTRACT PRICE

- 6.1 The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at his expense without change in the Contract Price.
- 6.2 The fees which may be charged by the CONTRACTOR for the second and subsequent years of the term of the Contract shall be adjusted upward or downward to reflect changes in the cost of operations, excluding capital costs, as reflected by fluctuations in the Consumer Price Index for Urban Wage Earners and Clerical Workers (All Items) and the Consumer Price Index for Urban Wage Earners and Clerical Workers, Expenditures Category "Gasoline", both as published by the U.S. Department of Labor, Bureau of Labor Statistics. As of the last day of the first year of the Contract and every twelve months thereafter (the "Rate Modification Date"), the fees shall be increased or decreased for the ensuing twelve-month period in a percentage amount equal to 100 percent of the net percentage change of the All Items Index during the twelve month period preceding each Rate Modification Date. This rate modification will only be applicable to labor and fuel costs during the twelve months preceding the rate modification date. Notwithstanding the foregoing, the rate shall not adjust during any year by more than 5% of the rate for the preceding year.
- 6.3 It is the responsibility of the CONTRACTOR to initiate any and all rate modifications. As soon as possible after a Rate Modification Date, the CONTRACTOR shall send to THE WCA a comparative statement setting out for both the All Items Index and the Gasoline Index:
- A. The index value on the Rate Modification Date preceding the date of the statement.
 - B. The index value for the date one year prior to said Rate Modification Date.
 - C. The net percentage change.
 - D. The composite percentage change equal to the net percentage change in the All Items Index plus 10% of the net percentage change in the Gasoline Index.
 - E. The increase or decrease in the fees which may be charged by the CONTRACTOR.

- 6.4 On the next billing date after the receipt of the comparative statement, THE WCA shall pay to the CONTRACTOR or the CONTRACTOR shall credit THE WCA, as the case may be, a lump sum equal to any increase or decrease applicable to that portion of the current period which has elapsed and, thereafter, the fees charged by the CONTRACTOR shall be modified to reflect any change until the next annual comparative statement is received by THE WCA.

ARTICLE 7 - TERMINATION CLAUSES

7.1 For Cause

THE WCA may terminate the Contract for cause upon any of the following events of default:

- A. If, in THE WCA's sole discretion, CONTRACTOR fails to fulfill or maintain in a timely and proper manner any obligations, duties or provisions of or under the Contract and, unless otherwise provided herein, CONTRACTOR shall fail to cure such default within thirty (30) calendar days of its receipt of written notice from THE WCA specifying the respects in which CONTRACTOR has failed to perform. If the default is one that cannot be cured within that period, CONTRACTOR shall provide THE WCA with a schedule of cure within fifteen (15) calendar days of its receipt of THE WCA's notice of default, shall begin action to cure the default within said thirty (30) calendar days, and shall diligently proceed to cure the default. THE WCA may accept CONTRACTOR's schedule of cure, may make a written demand that the CONTRACTOR cure the default within a time period set by THE WCA, or may terminate the Contract at the end of the thirty (30) day default period.
- B. If CONTRACTOR is adjudicated a voluntary or involuntary bankrupt, or a petition is filed by or against CONTRACTOR to declare CONTRACTOR bankrupt, or if CONTRACTOR is subject to the appointment of a receiver or trustee and fails to have the receiver or trustee removed within sixty (60) days, or if any assignment of CONTRACTOR's property shall be made for the benefit of creditors, or if CONTRACTOR becomes insolvent, or is unable to pay its debts as they become due.
- C. If CONTRACTOR fails to provide and maintain the performance or payment bond as required by the Contract; fails to obtain or maintain the insurance policies and endorsements as required by the Contract; or fails to provide the proof of insurance as required by the Contract.

7.2 Failure to Collect

The foregoing cure period described in Section 7.1.A shall not apply to an event of default resulting from CONTRACTOR's failure to collect solid waste in accordance with the Contract, hereafter referred to as a "Scheduled Pickup". A Scheduled Pickup is defined as

a collection of Residential Solid Waste as required by the Contract from a Unit, Multi-family Residence, Designated Non-Residential Location, on the designated day, or trading out containers at the Recycling Drop-Off Center when full in accordance with the Contract Documents. To cure such default, the CONTRACTOR must return to the Unit or location and perform or complete the Scheduled Pickup within twenty-four (24) hours of its receipt of written or oral notification by THE WCA or the Customer. Should CONTRACTOR fail to do so within the stated time, THE WCA, in its sole discretion, may exercise any one or more of the following rights and remedies:

- A. THE WCA may terminate the Contract, thus making the Performance Bond immediately available;
- B. THE WCA may hire a third party to provide the collection services and backcharge the CONTRACTOR or seek reimbursement from CONTRACTOR for the costs thereof including, but not limited to, costs for supervision, labor, equipment, accounting and administrative functions;
- C. THE WCA may require CONTRACTOR to reimburse Customers for damages associated with collection services or lack of collection services or may deduct from any amounts due to CONTRACTOR the cost of such damages and pay the customer directly;
- D. THE WCA may enforce specific performance; and/or,
- E. THE WCA may seek such remedies as are provided by law.

7.3 Specific Performance

THE WCA and CONTRACTOR acknowledge that the failure of CONTRACTOR to collect solid waste as required by the Contract would damage THE WCA in a way that could not be adequately compensated by monetary damages. The parties therefore agree that the breach or threatened breach of such obligations of the CONTRACTOR may appropriately be restrained by an injunctive order granted by a court of appropriate jurisdiction, and that THE WCA may seek an order from a court of appropriate jurisdiction requiring CONTRACTOR to specifically perform as required by the Contract.

7.4 Administrative Fee - Failure to Collect

THE WCA shall charge and the CONTRACTOR shall pay THE WCA an administrative fee to compensate THE WCA for its administrative costs associated with CONTRACTOR's failure to collect solid waste as required by the Contract. Said fee shall be \$250 per day when the CONTRACTOR fails to collect solid waste from ten (10) or less Unit and \$1,500 per day when the CONTRACTOR fails to collect solid waste from more than ten (10) Units but less than one thousand five hundred (1,500) Units. Failure by the CONTRACTOR to

collect solid waste as required by the Contract from one thousand five hundred (1,500) Units or more shall be considered a technical default of the Contract. The parties stipulate that such sums are reasonable and not to be construed as a fine or penalty, and shall be in addition to any other remedy THE WCA may have at law, in equity or under the Contract.

7.5 Cancellation of Orders and Subcontract

Upon the effective date of termination as contained in the notice, the CONTRACTOR shall, unless the notice directs otherwise, immediately discontinue all service in connection with the Contract and shall proceed to cancel promptly all existing orders and subcontracts insofar as such orders or subcontracts are chargeable to the Contract. As soon as practicable after receipt of notice of termination, the CONTRACTOR shall submit a statement to THE WCA showing in detail the services performed under the Contract to the date of termination. THE WCA agrees to compensate the CONTRACTOR for that portion of the services actually performed under the Contract and not previously paid, net of any charges or deductions.

7.6 Termination

THE WCA is will issue a written notice of if it intends to terminate the Contract. Any termination of the Contract shall not relieve the CONTRACTOR of the obligation to pay any fees, taxes or other charges then due to THE WCA or any other party incident to the Contract, nor relieve the CONTRACTOR of the obligation to file any monthly, quarterly or annual reports covering the period to termination nor relieve the CONTRACTOR from any claim for damages previously accrued or then accruing against the CONTRACTOR.

7.7 Where CONTRACTOR's services have been so terminated by THE WCA, the termination shall not affect any rights or remedies of THE WCA against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by THE WCA will not release CONTRACTOR from liability.

7.7 Contractor May Stop Work or Terminate

If, through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety (90) days by THE WCA or under an order of court or other public authority, or THE WCA fails for thirty (30) days to pay CONTRACTOR any sum not in dispute and resolved pursuant to Article 9 of the General Conditions, then CONTRACTOR may, upon fourteen (14) days' written notice to THE WCA, and provided THE WCA does not remedy such suspension or failure within that time, terminate the Contract and recover from THE WCA payment. In lieu of terminating the Contract and without prejudice to any other right or remedy, if THE WCA has failed for thirty (30) days to pay CONTRACTOR any sum finally determined to be due, CONTRACTOR may upon seven (7) days' written notice to THE WCA stop the Work until payment of all such amounts due CONTRACTOR, including interest thereon.

ARTICLE 8 - DISPUTE RESOLUTION PROCESS

Any controversy, claim, dispute, or other matter concerning the performance of the CONTRACT or the interpretation of the Contract, shall be first submitted in writing to THE WCA Board of Directors or its designated agent. The Board of Directors or its designated agent shall thereafter render a written decision to the CONTRACTOR within thirty (30) days from the date of such submission. Any controversy, claim or dispute not resolved by such decision which relates to the Contract shall be submitted to arbitration pursuant to the rules of the American Arbitration Association. Any judgement or award may be entered in any court having jurisdiction thereof. Such proceeding shall be held in Houston, Texas. Notwithstanding the above, this Article 9 shall not apply to or limit in any way THE WCA's right to pursue immediate injunctive relief as otherwise provided in these General Conditions or THE WCA's ability to terminate the Contract as provided in these General Conditions.

ARTICLE 9 - HUMAN RESOURCE PROVISIONS

9.1 Character and Conduct of Employees

- A. The Contractor's employees who normally and regularly come into direct contact with the public shall bear some means of individual identification such as uniform with name badges, name tags or identification cards.
- B. The CONTRACTOR shall assure that employees serve the public in a courteous, helpful and impartial manner. All employees of the CONTRACTOR in both field and office shall refrain from belligerent behavior and/or profanity. Correction of any such behavior and language shall be the responsibility of the CONTRACTOR.
- C. In the event a report is received alleging an employee(s) of the CONTRACTOR was wanton, discourteous, belligerent, profane or in any way intimidating, either physically or verbally, the CONTRACTOR shall submit a written report to THE WCA outlining the complete details of the incident. Said report shall include the nature of the incident, time, date and location, and name, address and telephone number of the person alleging the violation. The report shall also include the name and title of the employee and what disciplinary action, if any, was taken. If an employee of the CONTRACTOR is the subject of repeated or egregious allegations of the type described above, THE WCA may request that the employee be barred from further work for the CONTRACTOR in connection with the Contract. Upon THE WCA's request, the CONTRACTOR shall, within ten (10) calendar days, comply with THE WCA's request for the duration of the Contract Time.
- D. The CONTRACTOR's employees shall make collection with as little noise and as little disturbance to the Customer as possible.

- E. No employee shall disturb or otherwise interfere with property that is impertinent to the proper execution of his duties.
- F. Care shall be taken to prevent damage to property, including lawns, shrubs, flowers and other plants.

ARTICLE 10 - INDEPENDENT CONTRACTOR STATUS

10.1 The CONTRACTOR shall at all times be and hold itself out to the public as an independent CONTRACTOR working on behalf of THE WCA. The CONTRACTOR is not an agent, employee, or servant of THE WCA, nor shall anything herein be construed as creating a partnership, agency, joint venture, or other similar relationship between THE WCA and CONTRACTOR, and CONTRACTOR shall not claim any right arising from such other status. The CONTRACTOR shall not represent to anyone that its relationship with THE WCA is other than that of an independent CONTRACTOR, and THE WCA and the CONTRACTOR may so inform the parties with whom they come into contact and may take other reasonable and responsible steps to carry out the intent of this paragraph. The CONTRACTOR shall have the sole discretion to determine the manner in which the services and work performed in connection with the Contract are to be performed, save and except that the same must be performed in accordance with the Contract. Nothing in the Contract shall authorize CONTRACTOR to assume or create any obligation or responsibility whatsoever, expressed or implied, on behalf of, or in the name of THE WCA.

ARTICLE 11 - FORCE MAJEURE

11.1 It is mutually understood and agreed that the CONTRACTOR shall be relieved of its obligations under the Contract during any period or periods of time when acts of God, war or public enemy render impossible its performance under the Contract. In the event of such a Force Majeure, the CONTRACTOR shall give THE WCA prompt telephone notification followed by written notice of the particulars and estimated duration of said Force Majeure. During such period or periods of time, a deduction in the proportional charge for collection and removal of Refuse, Yard Waste, Bulky Waste and/or Recyclables at the prevailing rates shall be made; provided, however, that the CONTRACTOR must make a reasonable effort to resume service as soon as possible in the event that an act of God or other catastrophe terminates or reduces service. **Strikes, slowdowns, walkouts, lockouts, industrial disturbances or other disputes are not excused under this provision.** In the event that any of the aforementioned should occur, the CONTRACTOR will be held responsible for meeting its obligations under the Contract.

ARTICLE 12 - MISCELLANEOUS

12.1 Giving Notice

All notices, requests and demands shall be given in writing and (except as otherwise expressly specified herein) shall be deemed to have been given to or made upon the respective parties hereto, when delivered by the mails or delivered by confirmed facsimile, addressed to any party hereto at its address given below (or, in the case of facsimile messages, to the facsimile number of such party given below) or delivered by messenger or courier to the following addresses:

Address of Contractor: (include facsimile number)

Address for THE WCA:

Street Address

Mailing Address

WCA
9450 Grogan's Mill Rd.
The Woodlands, TX 77380
Facsimile Number: (713) 364-7957

WCA
P.O. Box 7859
The Woodlands, TX 77387-7859

12.2 Notice of Claim

Should THE WCA or CONTRACTOR suffer injury or damage to his person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim shall be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph shall not be constructed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.

12.3 THE WCA Not Liable for Delays

It is further expressly agreed that in no event shall THE WCA be liable for or responsible to the CONTRACTOR, any subcontractor or to any other person for or on account of any stoppages or delay in the work herein provided for by injunction or other legal or equitable proceedings or on account of any delay for any cause over which THE WCA has insufficient control to cause a different result.

12.4 Change Orders and Modifications

Any Change Orders or Modifications to the Contract must be mutually agreed upon by the parties and be incorporated by written amendment(s) to the Contract. The Board of Directors of THE WCA shall have the authority to change or modify the Contract on behalf of THE WCA.

12.5 Waiver

A waiver of any breach of any provision of the Contract shall not constitute or operate as a waiver of any breach of such provision or any other provision, nor shall any failure to enforce any provision hereof operate as a waiver of such provisions or any other provision.

The failure of THE WCA at any time to enforce or to object to a failure or refusal to perform any term, condition, or covenant of the Contract, or to exercise any option herein given, or to require at any time performance by the CONTRACTOR of any term, condition or covenant hereof, shall in no way constitute a waiver of any subsequent breach, or effect the validity of the Contract or any part thereof or the right of THE WCA thereafter to enforce the same, but shall apply only to the specific instance to which the waiver is directed.

12.6 Law to Govern

The Contract shall be governed by and construed and enforced in accordance with the laws of the State of Texas. The Contract is performable in Montgomery County, Texas, and therefore the parties agree that venue for any dispute under the Contract is proper in that county, except as otherwise set forth herein.

12.7 Entirety of Contract: Titles of Sections

The Contract embodies the entire Contract between THE WCA and the Contractor. The section headings inserted herein are for convenience only, and are not intended to be used as aids to interpretation and are not binding on the parties. -

All exhibits, attachments, annexed instruments and Addenda referred to in the Contract Documents shall be considered a part of the Contract for all purposes with the same force and effect as if copied at full length therein.

12.8 Severability

The invalidity of one or more of the phrases, sentences, clauses or sections contained in the Contract shall not affect the validity of the remaining portion of the Contract so long as the material purposes of the Contract can be determined and effectuated.

12.9 Approvals

Notwithstanding anything herein which may be to the contrary, all approvals or consents required or permitted pursuant to the Contract shall be in writing in order to be considered valid and effective.

12.10 Buy-Out-Clause

If in the event, the successful proposer and the CONTRACTOR sells, transfers or relinquishes, whether voluntarily or by operation of law, his ownership interest in the corporation, the partnership or proprietorship identified in either the Proposal or the Contract, or substantially all the assets of such are sold or transferred voluntarily or otherwise, the Contract shall terminate without necessity of dispute resolution procedures unless THE WCA shall agree to continue with the corporation, partnership or proprietorship after the change of control or disposition of assets. The successful proposer and CONTRACTOR shall promptly notify THE WCA of any actual or proposed change in, transfer of or acquisition by another party of control of said corporation, partnership, or proprietorship. For purposes of this document, the word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. Any approval by THE WCA of transfer of ownership or control shall be contingent upon the perspective controlling party becoming a signatory to the Contract and otherwise complying with all the terms and conditions herein. No sale, transfer, or acquisition by another party of control of said corporation, partnership, or proprietorship shall be approved unless the perspective controlling party submits a performance bond satisfactory to THE WCA and in the amount specified under the Contract.

12.11 Successors and Assigns

The Contract shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto; provided, however, this provision shall not be deemed to authorize the assignment or other transfer of the Contract which may only be accomplished as expressly provided in the Contract.

12.12 Additional Service

Pursuant to the Contract, no Customer may be provided additional services by the CONTRACTOR which are outside the scope of the Contract. The CONTRACTOR shall not charge any Customer for services provided by THE WCA under the terms of the Contract. Likewise, THE WCA shall not be responsible to the CONTRACTOR or the Customer for any additional services provided at the request of the Customer by the CONTRACTOR.

ARTICLE 13 - NOT TO SUBLET OR ASSIGN

13.1 The CONTRACTOR shall constantly give his personal attention to the faithful prosecution of the Work, shall keep the same under his personal control, shall not assign the Contract or sublet the Work or any part thereof without the previous written consent of THE WCA, and shall not assign any of the moneys payable under the Contract, or his claim thereto, unless by and with the written consent of THE WCA and the Surety on the Contract Bonds. Any assignment or subletting in violation hereof shall be void and unenforceable.

13.2 The CONTRACTOR shall be responsible for all acts of subcontractors and for all Contract work regardless of any subcontracts. All interests of THE WCA in work of subcontractors shall be coordinated through the CONTRACTOR.

ARTICLE 14 - TITLE TRANSFER

14.1 The title to the solid waste collected by the CONTRACTOR shall pass to the CONTRACTOR when the solid waste is placed in the collection vehicle of the CONTRACTOR.

ARTICLE 15 - ATTORNEY'S FEES

15.1 Any party hereto who is the prevailing party in any legal proceeding brought under or with relation to the Contract shall be entitled to recover court costs and reasonable attorney's fees from the non-prevailing party.

**SOLID WASTE COLLECTION AND DISPOSAL SERVICES
FOR THE WOODLANDS COMMUNITY ASSOCIATION, INC.
THE WOODLANDS, TEXAS**

SPECIAL PROVISIONS

- Article 1 - General
- Article 2 - Refuse Collection
- Article 3 - Yard Waste Collection
- Article 4 - Recyclables Collection
- Article 5 - Bulky Item Collection
- Article 6 - Customer Complaints and Non-Performance

ARTICLE 1 - GENERAL

1.1 Schedules, Routes and Public Information

- A. The CONTRACTOR shall submit detailed route maps and schedule of collection days to THE WCA within sixty (60) days prior to implementation of service. Those routes will be documented on detailed route maps which show the area to be collected, the starting point for collection, the exact direction of travel, and order of travel of streets to be collected.
- B. Thirty (30) days prior to implementation of service, The CONTRACTOR shall be responsible for providing all Customers with service schedules and other pertinent information, such as the type of services provided and container or material restrictions. Notice shall be made in writing to each individual Customer, and delivered using door hangers, and at least one other printed form of notification. THE WCA intends to take reasonable steps to make available to the CONTRACTOR its own means of publicizing routing and scheduling information, including press releases and newsletter.
- C. The CONTRACTOR shall notify THE WCA within thirty (30) days prior to implementation of any change in routes or schedules. All such changes must be approved by THE WCA and documented in the same detail as the original maps supplied by the CONTRACTOR.

- D. The CONTRACTOR shall notify all affected locations or Units within two (2) weeks prior to implementation of any change schedules. Notice shall be made in writing to each individual Customer, and delivered using door hangers, and at least one other printed form of notification. Notification by notice attached to the container is not sufficient. THE WCA intends to take reasonable steps to make available to the CONTRACTOR its own means of publicizing routing and scheduling information, including press releases and newsletter.
- E. The CONTRACTOR shall be responsible for providing new residents with service schedules and other pertinent information, such as type of services provided and container or material restrictions. Such notification shall be by a method approved by THE WCA.

1.2 Public Education/Public Relations

- A. It is the CONTRACTOR's sole responsibility to notify customers of public education and community outreach programs. To ensure coordination of public information, all materials and information that will be disseminated to Customers must be pre-approved by THE WCA. It is the CONTRACTOR's responsibility to coordinate production and dissemination schedules to allow for reasonable review time by THE WCA, for preparation of revisions, for coordination of messages, and to meet THE WCA publication deadlines, as applicable.
- B. The public education program shall include the following information on recycling and waste reduction, in support of The Woodland's, county's, and state's waste reduction programs and goals:
 - 1. Development and distribution of brochures and literature twice yearly which promote waste reduction and recycling, yard waste minimization and composting, and other solid waste subjects selected by THE WCA. The CONTRACTOR should specifically address information pertinent to solid waste collection including frequency and dates of collection and types of collection services provided. It is mandatory that the CONTRACTOR provide information to customers identifying and defining household hazardous wastes and special wastes (medical wastes, used oil and oil filters, lead acid batteries, and tires) that should not be commingled with Refuse.
 - 2. Development and implementation of educational programs to be presented twice yearly at the direction of THE WCA that encourage Customers to properly containerize their Refuse and other materials and set it out at the proper time and place.

1.3 Service Frequency

The CONTRACTOR shall provide regularly scheduled, service on either a once-per-week, or twice-per-week, as determined during Contract negotiations, schedule for Refuse, Yard Waste and Recyclable collections on the same day from the curb (or other Designated Collection Area) to each Unit within the Contract Area. Bulky Waste collection shall be on an as-needed basis, within one week of notification of need by the customer. All items shall be placed by customers at curbside by 7:00 a.m. on the designated collection day.

1.4 Days of Collection

- A. The days of collection will be on a consistent schedule throughout the Contract Area. THE WCA will notify the CONTRACTOR of required changes not less than thirty (30) days prior to the start of services.
- B. Scheduled days of collection are limited to Monday through Friday. No regularly scheduled collection shall be allowed on Saturday or Sunday without the prior approval of THE WCA.

1.5 Holidays

- A. Within ten (10) working days prior to the Starting Date, the CONTRACTOR shall submit to THE WCA its observed holidays for the remainder of that calendar year. Holiday schedules for following years must be submitted by the CONTRACTOR by November first preceding the new calendar year. All such schedules shall include days and dates of holiday make-up collections.
- B. Collection frequencies shall not be reduced on holiday weeks, but collections shall be accomplished Monday through Friday only.

1.6 Office and Equipment

The CONTRACTOR shall provide all equipment necessary for the effective collection and removal of Refuse, Yard Waste and Recyclables. CONTRACTOR agrees to provide office and effective maintenance services and to keep all equipment clean, neat in appearance, and in good repair.

1.7 Care and Diligence

- A. The CONTRACTOR shall exercise the utmost care and diligence in the performance of the Work required by the Contract Documents. Every effort must be made to prevent spilling, scattering or dropping solid waste during the collection process. However, in the event that solid waste is spilled, scattered or dropped, the collector shall immediately clean up the material before leaving the location of the spilling, scattering or dropping.

- B. The CONTRACTOR shall be solely responsible for all damages to containers and property resulting from the CONTRACTOR's actions or omissions.

1.8 Collection Vehicles

- A. The CONTRACTOR shall provide and maintain during the entire period of the Contract a fleet of solid waste collection vehicles sufficient in number and capacity to perform the work and render the service required by the Contract. The vehicles must contain the residential Refuse, Yard Waste, Bulky Waste and Recyclables so that no material is spilled, leaked, or blown from the vehicle during its transit to the identified disposal site. The fleet must be sufficient to handle the special requirements of adverse weather and holiday overloads.
- B. The CONTRACTOR's vehicles and other equipment must be clearly identified. This identification shall be affixed to each vehicle and piece of equipment. All vehicles and equipment used in the provision of collection and removal service shall be in good repair, clean, well-maintained and free of excessive noise, odor, or emissions.
- C. The CONTRACTOR shall maintain collection equipment in good repair at all times. All parts and systems of the collection equipment shall be operated and maintained properly. Any leakage or spills of fuels, lubricants, or oil from or by collection vehicles shall be cleaned up immediately before leaving the location of the spill or leak and immediately reported to THE WCA. CONTRACTOR shall take reasonable care to prevent damage to Refuse containers during collection. It shall be the CONTRACTOR's responsibility to repair or replace property damaged by the CONTRACTOR. The CONTRACTOR shall save, defend, indemnify, and hold THE WCA harmless from and against any claims, demands, costs, suits, and liabilities asserted by any individual or entity for injuries to persons or damage to property arising in any way from or incident to the breakdown or disrepair of any of CONTRACTOR's vehicles and other equipment or any leakage, spills of fuels, lubricants, oil, chemicals, emissions, noise, or pollutants discharged therefrom.
- D. The CONTRACTOR shall provide THE WCA with a list of all equipment that shall be used in fulfilling the Contract and shall notify THE WCA of additions or deletions as they occur. THE WCA reserves the right to monitor the performance of the Contractor's duties, including the routes and collections made, Customer reports, trips to identified Disposal Facilities and other destinations, the content of individual loads or portions of loads disposed of at identified Disposal Facilities, and the Contractor's records at any time, in order to ensure the Contractor's compliance with the Contract.

1.9 Prohibition on Commingling

Refuse, Yard Waste, Recyclables and other materials collected from the Collection Area shall not be mixed or commingled with Refuse, Yard Waste, Recyclables or other materials from other collection routes. Only those materials collected from Units, Multi-family Units, or Designated Non-Residential Locations within the

Contract Area will be allowed to be disposed of under the Contract, unless specially authorized by THE WCA (such as removal of disaster debris.) Recyclables, Yard Waste, Special Waste, and Household Hazardous Waste shall not be commingled with Refuse; and disposal of Recyclables, Yard Waste, Special Waste, and Household Hazardous Waste in the identified landfill is prohibited.

1.10 Noise Limitations

The CONTRACTOR shall not operate or permit to be operated a Refuse collecting vehicle which when collecting or compacting exceeds a sound level of 70 dB(A) at a distance of 10 feet from any surface of the collecting or compacting unit.

1.11 Non-Residential Collections

The CONTRACTOR shall provide collection service to specifically Designated Non-Residential Locations. These may include but are not limited to fire stations or other public facilities or public buildings. (A detailed listing of these facilities is included as an Attachment _____ to the Contract). Each Designated Non-Residential Location shall be counted as one (1) Unit. However, all Designated Non-Residential Locations will be billed individually.

1.12 Time of Collection

The CONTRACTOR shall not start materials collection prior to 7:00 a.m. and may not continue collections after 7:00 p.m. In an emergency, the CONTRACTOR may request authorization from THE WCA to work beyond 7:00 p.m.

1.13 Disposal/Processing

Prior to the commencement of services hereunder, the CONTRACTOR shall identify a solid waste disposal facility or landfill for the disposal of the Refuse or a processing/treatment facility for other materials collected from the service locations and removed by the CONTRACTOR during the term of the Contract. The CONTRACTOR shall be required to dispose of all such Refuse collected at the identified Disposal Facility or landfill site identified by the CONTRACTOR. Any identified Disposal Facility or Processing Facility must, at a minimum, be legally authorized and permitted under all applicable federal, state and local laws.

1.14 Hauling

All Refuse hauled by the CONTRACTOR shall be so contained, tied or enclosed that leaking, spilling or blowing are prevented. The CONTRACTOR shall be fully and solely responsible for any consequential cleanup.

1.15 Responsibility for Materials Collected

Upon placement of materials collected in performance of the Contract into the CONTRACTOR's vehicle, transport of those materials to the identified Disposal Facility becomes the sole and complete responsibility of the CONTRACTOR. The

foregoing, also, shall not be construed to prejudice any rights the CONTRACTOR may have against any Customer who places in a container Refuse other than non-hazardous solid waste which is permitted to be collected in CONTRACTOR's vehicles and disposed of in a non-hazardous solid waste sanitary landfill.

1.16 Work

- A. It is the CONTRACTOR's responsibility to supervise the Work in progress and to provide direction to employees in the field. THE WCA does, however, intend to monitor the CONTRACTOR's performance, through data tracking and analysis and through on-site contract monitoring and inspection. If the monitor records deficiencies which must be corrected, the CONTRACTOR shall notify THE WCA when these deficiencies have been corrected. The monitor will recheck the work to determine that it has been completed satisfactorily.
- B. If the monitor finds that the deficiencies previously noted were not corrected, a charge of current monitor time at actual cost for the monitor's time will be deducted from the payment to the CONTRACTOR. If the deficiencies have been corrected, no charge will be made. Repeat inspections will be made by THE WCA until the work is determined by THE WCA to be complete. THE WCA shall have the right to inspect service areas to ensure quality work is being performed. While THE WCA may suggest possible solutions to problems or unusual situations, the CONTRACTOR retains the responsibility for collecting materials included in the Contract. No suggestions by either the monitor or THE WCA shall be construed as an acceptance of any liability for the consequences of CONTRACTOR's subsequent actions or in any way relieve CONTRACTOR from its obligation to determine the manner in which Work is to be performed.

1.17 Emergency Plan

- A. The Contract Area has been subjected to hurricanes, floods, ice storms, and other natural disasters. The CONTRACTOR shall be capable of mobilizing additional personnel and resources during these times for the collection of solid waste. It is anticipated that the additional personnel and resources will cost additional funds as stated on the Proposal Cost Form for hourly rates/dumpsters.
- B. No later than ten (10) working days prior to initiation of service, the CONTRACTOR shall submit an emergency plan to THE WCA which shall detail those actions which the CONTRACTOR will take to deal with emergency situations such as hurricanes, floods, ice storms, fire, or natural disaster which would require a deviation from normal operating procedures. The Emergency Plan shall also include emergency phone numbers for the local offices, and for key contact persons, such that a responsible contact person is available to THE WCA at all times.
- C. A specific plan for specific emergencies shall be submitted to the CONTRACTOR no later than 24 hours before clean-up of that emergency is initiated under the terms of the rates for Additional Services as stated in the Proposal.

1.18 Reporting Requirements

- A. The CONTRACTOR shall be responsible for maintaining and submitting reports on a monthly and annual basis. Monthly reports shall be transmitted to THE WCA no later than fifteen (15) days following the reporting period. Each report shall include all information listed in the report form including the following:
 1. Tons of Refuse
 2. Ton/pounds of Recyclables by individual item
 3. Cubic yards of Yard Waste, noting compacted or uncompacted yards
 4. Number of Houses Served
 5. Number and Description of Customer and WCA Complaints/Actions Taken/Current Disposition
 6. Participation Rates for Recycling and Yard Waste
- B. Copies of the required report forms are attached as Exhibit ____ . The formats and contents of the forms shall be followed in all CONTRACTOR submittals. Those formats, the formats of additional reports, and software used in preparing them, shall be at the direction of THE WCA.
- C. Monthly reports shall include all of the information described in this Section and shall be submitted with a cover letter that abstracts the report and highlights major accomplishments, problems, trends and other pertinent information during the preceding month. Any reconciliations of any and/or adjustments from prior reports shall also be noted.
- D. No later than thirty (30) calendar days after the end of each calendar year, the CONTRACTOR shall submit to THE WCA an annual report covering the immediate preceding Contract year and include the following information:
 1. A collated summary of the information contained in the monthly and quarterly reports, including reconciliation of any and/or adjustments from prior reports.
 2. A discussion of highlights and other noteworthy experiences, along with measures to resolve problems, increase efficiency and increase participation.
 3. A description of all public information programs undertaken with audiences reached and media used.
- E. The obligation to submit an annual report shall survive the termination or expiration of this agreement. The CONTRACTOR shall submit an annual report for the final Contract year of this agreement no later than thirty (30) calendar days after the end of each year of the agreement. THE WCA may withhold payment of balances due the CONTRACTOR at the end of the Contract until such final report is received and accepted by THE WCA.
- G. The CONTRACTOR shall cooperate fully with providing information relevant to reporting requirements. Failure to comply with reporting requirements shall

constitute a major default and shall be subject to penalties and/or termination of the contact.

H. All reports shall be submitted in approved format to:

By Mail:

THE WCA
P.O. Box 7859
The Woodlands, TX 78387-7859

Hand Delivery:

THE WCA
9450 Grogan's Mill Road
The Woodlands, TX 77380

or to such other address as THE WCA may designate in writing. If report information is transmitted electronically, the CONTRACTOR shall provide information in a format that is compatible with the existing computer system at THE WCA.

ARTICLE 2 - Refuse COLLECTION

2.1 Scope of Work

It is the purpose of the specifications to provide a framework for accomplishing the tasks which result in maintaining a sanitary environment for the residents of The Woodlands. This section addresses the collection of Refuse from the Contract Area of THE WCA as described in these specifications. The intent of the Work is to collect all Refuse placed out for collection within the Contract Area on a once per-week, or twice-per-week, depending on contract negotiations, frequency.

2.2 Materials to be Collected

- A. The CONTRACTOR shall furnish all labor, supervision, materials, permits, licenses, and equipment necessary to collect all Refuse that has been placed at curbside. Curbside refers to that portion of the street right-of-way adjacent to paved or traveled roadways. After loading the Refuse into the collection vehicle, The CONTRACTOR shall place empty containers as close to the roadway as practical without interfering with or endangering the movement of vehicles or pedestrians.
- B. The CONTRACTOR will provide up to \$2500 per year in free Refuse collection service to THE WCA or other community groups as designated by THE WCA as part of the Contract.

2.3 Containers

There shall be no restriction on the type of container used to hold Refuse, provided that no container or bundle of Refuse shall exceed four feet in length, width or height or exceed 40 pounds in weight. Excepted from this requirement are Bulky Waste items which will be collected by special arrangement as discussed in Article 5 of the Special Provisions. Containers may also be required by the CONTRACTOR for semi-

automatic or automatic collection. If this is the case, container specifications shall be provided by the CONTRACTOR and approved by THE WCA. These initial containers, if required, shall be provided to all single family residences at no cost. Customers may purchase additional or replacement containers from the CONTRACTOR at cost. The CONTRACTOR will make this cost known to THE WCA.

2.4 Places of Collection

Normal collection points for residential solid waste shall be curbside (adjacent to roadway) at the driveway.

2.5 Collection Impediments:

- A. A number of collection impediments may require special effort to accomplish this level of service. Periodically major construction is necessary for development of The Woodlands and may cause blocking of streets. This includes such activities as constructing homes or pools, placing or replacing gas, water and sewer lines, surfacing or resurfacing streets, and replacing wiring for telephone, electricity, or cable television.
- B. If THE WCA is notified in advance of these activities, THE WCA will notify the CONTRACTOR. However, it is not uncommon for work to be initiated without prior notification. Alternate solid waste service must be provided during this period of disruption. The CONTRACTOR should evaluate each circumstance individually to determine the appropriate alternative. THE WCA shall be notified of the nature of the disruption, its location, and the alternative employed to provide service. No additional fees shall be payable to the CONTRACTOR for services provided under these conditions.

ARTICLE 3 - YARD WASTE COLLECTION

3.1 Scope of Work

The CONTRACTOR shall provide once per week curbside collection of Yard Waste which is composed of grass clippings, leaves, tree and shrubbery trimmings.

3.2 Materials to be Collected

- A. The CONTRACTOR shall furnish all labor, supervision, materials, permits, licenses, and equipment necessary to provide Yard Waste collections for Customers within the Contract Area as follows:
 1. The CONTRACTOR shall collect all Christmas trees placed for collection.
 2. The CONTRACTOR shall collect all Yard Waste such as tree limbs not larger than four (4) inches in diameter nor longer than four (4) feet, and stacked in piles not to exceed four (4) feet in height. Tree trunks larger than four (4) inches in diameter will not be collected.

3. The CONTRACTOR shall collect all other Yard Waste placed in plastic bags at the curb.
4. The CONTRACTOR shall take Yard Waste collected to the Processing Facility as identified by the CONTRACTOR.
5. In the event that Yard Waste set-out at a Unit in the Contract Area does not meet the specifications above, the CONTRACTOR shall leave a clearly-explanatory printed or written notice for the Customer.
6. Following notification by the CONTRACTOR, THE WCA will investigate the matter and advise the CONTRACTOR of its decision and of any action that is required by the CONTRACTOR. If THE WCA finds that the material set out did meet the specifications, the CONTRACTOR will be notified by THE WCA and must return and pick up the Yard Waste within eight (8) working hours of notification. If THE WCA finds that the material set out did not meet specifications, the CONTRACTOR will not be required to return to the Unit until the next regularly- scheduled pickup. If, at the next regularly-scheduled pickup, the material set out meets the specifications, the CONTRACTOR shall pick up the material.

3.3 Place of Collection

Normal collection points for residential yard waste shall be at curbside (adjacent to roadway) at the driveway.

ARTICLE 4 - RECYCLABLES COLLECTION

4.1 Scope of Work

The CONTRACTOR shall provide once per week collection of curbside Recyclables from a Recyclables container provided by the CONTRACTOR.

4.2 Materials to be Collected

The CONTRACTOR shall furnish all labor, supervision, permits, licenses, and equipment necessary to provide curbside Recyclable collection for Customers within the Contract Area as follows:

- A. The CONTRACTOR shall collect all Recyclables as determined by THE WCA. The CONTRACTOR shall base its Proposal on the collection of the following items: newspapers and inserts, glass jars and bottles, corrugated cardboard, aluminum cans, steel cans, No. 1 (PET) plastic and No. 2 (HDPE) plastic containers..
- B. The CONTRACTOR shall collect all Recyclables placed in a container provided by the CONTRACTOR. If unacceptable materials are placed in the container, the CONTRACTOR shall collect all acceptable materials and leave the unacceptable materials with a clearly-explanatory printed notice to the Customer.

- C. The CONTRACTOR shall be responsible for collecting overflow Recyclables placed on top of or beside the Recyclables container.
- D. The CONTRACTOR shall not collect materials resulting from the operation of any business or commercial endeavor including businesses conducted from or in a residential dwelling unit.
- E. The CONTRACTOR shall take Recyclables collected to a Processing Facility as identified by the CONTRACTOR in the contract.
- F. The CONTRACTOR may add new Recyclable materials only if it is demonstrated that a market exists for the materials for at least one (1) year.
- G. No Recyclables shall enter a landfill for disposal without prior written consent by THE WCA.
- H. The CONTRACTOR shall operate and maintain a Recycling Drop-Off Center, located at the current Recycling Drop-Off Center site in The Woodlands.

4.3 Containers

The CONTRACTOR will provide the initial Recyclables containers to all single family residences at no cost to the Customers. Customers may purchase additional or replacement containers from the CONTRACTOR at cost. The CONTRACTOR will make this cost known to THE WCA.

4.4 Place of Collection

Normal collection points for single-family residential Recyclables shall be at curbside (adjacent to roadway). The normal place of collection of Multi-Family and Designated Non-Residential Recyclables collection shall be at a centralized location in the multi-family complex or Designated Non-Residential Locations.

4.5 Recycling Drop-Off Center

- A. The CONTRACTOR shall also operate and maintain the Recycling Drop-Off Center. Responsibilities of the CONTRACTOR shall include, but not be limited to the following:
 - 1. Providing all necessary containers in a sufficient quantity to accommodate all Recyclables dropped-off by Customers at all times when the center is open to the public.
 - 2. Removing, exchanging, or emptying of containers as necessary to maintain the site in a clean condition and to prevent overfilling of containers with Recyclables. Removal, exchange, or emptying of containers shall not be done during the hours that the center is open to the public.

3. Recyclable containers shall be covered or otherwise maintained to provide protection from weather including scattering of Recyclables by wind.
 4. Providing all necessary office furniture and equipment, as well as utilities necessary, including telephone and electricity, to professionally operate the center.
 5. Maintaining the center by keeping it clean and orderly. CONTRACTOR shall be responsible for repairing all damage to the center which was caused by the CONTRACTOR.
 6. Marketing and/or processing of all the recyclable materials. No Recyclables shall enter a landfill for disposal without prior written consent by THE WCA.
- B. The Recycling Drop-Off Center shall be open to the public at least 35 hours each week, including a minimum of 6 hours on Saturday. The Recycling Drop-Off Center shall remain open at least one weekday until 7:00 p.m.
 - C. During the operating hours of the Recycling Drop-Off Center, The CONTRACTOR shall provide and pay for staffing levels sufficient to properly maintain the center and handle the flow of traffic entering and exiting the facility. The staffing level to be maintained during hours of operation of the center must be approved by THE WCA. The staff shall ensure that Recyclables are properly separated; that Refuse, Special Wastes, Household Hazardous Wastes, and other materials are not left at the site; and that the site is properly maintained in a clean condition.
 - D. In case of storm, flood, hurricane, or other disaster or other Acts of God, CONTRACTOR will, if necessary, be able to experience reasonable variance from scheduled operations.
 - E. No alterations or modifications shall be made to the center without prior approval of THE WCA. Requests for alterations or modifications must be submitted in writing.
 - F. The CONTRACTOR shall collect all Recyclables as determined by THE WCA. The CONTRACTOR shall base its Proposal on the collection of the following items: newspapers and inserts, glass jars and bottles, corrugated and paperboard containers, aluminum cans, steel cans, No. 1 (PET) plastic and No. 2 (HDPE) plastic containers, tin/bi-metal containers, white paper, magazines, and telephone books.
 - G. The CONTRACTOR may add new Recyclable materials only if it is demonstrated that a market exists for the materials for at least one (1) year.

ARTICLE 5 - BULKY WASTE COLLECTION

5.1 Scope of Work

- A. The CONTRACTOR shall provide curbside collection of furniture, appliances, and

other items too large for residential Refuse containers which are acceptable for disposal at a Type I Municipal Solid Waste Landfill.

- B. Service shall be provided to all Customers in Units located within the Contract Area, for the benefit of Customers who are currently residing in the Units or who have recently vacated Units.

5.2 Time and Place of Collection

The CONTRACTOR shall provide curbside collection of Bulky Waste within one week of notification by a Customer. The Customer shall be given a date and time at which collection will occur.

5.3 Disposal:

Recyclable and non-recyclable bulky items shall be delivered to disposal/processing facilities, as specified in this document and by THE WCA.

ARTICLE 6 - CUSTOMER COMPLAINTS AND NON-PERFORMANCE

6.1 Complaint Receipt and Handling

All Customer complaints shall be initially directed to the CONTRACTOR for handling. The CONTRACTOR shall notify THE WCA of each complaint reported in the Contract Area. It shall be the duty of the CONTRACTOR to take whatever steps may be necessary to remedy the cause of the complaint and notify THE WCA of its disposition within one day (24 hr.) after receipt of the complaint by the CONTRACTOR, except in cases of hazardous substance release or incidences of imminent environmental danger or imperilment of public health where immediate action is required. If immediate response is not provided by the CONTRACTOR, THE WCA reserves the right to request compensation from the CONTRACTOR for any action taken to cure the situation. THE WCA shall provide to the CONTRACTOR information regarding the type and source of complaints received by THE WCA. The CONTRACTOR shall obtain this information from THE WCA weekly by telephone or fax, or by personal visit to THE WCA's office.

6.2 Damage Claims Resolution

The CONTRACTOR shall provide THE WCA with a full explanation of the disposition of any complaint involving a customer's claim of damage to private property as the result of actions of the CONTRACTOR's employees, agents, or subcontractors.

6.3 Public Information Regarding Complaint Procedures

The CONTRACTOR shall notify all customers about complaint procedures, rules and regulations on an annual basis and whenever there is a change of service, day(s) of collection, procedures, etc. Notice is to be in the form of printed matter distributed by the CONTRACTOR to all units served by the CONTRACTOR. All notices must be pre-approved by THE WCA prior to use.

6.4 Failure to Remedy Complaints

Failure to remedy the cause of the complaint as provided for in the paragraphs above shall be considered a breach of the Contract. THE WCA will have the right to send a monitor out to check on the resolution of any complaints as described in Article 1.16.B in the Special Provisions.

References

References

RECENT JOURNAL ARTICLES AND REPORTS RELATED TO PRIVATIZATION

***How to Compare Costs Between In-House and Contracted Services*, Lawrence Martin: Reason Foundation, Los Angeles, CA, March 1993. (\$11; phone 310 391-2245)**

Many considerations enter into the decision to contract out MSW services, including cost. This document provides a step-by-step approach for local governments to assess the full cost of these services. Because government activities are typically funded through several departments, officials may be unaware of the full cost of providing a given service. For example, they may not consider indirect costs, such as pension plans and administration. This document identifies cost that are often ignored and those that should be considered when comparing service options.

“Public/Private Competition in the City of Phoenix, Arizona,” Jim Flanagan and Susan Perkins, *Government Finance Review*, June 1995, pp. 7-12. Government Finance Officers Association, Chicago, IL. (\$6; phone 312 977-9700)

By initiating a competitive process for all city services, Phoenix, Arizona, created a system that provides the best service for the least cost. By involving city departments in competition with private contracts in a public-bid situation, and by using Full Cost Accounting, it has been able to compare 13 service areas and save a total of more than \$27 million. The competitive process demands that efficiency and customer satisfaction be established as the most important values. The attention paid to these factors also leads to creative approaches to equipment design, staffing, and costs. Because of this approach, solid waste programs in particular have benefited - better equipment has been purchased, the life of a landfill was extended by provided a contractor with monetary incentives to compact materials, and a transfer station was developed.

The Local Government Guide to

SOLID WASTE

C*ompetitive* **S***ervice* **D***elivery*



Produced by:



**PUBLIC
TECHNOLOGY,
INC.**



Privatizing Municipal Waste Services: Saving Dollars and Making Sense

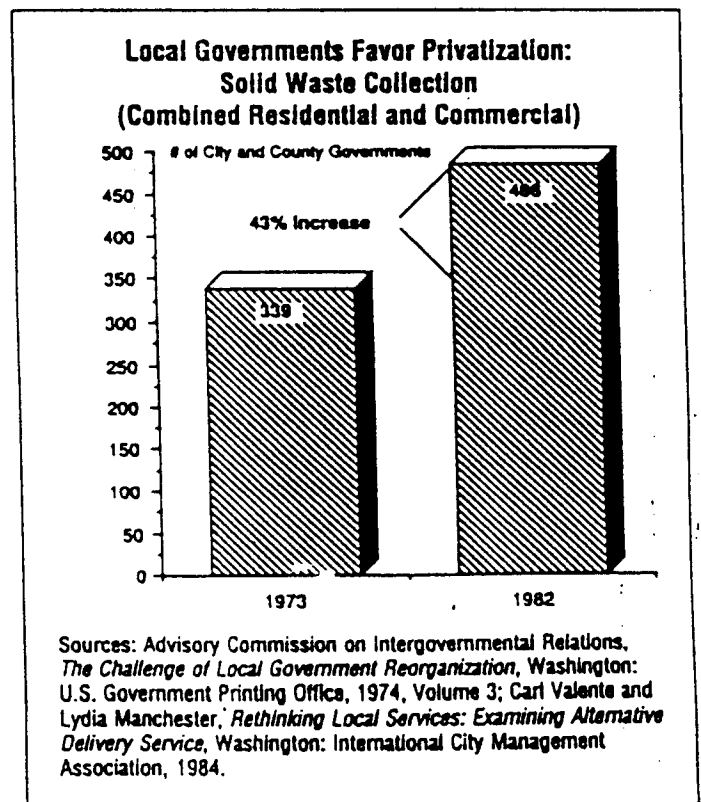
Introduction

One of the most essential services provided by cities and towns throughout the country involves collecting and disposing of solid waste. Americans expect garbage to disappear—efficiently, economically, and in an environmentally safe manner. The same standard applies to street sweeping.

Ironically, as municipal budgets shrink or remain nearly stable, hard-pressed officials must meet growing demands with fewer resources. Responding to such pressure, many administrators have turned for help to private waste service companies, which provide efficient, high-quality service at lower cost. The benefits of "privatization" are dramatic: according to a study by researchers at Columbia University, cities and towns which have contracted for trash collection have decreased their outlays on average by more than 40 percent.¹ In contrast, municipalities with their own removal systems typically incur expenses that are 29 percent higher than localities which use private collectors.²

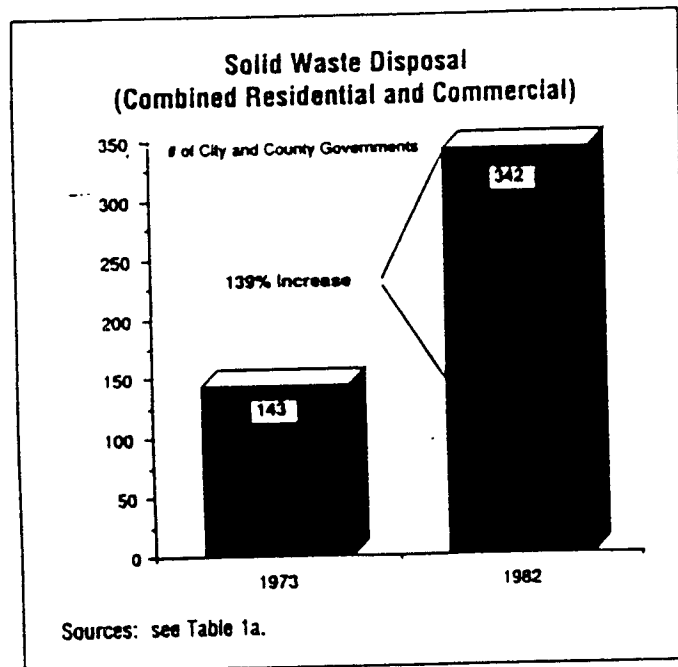
The outcome of such trends has been significant. Today, over 80 percent of the nation's garbage is collected by private companies—either under contract to government agencies or working directly for local residents. Between 1973 and 1982, in fact, the number of localities which chose this solution grew from 339 to 486.³

Table 1a



Meanwhile, many communities have also contracted for refuse disposal. In the decade following 1973, for example, the number of such communities more than doubled—from 143 to 342.⁴ Finally, a similar process has occurred with street sweeping. In 1984, a survey of 121 municipalities around Los Angeles found that sweeping costs dropped by 43 percent when contractors were hired.⁵ And in virtually all of these cases, the consuming public remains resolutely satisfied with the service it receives.

Table 1b



How does privatization work?

Basically, there are three forms of privatization:

- **Contracts.** Qualified contractors are selected (usually through a process of competitive bidding) to perform collection, disposal or sweeping services. Such contractors are paid by the municipality.
- **Franchises.** Essentially similar to contracts, these arrangements require private companies to bill and collect payment directly from each household. Rates are set by municipal officials.
- **Private subscription.** Each householder hires a refuse collection company and pays a garbage removal fee.

Today, around 40 percent of all localities rely upon private subscription for rubbish collection. Municipal

contracts exist in 35 percent of the nation's cities and towns; in contrast, only 37 percent of these jurisdictions still own and operate their own removal services.

Table 2a

Percentage of Local Governments That Contract With Private Firms*		
	Number Reporting	Percentage
Residential Solid Waste Collection	1,376	35%
Commercial Solid Waste Collection	1,106	44%
Solid Waste Disposal	1,223	28%
Street/Parking Lot Cleaning	1,483	9%

Table 2b

Percentage of Local Governments That Franchise With Private Firms*		
	Number Reporting	Percentage
Residential Solid Waste Collection	1,106	19%
Commercial Solid Waste Collection	1,376	15%
Solid Waste Disposal	1,233	5%

Source: Valente and Manchester.
*Based on responses to a survey of 1,780 local governments

Privatizing residential collection

Why do public officials privatize their residential collection services? Several major research studies provide reliable answers. The most detailed of these studies was carried out in 1974 by researchers at Columbia University's Graduate School of Business under a grant from the National Science Foundation. Its objective was to evaluate the cost of residential trash removal using data from 2,060 cities around the country.

In preparing their conclusions, researchers measured three basic factors:

- **Efficiency,** the total cost per household.
- **Effectiveness,** the extent to which services satisfied the community's needs.
- **Equity,** whether service was provided equally to all demographic and social groups within specific areas.

The results of this evaluation were emphatically clear. According to Columbia researchers, refuse collection by private contractors cost anywhere from 28 percent to 40 percent less than what public agencies

spent for comparable service.⁶ Such results were reaffirmed by subsequent studies in southern California (1983) and suburban New York City (1987).⁷ Here are some of the reasons why contract firms compiled this dramatic record:

Table 3

**Private Contractors Are More Productive:
A Comparison of Municipal and
Contract Residential Collection**

(Based on a study of two similar cities located 22 miles apart in the New York Metropolitan area)

	City A	City B
Arrangement	Municipal	Contract
Population	70,000	74,000
Area (sq. mi.)	4.3	3.8
Pickups per week	3	3
Truck shifts per week	Curb	Curb
Truck shifts per week	63	39
Men per truck	4	2
Man-days per week	237	78
Tons collected per man-day	3.40	9.67
Productivity index*	100	284

* The private contractor collected 2.8 times as much waste per day as did the municipal agency.

Source: E.S. Savas, *Privatization: The Key to Better Government*, New York: Chatham House, 1987.

■ **Greater efficiency.** In general, private haulers use smaller, more efficient pick-up crews.

■ **Lower absenteeism.** Contractors typically achieve lower rates of absenteeism due to illness or other causes—7.9 percent for private companies compared to 13.4 percent for public crews. This is significant because 69 percent of the total outlay for residential collection involves labor costs.

■ **Higher productivity.** Private firms serve more households per hour and often make two runs per day, as opposed to one run for city crews. In southern California, such efforts frequently contributed to productivity differences (in tons per eight-hour shift) of 40 percent to 60 percent.

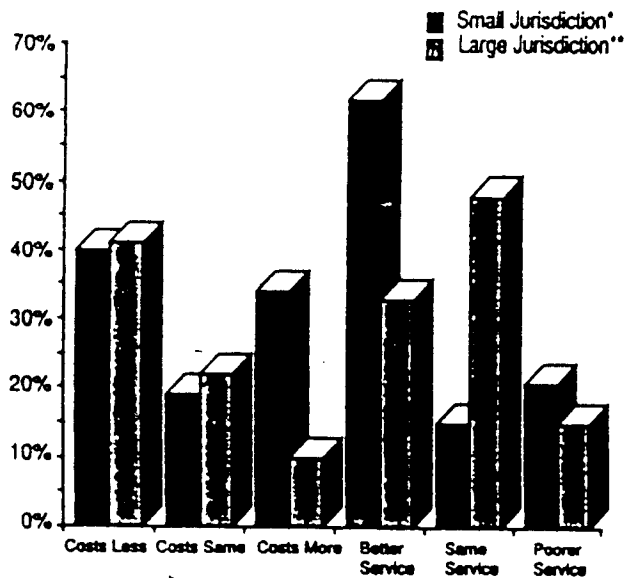
■ **Better morale.** Contractors make broader use of incentive systems (bonuses, freedom to go home when the job is finished) to improve employee morale and efficiency.

■ **Less downtime.** Private haulers tend to buy standardized vehicles with larger capacities and maintain

these vehicles better than city trucks. The result: lower downtime rates for contractors (6.2 percent) than for public agencies (16.2 percent).

Table 4

Survey of Public Officials' Opinions About Contracting



* Municipalities with population less than 50,000
Source: Patricia S. Floristano and Stephen B. Gordon, "Public vs Private: Small Government Contracting With the Private Sector," *Public Administration Review*, January/February, 1980.

** Fourteen municipalities and fourteen countries with populations greater than 50,000
Source: Patricia S. Floristano and Stephen B. Gordon, "Private Provision of Public Services: Contracting by Large Local Governments," *International Journal of Public Administration*, 1987.

These results have also been confirmed in Canada. In 1983, a major study by researchers at the University of Victoria, British Columbia, examined solid waste

Table 5

Residential Collection Costs in Canada

Type of Service	Cost per Household
Public	\$42.29
Public collection in mixed Systems	31.31
Private contract	28.02

Source: James McDavid, "Residential Solid Waste Collection Services in Canadian Municipalities," 1983, p. 24.

collection practices in 126 municipalities and concluded that private sector firms can collect residential solid waste at a lower cost than public employees can without sacrificing quality and frequency of service.⁸ For these reasons, public officials throughout North America have increasingly recognized that privatization offers an important solution to the problem of balancing municipal budgets. As this recognition grows, other jurisdictions are likely to follow the same path.

Street Sweeping

Virtually the same results have occurred with street sweeping. In the southern California study, 20 sample cities were examined—ten that used municipal workers and ten that used private firms. Where sweeping was done by contractors, local governments paid an average of \$9.52 per curb mile cleaned. Where city crews swept the streets, the rate rose to \$15.21, an increase of 60 percent. One important reason: on average, contractors cleaned six curb miles more per eight-hour shift—a difference of 27 percent.⁹

Table 6

Case Study of Street Sweeping (Based on a study of ten pairs of similar cities in Los Angeles County)		
	Contract	Municipal
Average Cost Per Year Per Mile Cleaned	\$9.52	\$15.21
Average Number of Curb Miles Cleaned Per 8 Hour Shift	28	22
Average Cubic Yards of Debris Collected Per Street Mile	31	32

Source: Barbara J. Stevens, *Delivering Municipal Services Efficiently: A Comparison of Municipal and Private Service Delivery*, Washington: Department of Housing and Urban Development, June, 1984.

Three factors explain the higher efficiency of contract crews:

- **Management and supervision.** Foremen in contract firms frequently supervise more employees than government foremen and achieve a much lower absentee rate. Often these employees also work longer shifts.

- **Responsibility for equipment maintenance.** Contract employees are more likely than municipal workers to be held accountable for maintaining their own equipment. Moreover, when municipal equipment malfunctions, it is usually sent to a centralized repair

facility, where it waits in line with machines from other agencies. In contrast, contractors experience lower downtime rates and minimize the need for costly back-up equipment.

- **Standardization.** Contract firms tend to use the same types and models of equipment more often than city agencies. Enhanced efficiency can be achieved when operators and mechanics only need to be well-acquainted with one or two types of equipment.

The study concluded that contract and municipal street sweeping crews are equally able to meet existing standards for clean streets (effectiveness), and to provide a uniform level of service in all jurisdictions (equity).

One additional point. Because private sweepers may serve several different customers, they often buy specialized equipment and offer a wide variety of services: power washing, sewer cleaning, snow removal, parking lot striping, etc. Many of these services are needed by smaller government entities that cannot afford to make the necessary investments on their own or to pay for additional training. Even larger municipalities may require a hand from time to time—for example, during periods of peak demand. Private contractors can help such agencies to satisfy public demand without increasing fixed costs and overhead.

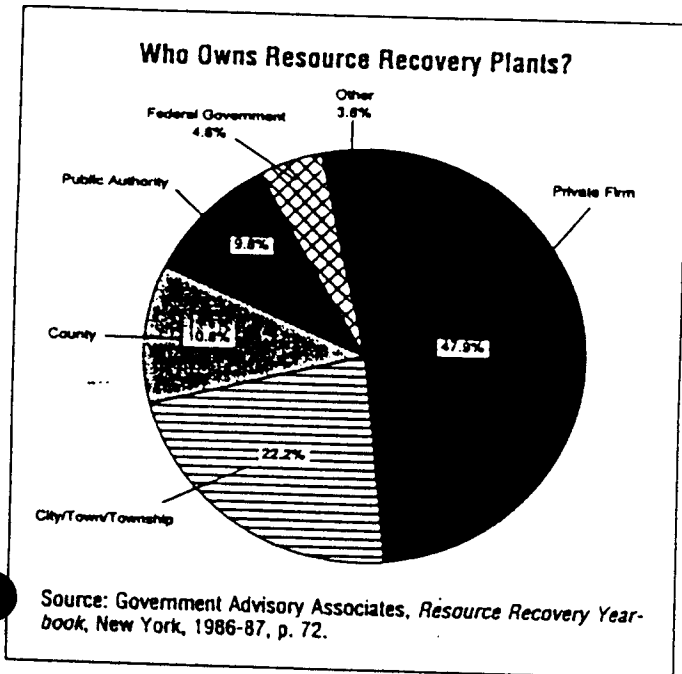
Contracting for Waste Disposal

Another trend that has accelerated in recent years involves solid waste disposal. In 1987, the accounting firm Touche Ross conducted a survey of municipal governments and found that 22 percent had contracted with private landfills or combustion facilities for disposal services over the previous five years. In addition, 32 percent of these governments had made plans to hire a contractor by 1989.¹⁰ As the capital cost of meeting environmental requirements rises, this option is likely to become even more attractive. At present, private firms own around 15 percent of the country's landfills and about half of its resource recovery (waste-to-energy) plants.

In many cases, public agencies have preferred to follow a different course: operating agreements. Although precise statistics are hard to find, it appears that around 7 percent of the nation's *publicly owned* landfills are currently *managed by private contractors*. Where local governments have chosen to build resource recovery plants, this arrangement has become even more important. According to Government Advisory Associates, Inc., a research firm, 73 percent of

these plants are operated by private contractors—often the same firms which designed and built them.¹¹ The purpose of such agreements is generally to assure that adequate disposal capacity is available while sharing the financial risks of large-scale projects.

Figure 1



Three case studies: Knoxville, Tampa and Halifax

In 1984, public officials in **Knoxville, Tennessee**, decided to trim \$3 million from the city's sanitation budget over a four-year period by hiring a private trash collector. For years, these officials had watched as collection costs rose by an average of \$200,000 annually—an increase of 9 percent. Since then, they calculate that this increase has been cut in half.

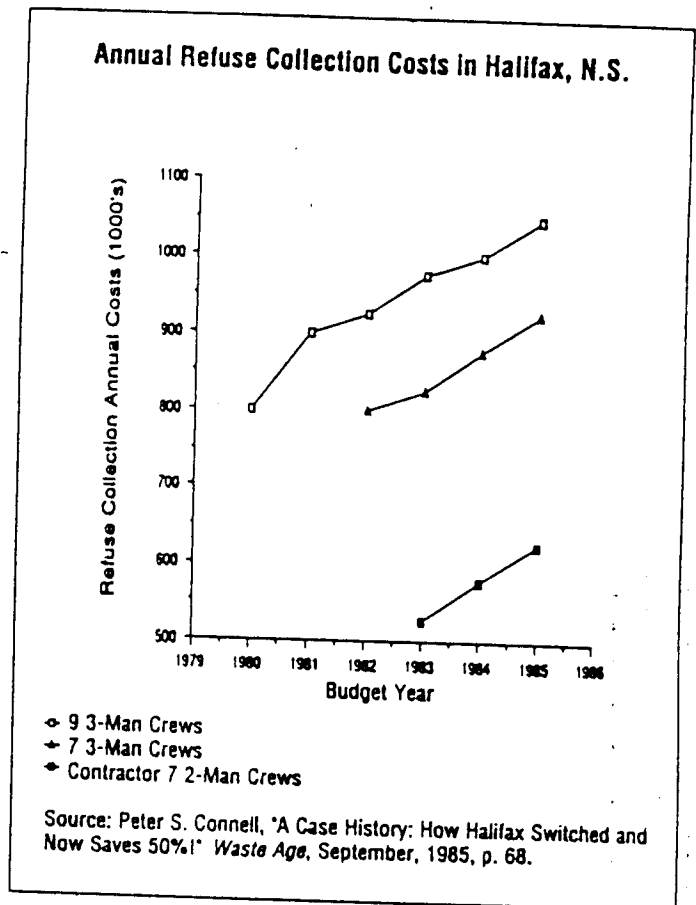
The Knoxville case illustrates another significant point: shifting from public collection to private service doesn't necessarily mean that municipal workers become unemployed. Of the 79 workers who were displaced by the new arrangement, 34 found other jobs in city government, 34 more were hired by the private contractor and the remaining few retired.

Similar events took place in **Tampa**. Concerned about "maintaining control" over contractors, officials there decided to leave about 60 percent of the city under municipal collection and divide the rest into two separate contracts. The result: in the first year alone, these officials estimate that they saved \$1.5 million—enough to make the Department of Sanitation a stand-alone enterprise. And faced with competition from

private collectors, municipal crews raised their productivity to comparable levels.

Canadian cities have undergone a similar transition. In 1983, **Halifax, Nova Scotia**, contracted its collection service to a private firm, after unsuccessfully trying to reduce the city's budget by reorganizing municipal crews. Annual savings since then have been impressive: \$440,000 in 1983 (a 46 percent reduction) and \$512,000 in 1985 (about 50 percent).

Figure 2



Recycling: Meeting the Challenge

As landfill space decreases, communities around the country are looking to curbside recycling programs as an important component of their solid waste management plans. Already several states—for example, Oregon, Connecticut, New Jersey and Rhode Island—have required such programs or have set specific goals to be reached by voluntary means. Similar measures are likely to become more widespread over the next few years and pose a significant challenge to local officials.

The key to successful recycling involves *returning*

recoverable materials to commerce. Such materials must be available in sufficient volume to pay the costs of beefed-up collection schedules, multiple routes and even additional trucks or other equipment. Often, the financial health of recycling efforts depends on supplementing the sale of commodities like glass and cardboard with savings from the avoided costs of rubbish disposal.

Private refuse haulers have already demonstrated their effectiveness in meeting these complex demands. Frequently, commercial recycling activities date back to the 1950s, and involve an intimate knowledge of volatile or shifting commodities markets. The results are undeniable: according to EPA, about 11 percent of the country's municipal solid waste is currently recycled; in many places, three-quarters of this volume is handled by private operators.

One model for cooperation between local governments and private recyclers has recently evolved in Seattle, where 153,000 households are eligible to participate in a voluntary curbside collection program. Rather than trying to provide this service directly, public officials divided the city into two sectors and hired private contractors for each one. Taking into account the avoided cost of landfill disposal, such officials expect to save as much as \$2 million over a ten-year period—even after spending \$1 million annually to run the program. All in all, they estimate that the total volume of residential waste will decrease by 8.7 percent over five years.

Privatization in Europe and Japan

The U.S. and Canada are not alone in setting the pace for privatization. West Germany, Switzerland, Japan and Great Britain have all begun to hire private companies for waste removal, sweeping and disposal. Perhaps the most dramatic results have appeared in Japan, where more than 200 municipal governments have contracted for collection services. As a result, research indicates that these municipalities have saved an average of 124 percent in their trash removal bills—a significant amount, particularly since collection there often takes place three or four times per week.

Conclusions

Privatization makes sense because commercial waste management companies have compiled an outstanding record of cost-effective, high-quality service. As public officials look for additional ways to trim operating costs, the advantages of contracting for waste collection, disposal and street sweeping will

grow. Such advantages arise from the well-spring of our economy—competitiveness—and reflect the enhanced efficiency of free markets. Like other managers, public officials will increasingly reap the benefits of free market competition—benefits which in turn will be recognized and appreciated by the residents whom they serve.

Notes

¹ E.S. Savas, *The Organization and Efficiency of Solid Waste Collection*, Lexington, Massachusetts: Lexington Books, 1977, pp. 97-120.

² Barbara J. Stevens, *Comparative Study of Municipal Service Delivery*, New York: Ecodata, Inc., 1984, p. 181.

³ Advisory Commission on Intergovernmental Relations, *The Challenge of Local Government Reorganization*, Washington: U.S. Government Printing Office, 1974, Volume 3; Carl Valente and Lydia Manchester, *Rethinking Local Services: Examining Alternative Delivery Service*, Washington: International City Management Association, 1984.

⁴ Advisory Commission on Intergovernmental Relations, *The Challenge of Local Government Reorganization*; Carl Valente and Lydia Manchester, *Rethinking Local Services*.

⁵ Barbara J. Stevens, *Delivering Municipal Services Efficiently: A Comparison of Municipal and Private Service Delivery*, Washington: U.S. Department of Housing and Urban Development, 1984.

⁶ Savas, *The Organization and Efficiency of Solid Waste Collection*; Stevens, *Comparative Study*. See also E. S. Savas, "Policy Analysis for Local Government: Public vs. Private Refuse Collection," *Policy Analysis*, Volume 3, Number 1, 1977, pp. 1-26.

⁷ Stevens, *Comparative Study*; E.S. Savas, *Privatization: The Key to Better Government*, New York: Chatham House, 1987.

⁸ James McDavid, "Residential Solid Waste Collection Services in Canadian Municipalities," Victoria: University of Victoria, 1983.

⁹ Stevens, *Comparative Study*, pp. 27-80; Stevens, *Delivering Municipal Services*.

¹⁰ Touche Ross and Company, *Privatization in America*, Washington: Touche Ross, Inc., 1987.

¹¹ Eileen Berenyi and Robert Gould, *Resource Recovery Yearbook*, New York: Government Advisory Associates, 1986, pp. 13-16.

Additional References

R.W. Beck and Associates, *The Nation's Public Works: Report on Solid Waste*, Washington: National Council on Public Works Improvement, 1984.

Columbia University, Public Technology, Inc., and the International City Management Association, *Evaluating Residential Refuse Collection Costs: A Workbook for Local Government*, Washington and Pasadena: Public Technology, Inc., 1978.

International City Management Association, "Residential Solid Waste Collection," *Urban Data Service Report*, Volume 14, Number 12, December 1982.

International City Management Association, "Intergovernmental Service Arrangements and the Transfer of Functions," *Baseline Data Report*, Volume 16, Number 6, June, 1984.

David Moretti, "The Other Florida." *Gainesville, Florida Case Study*, New York: Center for Government Studies, Graduate School of Business, Columbia University, March, 1979.

E.S. Savas, Eileen Berenyi, David Moretti and Philip Hutchinson, *Alternatives in Service Delivery: Municipal and Contract Refuse Collection in Kansas City*, New York: Center for Government Studies, Graduate School of Business, Columbia University, March, 1979.

Donald Sexton, "Effectiveness, Equity and Responsiveness of Solid Waste Collection Services," New York: Center for Government Studies, Graduate School of Business, Columbia University, August, 1980.

Frank J. Sudol, *The Newark Experience; Public Work Service Contracting*, Newark, N.J.: Department of Engineering, no date.

Contracting Services: A Question Of Needs

By Richard J. Hutchinson

Behind every successful private contractor is a group of local government representatives who took strategic steps to find them.

When contracting solid waste services, price is not the only factor to consider. Of equal importance is the long-term reliability of the contractor. When a program is not reliable, customers will quickly forget the bargain price and remember only the failing program's inadequacies.

To obtain the highest level of service, as well as the best price over the life of the contract, officials should determine the specific needs of the community and the services that will meet these needs; communicate this information to the bidders; and award a service contract that meets these needs.

Internal or external resources can be used to identify which services are needed. While larger local governments may already have the necessary resources to contract services, smaller ones may need to obtain outside help.

During the contracting process, request the bidders to submit implementation plans. Next, evaluate the proposals and select the method that will best meet the program's needs. Finally, determine the scope of services to be advertised for bid.

The advertised Invitation to Bid is usual-

Following a logical series of steps will ensure your community the best service at a fair price.

ly the initial announcement. The advertisement should provide sufficient information to attract a large number of qualified bidders. The invitation should answer the following questions:

- What services are being requested?
- Where and when may the Request for Bids (RFB) be obtained? Can it be obtained by mail and/or in person?
- Is there a fee for obtaining the RFB? If so, is it refundable?
- Who can be contacted to answer questions?
- What is the deadline for bidders to submit their bid packages?

• Are there Bid Bond requirements? If so, what is the amount and when is it due?

• Are there Performance Bond Requirements? If so, what is the amount and when is it due?

• Is there a pre-bid meeting? If so, when and where will it be held? Is it mandatory? What is the penalty for not attending?

Also include any other unusual requirements in the initial advertisement. A clear, informative invitation can save a significant amount of administrative time and help to set a positive tone for the entire process.

Bid Packages

The bid package should be prepared thoroughly. A package is not complete until it includes all the information that the bidder needs to understand exactly what is wanted.

When preparing the bid package, remember that this is a bid, not a negotiation. Therefore, the

Sample Schedule Of Administrative Actions

1. Commingling solid waste with recyclable materials	\$100 per incident, per location
2. Failure to clean-up spillage caused by the contractor	\$50 per incident, per location
3. Failure to repair or replace container damage caused by the contractor or its personnel	\$50 per incident, per location
4. Failure to maintain equipment in a clean, safe and sanitary manner	\$100 per incident, per day
5. Failure to have vehicle operators licensed properly	\$100 per incident, per day
6. Failure to maintain office hours as required by this contract	\$100 per incident, per day
7. Failure to maintain and/or submit to the county all documents and reports required under the provisions of this contract	\$100 per incident, per day
8. Failure to cover properly materials in collection vehicles	\$100 per incident
9. Failure to display contractor's name and phone number on collection vehicles	\$100 per incident, per day
10. Failure to comply with the hours of operations as required by this contract	\$100 per incident
11. Failure or neglect to complete each route on the regular scheduled pick-up day	\$1,000 for each route not completed
12. Changing routes without proper notification	\$100 per incident, per day
13. Failure to deliver any waste or recyclable materials to the appropriate designated facility	\$1,000 per incident
14. Failure or neglect to provide collection service to any dwelling unit in the service area	\$100 per incident, per location

Source: SCS Management Services

package should include a full set of documents for the bidder to complete. For example, a complete bid package will include a copy of the Invitation to Bid; background information; general and special terms and conditions; bid forms; a contract; a checklist; and an addendum.

The background information should include geographic and demographic information for the service area. Never assume that the bidder already has this information. Also include data on the current service, proposed service, complete system user information and a summary of program intent.

The general terms and conditions

section of the bid package should include: an execution of the bid; the bid deadline; additional terms and conditions; interpretations and questions; any conflicts of interest; legal requirements; minority business enterprise or similar requirements; all required forms; insurance information; the contractual agreement; information on facilities; award terms; disqualification of bidder provisions; and subcontractor requirements.

A section on special terms and conditions can be combined with the general terms, or it may be used to separate and emphasize critical areas. For example, it should in-

clude the preparation of the bid; receipt and opening of bids; pre-bid conference; bid and performance bond requirements; minimum bid requirements; bid dates; and bid forms.

A properly designed bid form will require information that will help the local government evaluate the current services. It also will seek a detailed plan for any changes foreseen in the near future. For example, when tipping fees increase, how will the customers' rates for disposal be adjusted?

When designing the bid forms, remember that every service has several elements. For example, a bid for residential collection services will typically require separate collection for garbage, yard waste and recyclable materials. Therefore, ask for a breakdown of the costs for each collection operation. And because disposal facilities may charge different rates for garbage and yard waste, require the bidder to provide separate disposal costs for each material as well as the basis for the disposal charge. This way, the local government can provide for disposal rate changes based on changes in the tipping fees.

It's In The Contract

The contract is the most important part of the bid package. It should be included in the bid package, in its final form, ready to be signed. A bid package should be considered incomplete unless the bidder has included its signed contract.

All contracts differ, depending upon the requested services, state and local government requirements and the preferences of the local government and its attorney. However, regardless of the contract's inclusions, the local government can set the rules and methodology for providing services and the terms for the services.

The contract is the key to determining if the program will succeed. Consequently, it should be approved by the governing board, at least in concept, before advertising the Invitation to Bid. When designing a contract for services, consider the following:

- *Definitions.* Properly define terms such as service requirements and rate changes.
- *Rate Adjustments.* Include a specific methodology for rate adjustments, both decreases and increases, and include details of when and how rate adjustments will occur.
- *Quality of Performance and Administrative Actions.* Develop a set of service performance standards and the administrative actions to enforce

the standards (see chart on page 50).

- **Required Items.** Include all of the service provider requirements. This can include anything from review of financial data to employee uniforms. No items are immaterial.

- **Flexibility.** Include provisions for program changes and unforeseen circumstances. Many federal, state or local regulations will require program changes during the life of any contract lasting longer than three years. Flexibility allows the local government to adapt while retaining control of the program.

To complete the bid package, include all necessary forms. For example, some local governments may require the bidder to use a standard form for bid and performance bond information. It's also helpful to enclose a checklist of all major items that should be included in the bid package. Require bidders to complete, sign and return the checklist as part of the bid documents.

Since the solid waste services contract is part of the bid package, it is important to hold a mandatory pre-bid conference to address any contract or service questions. This conference is the only chance bidders have to ask questions and to suggest changes to the documents.

After the meeting, all changes

should be included in the bid package addendum and mailed to all bidders. The only changes considered valid are those that have been documented in a bid package addendum; oral representations are not valid.

Evaluating The Bids

Unless required by law, do not provide the public with any information beyond the bidders' names. No one benefits when prices are released immediately and then discrepancies occur in areas such as insurance provisions. Furthermore, the pricing structure of collection and disposal bids usually requires a detailed analysis before the lowest bid can be determined. In many cases, price is just one element considered for the contract.

Before awarding the bid, keep in mind that the bid documents include a signed service contract — use it. Do not negotiate conditions, price or terms after the award has been made.

In the end, a local government's success can be measured by the level of control it maintained during the contracting process. ■

Richard J. Hutchinson is the manager of SCS Management Services in West Palm Beach, Fla.

Is It Time To Adjust Rates?

The overall rate paid by the customer consists of two fees: collection and disposal. An important part of structuring a collection contract is determining when the collection rates will require an adjustment and how much it will be. If both issues are not addressed in the contract, lengthy and adversarial rate negotiations can result.

Q: When is an adjustment due?

A: Collection rates can be adjusted at any time during the life of the contract. The majority are adjusted annually.

Q: How are adjustments determined?

A: One approach to adjust collection rates uses the collector's income. However, this method can reward an ineffi-

See "Rates" on page 56

"Rates" from page 54

cient collector (one whose operating methods have resulted in a low income) by increasing the rates to its customers, while penalizing an efficient collector (one achieving a higher net income through good management).

Q: What other rate adjustment methods are available?

A: The Consumer Price Index (CPI) approach often is used to adjust rates. However, this method is somewhat flawed because the CPI includes the effects of cost changes for goods and services that do not directly affect solid waste collection services. As a result, collection rates may increase at a time when collectors' costs are not rising, or the rates may not increase when collectors' costs are increasing significantly.

The Refuse Rate Index (RRI) is a price indexing method designed for adjusting collection rates. The RRI is based on various national indices that apply directly to the specific costs of the collector.

With the RRI method, the collector periodically (typically annually) submits financial information that separates operational costs into five categories. Each category is weighted, based on its particular value as a percentage of total cost.

Each category is associated with a specific national index and the change in that index is calculated for the appropriate period. Next, the index change is multiplied by the "weight factor" for the appropriate category. The sum of the results is the RRI for that period. The new collection rate is established by multiplying the current rate by the new RRI.

Q: Does this method produce the lowest rate?

A: Maybe. Historically, the RRI has been lower than the CPI and has occasionally produced a rate decrease. Its value is that it produces a fair and equitable rate adjustment because it uses only indices that affect solid waste and recycling collection operations.

Q: How is the initial disposal rate* determined?

A: The initial disposal rate is calculated by multiplying the tipping fee by the annual tonnage generated by the residential unit (the annual generation factor).

Conduct a generation study to

determine the annual generation factors. This study should be done every two to three years, or as often as significant changes occur that will affect the disposal rate. For example, if the solid waste program adds new materials to its recycling program, the annual generation factor will change; or if the disposal facility requires yard waste to be collected separately, and charges a different fee for that material, a new yard waste generation factor must be developed.

Q: How are generation factors used?

A: Generation factors can be used to calculate disposal rate adjustments based on changes in disposal rates, changes in the disposal system, or both. For example, assume your annual solid waste disposal rate is \$43.20, based on a generation factor of 1.2 tons per year and a tipping fee of \$36 per ton (1.2 x \$36). If the tipping fee is raised to \$40 per ton at the end of Year One, your new disposal rate beginning in Year Two will be \$48 (1.2 x \$40).

However, beginning in Year Three, yard waste must be separated. The disposal facility institutes a tipping fee of \$48/ton for MSW and \$20/ton for yard waste.

Note: A generation study performed over the last half of Year Two calculates household garbage at 0.9 tons and yard waste at 0.3 tons. If you accept full service, your disposal rate for Year Three is \$49.20. If you accept only household garbage service, your disposal rate is \$43.20.

Remember: annual generation factors always allow you to adjust the disposal rate equitably for the customer and the collector.

— Richard J. Hutchinson

**The disposal rate is made up solely of the charge for unloading, or tipping, the solid waste at the disposal facility. The charge, or tipping fee, is normally calculated using a dollar-per-ton formula. The disposal rate element should be passed to the customer and should not include any profit or administrative charges.*

Disposal rates should only be increased when the tipping fee is increased. Therefore, the only issue with disposal rate adjustments is how much the increase should be. To avoid future problems, clearly address this issue in the collection service contract.

\$10 million this year. The upfront payment would increase to \$750,000 if the city and Ogdan Martin cannot obtain a sales tax exemption for the pollution control equipment, said Bob Lemons, city chief financial officer.

The city also for the first time will pay a tipping fee for the trash it sends to the facility. The fee will be \$16.50 per ton through October 2000 and then rise to \$21 per ton.

In exchange, the city will stop paying Ogdan's operational costs and other annual expenses, estimated to rise to \$10.38 million per year from \$8.35 million currently, Lemons said. Also as part of the agreement, Tulsa no longer will be involved in the retrofit process, a feature both sides applauded. The city will avoid debt payments of \$4 million annually to retire bonds it would have had to issue to finance the retrofit.

N.M. official questions privatization option

Report says Santa Fe County could run transfer stations more cheaply than WMI's bid

By Byron Acohidio

SANTA FE, N.M.— Waste Management of New Mexico has submitted the only qualified bid to assume operation of a network of seven rural transfer stations run by Santa Fe County, N.M.

But a recent report shows privatizing the transfer stations could prove significantly more expensive during the next eight years than simply continuing county management of the facilities.

Waste Management's proposal would cost the county at least \$69,000 more during the life of the proposed eight-year contract, assuming no changes in the waste stream, said Jill Holbert, county solid waste manager.

However, if the county's waste stream rises 3 percent annually — matching the region's projected population increase — expenses could ring in as much as \$635,000 more under Waste Management's proposal compared with continuing county management, Holbert said.

The proposed agreement maintains the existing May 2007 expiration date. The new contract still would require 7 percent trash collection rate increases in 2001 and 2003 to maintain the projected \$7.5 million savings, said Charles Hardt, Tulsa public works director.

Officials estimate the new contract would boost the authority's reserves to \$10.9 million by 2007, compared with \$3.4 million under the existing contract. Trash collection rates also could decrease after 2007 under the current plan. City officials have said the city will consider landfilling its trash after 2007.

The proposed contract keeps a requirement that the city guarantee the delivery of 340,000 tons of trash annually.

"Because we'd pay them on a per-ton basis, the more we generate, the more we pay," Holbert said.

Waste Management has indicated it would give the 16 county workers who operate the transfer stations first preference to keep their jobs.

But the company also has said it expects to need only a dozen workers.

Santa Fe county officials issued a call for bids last fall as part of an ongoing effort to lower garbage service fees.

County residents long have been accustomed to paying \$10 per year for unlimited use of an unlined county dump accessed via the network of far-flung transfer stations.

But the old dump closed last year, replaced by the modern

Caja del Rio landfill jointly owned by the city and county of Santa Fe.

Residents now pay about \$5 per trip to a transfer station, so some have taken to regularly dumping trash in the county's many canyons and ravines.

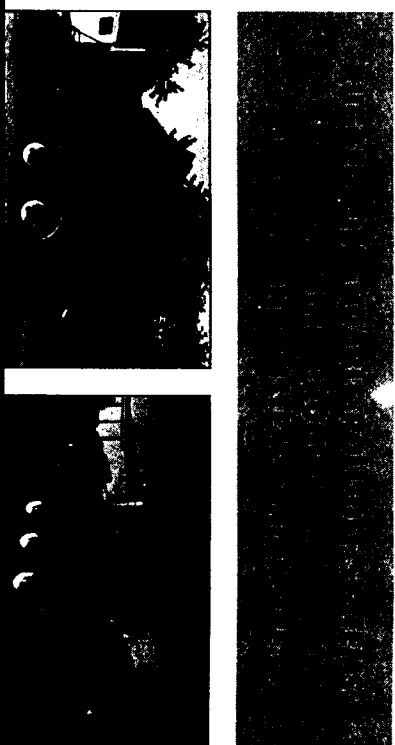
The cost of keeping the transfer stations open is comparatively high: about \$834,000 to handle 9,000 tons of waste annually.

One station is 75 miles from the landfill.

"We have some stations that only get three tons a day," Holbert said. "But we're providing a way for people to get rid of their trash without dumping it illegally."

The commission is scheduled to review Waste Management's proposal in detail at its next meeting. ■

ROLL-OFF TRAILERS TO MEET EVERY NEED



A LOOK BACK

RECYCLING BEAT

Merger mania clouds recycling's future

By Joe Truini

Mega-merger mania may give small, independent recycling firms a chance to snatch some residential recycling from colossal, vertically integrated waste management companies, or it may squash the crumb of competition they present, according to a consultant.

The joining of the industry's giant publicly owned waste management companies could be fatal for recycle-only firms trying to get a foothold in the market, said Peter Anderson of RecycleWorlds Consulting in Madison, Wis. The convenience that large waste management companies offer municipalities makes smaller firms' services less attractive.

"It's not going to be beaten back by a dedicated and sincere entrepreneur with no capital trying to break in," Anderson said. As a person who wants recycling to succeed, I'm extremely concerned about the drift toward consolidation."

Cities are more likely to give contracts to combined waste hauling and recycling outfits because of the ease of administration, he said. These companies, in turn, realize substantial synergies from combining services.

Material diverted from a company's landfills through recycling programs saves the company waste hauling and disposal costs. Recycle-only operations can't gain those savings, making it even harder for them to compete, he said.

"I think that when you have the time person doing both, you make impossible for a lot of recyclers

they can change the way they solicit bids for contracts," Koplowski said. "They could be more creative in how they did their request for proposals so smaller companies only providing recycling services have an opportunity to get them."

But the economics of recycling can't sustain a national consolidation of recycling companies, Anderson said. They will not be able

to band together to compete head-on with the giant solid waste management firms, he said.

Recycling companies will expand not through acquisitions but by gobbling up contracts in their own regions, Liss said.

Cities requiring aggressive recycling programs will have to turn to independent recyclers, he said.

One way smaller recycling

companies can compete is by teaming with small, independent waste haulers and even composting operations to offer cities full-service waste management, he said.

Increasing hauling and disposal costs created by mergers also may benefit recyclers, allowing recycling to compete.

But the large waste management conglomerates will not al-

low that to happen, Anderson said.

"Unfortunately, for this theory to hold, one has to assume that gentlemen like John Drury [Waste Management Inc. chairman and CEO] and Tom Van Weelden [Allied Waste Industries Inc. chairman and CEO], who have built billion-dollar companies out of a few loosely linked haulers, are asleep at the switch," he said. ■

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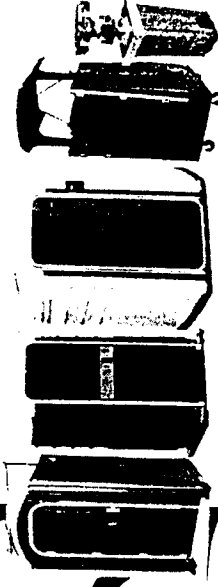
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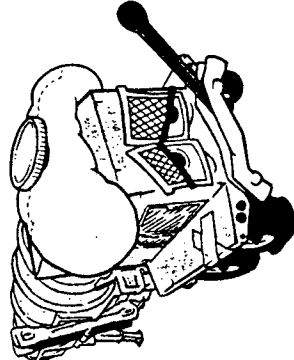
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larger and more...
said.
"I think that when you have the same person doing both, you make it impossible for a lot of recyclers to even bid on the contracts," said Doug Koplow, a senior associate with Cambridge, Mass.-based Industrial Economics Inc.

But the very nature of the recycling industry could open the door for small firms, said Gary Liss of Gary Liss & Associates in Sacramento, Calif. Most recycling companies operate on much lower profit margins than their hauling counterparts, he said.

The cyclical pricing of the recyclable commodity market makes recycling programs less attractive to a large public company that must satisfy investors. A large company needs a 30 to 35 percent return on its investment to woo investors; an independent operation needs only a 10 to 15 percent return, he said.

"Those who are not dependent on capital from Wall Street are able to compete in this particular niche," said Liss, a former solid waste manager for the city of San Jose, Calif.

Municipalities offering recycling and solid waste collection contracts also are a key if the small independents are to survive, Koplow said. City officials need to examine the benefits of contracting with separate recycling and waste hauling companies.

"If [municipalities] had an interest in trying to make sure that recycling stays competitive, then

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RECYCLING PLAN

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Managing Public/Private Competition

Some haulers say competition between the public and private sectors is like comparing apples and oranges. But careful "refereeing" by local governments can level the playing field.

In the game of privatization, competition had always been fierce, but at least the players—whether they were big or small private firms—were playing from the same rule book, and privatization had been steadily increasing. But in recent years, a new competitor has emerged to shake things up. Once a seeming sideline spectator, the public sector “team” now is competing head-to-head with the private sector for solid waste contracts in what is called “managed competition.”

However, the private sector argues that many

times the two competitors are not playing by the same set of rules, and has asked local governments to keep the game fair. But can a level playing field be maintained? *Waste Age* talks to analysts, consultants, and representatives from the public and private sectors to get a play-by-play perspective of managed competition.

representatives from the public and private sectors to get a play-by-play perspective of managed competition.

Instant replay

Trend or fad, like it or not—managed competition is increasingly being used by local governments for solid waste collection, disposal, and recycling services contracts, and they are seeing results.

By Bethany Barber

Managed competition cont'd.

But while the last two years have witnessed more and more cities using it, managed competition is not a new concept.

In fact, the city of Phoenix, Ariz.'s Public Works Department is credited with pioneering the concept nearly 20 years ago, when it pitted city workers against

private contractors in a bid for waste collection and tree-trimming services, according to *Competitive Neutrality: Ensuring a Level Playing Field in Managed Competitions* (March 1998), part of the Reason Public Policy Institute's (RPPI, Los Angeles) How-To Guide series.

Although privatization continued throughout the

Privatization Trends: *The Box Scores*

Studies, workshops, surveys, focus groups—they all agree on one sure thing: Privatization is on the rise. Quite possibly, the only thing growing more rapidly is the number of studies focusing on privatization. Waste Age spotlights two of those studies released this year.

Privatization—it's happening globally and at record levels. In fact, according to the Reason Public Policy Institute's (RPPI, Los Angeles) latest report, *Privatization '98*, global privatization in 1997 is valued at a record \$160 billion, blasting 1996's record \$89 billion out of the water.

Indeed, it's a safe bet that some form of privatization is happening in your own community at this very moment. It's taking place in big cities and in small towns. All across the country, state and local governments are looking to privatize everything from health care and highways to prisons and schools.

But privatization is nothing new to the solid waste industry, says Adrian Moore, director of economic studies for RPPI and editor of *Privatization '98*. "Solid waste and recycling collection is one of the first services where privatization began. It's more of a matter of course now."

But that doesn't mean it isn't increasing, he adds.

RPPI's report cites a 1997 reader survey in *Public Works* magazine in which more than 35% of respondents projected privatization of recycling and solid waste services to increase.

Preliminary results from consult-

ing firm R.W. Beck's (Orlando, Fla.) biennial update to its National Privatization Survey™ were presented at this year's WasteExpo in June, showing that of the 650 communities interviewed for the study—all with populations of more than 100,000 people—more than 50% are serviced at least partially by private waste haulers.

That number has grown steadily by 2% annually in the past decade, says Jonathan Burgiel, director of solid waste management services for R.W. Beck. However, Burgiel adds, the rate likely will change to a 3% or 4% growth rate in the future.

"A good guess would be that by the year 2000, 67% to 70% of communities [will be serviced, at least in part, by private haulers]," he says.

Why are more and more communities considering privatization of their solid waste services?

RPPI's study cites "improving service delivery, cutting costs, and helping shrink the scope of government" as general reasons why communities turn to privatization. Specifically in the solid waste industry, the costs of compliance with state recycling requirements and federal regulations have been a driving force.

R.W. Beck's survey broke the reasons down into percentages to reveal that 44% of respondents cited cost savings as the No. 1 reason to privatize. Another 19% and 12% cited efficiency and political pressure, respectively. But a quarter of the respondents cited "other" as their reason to privatize.

According to Burgiel, some reasons falling under the "other" category include the consideration of upcoming major events or capital expenditures such as replacing vehicles, or even new regulations, such as Subtitle D and the loss of flow control. ■

—BB

For more information or to obtain a copy of *Privatization '98*, contact RPPI at 310/391-2245 or visit its Web site at www.reason.org. For more information on R.W. Beck's National Survey, contact Jonathan Burgiel at jburgiel@rwbed.com.

Managed competition contd.

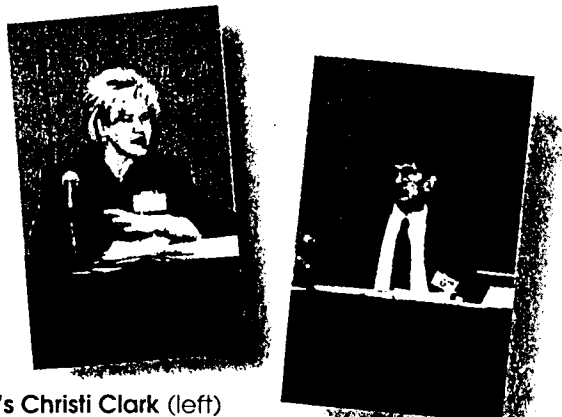
1980s and 1990s, the practice of managed competition really didn't catch on elsewhere in the U.S. until the early '90s, says William Eggers, a privatization expert and consultant, and author of *Competitive Neutrality*. "Right around '92 and '93, we started seeing it [managed competition] kicking up in the U.S."

Eggers asserts that the popularity of the book *Reinventing Government* and the success of competitive programs in Phoenix and Indianapolis increased awareness of managed competition and its virtues.

For the good of the game

Whatever its beginnings, the successes of some communities, both large and small, that said, "If the private sector can do it, so can we," now have spurred other communities to say, "Well, if they can do it, so can we." Indeed, communities are considering managed competition more than ever before, citing improved costs and operation efficiency attained from both the private and public sectors.

According to preliminary results from consulting firm R.W. Beck's (Orlando, Fla.) biennial National Privatization Survey (see sidebar), 14% of the respondents—representing communities with populations of 100,000 or more—have used managed competition in the past. And of those communities that hadn't used managed



BFI's Christi Clark (left) and R.W. Beck's Jonathan Burgiel (right) discussed managed competition at this year's WasteExpo in Chicago.

competition, 13% say they are planning to use it in the future, especially for waste collection.

Moreover, managed competition has reached those communities that previously had never considered privatization for reasons of job loss and the feeling that they hadn't done a good job, according to Jonathan Burgiel, R.W. Beck's director of solid waste management services. With managed competition, the public sector now is given the same opportunities to compete with the private sector.

Managed competition: *Here to stay?*

Does managed competition have staying power? Not everyone is convinced of its longevity. In fact, some people assert that managed competition will prove to be merely a fad.

"There are definitely a lot of 'fad' aspects to it. It has those appealing qualities politically," says Adrian Moore, director of economic studies for the Reason Public Policy Institute (Los Angeles).

But, Moore adds, it is not something that should be treated lightly.

"The general sense is the private [sector] thinks it's a fad, and the public [sector] says it's a trend. The bottom line is it is just some wishful think-

ing/sour grapes from the private sector. They are not being realistic."

William Eggers, a consultant and privatization expert, argues that it is still too early to tell. "If the public sector is able to perform up to specifications of the memorandum of understanding and stay within those costs, there is a much better chance that it is here to stay."

However, he adds, if the private sector is right or if it "continues to play, and contracts continue to stay in-house, private bids will begin to slack off. Then it [managed competition] might disappear."

"You could call it a fad, but to me, it's all the same, but evolving. It's just going

by a different name," explains Ulysses G. Ford, vice president, public sector services for Waste Management, Inc. (Houston), and a seasoned veteran of privatization.

"When it started in the late '70s, it was called contracting out...and then in the '80s, it evolved into 'privatization.' By the '90s, 'managed competition' evolved. Local government re-engineered itself, and the public sector became more aware of costs and became a competitor," he says.

"In the year 2005, it may be called something else, but it isn't going away," he adds. ■

-BB

Before these communities instituted managed competition, "public employees had long enjoyed a protected monopoly ...Managed competition has reduced political opposition to competitive contracts," Eggers writes in *Competitive Neutrality*.

The benefits of managed competition have representatives from both sectors singing its praises; all parties involved realize that they can do better.

"Managed competition has been a wake-up call to the public and private sectors. [Everyone] must be more cognizant of their costs than ever before," Burgiel says.

Managed competition "proves that any of us are in danger if we don't stay on top of our game, stay efficient," said Christi Clark, then corporate director of public sector marketing and sales for Browning-Ferris Industries (BFI, Houston), at Waste-Expo '98 last June.

Player stats & handicaps

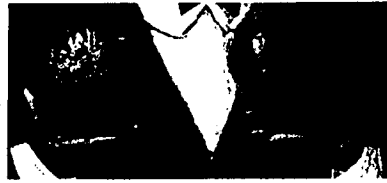
While the merits of managed competition benefit both sectors, many private haulers argue that the odds are stacked against them when competing with the public sector because their costs cannot be fairly compared.

Indeed, *Competitive Neutrality* lists several innate advantages of the public sector over the private sector. It has lower capital costs, pays little to no taxes, does not have to earn a profit, is exempt from certain laws and regulations, and is self-insured. In addition, oftentimes the public sector has a close relationship with the staff evaluating the bids.

Private haulers argue that each of the public sector's advantages often underscore private sector bids. At WasteExpo, Lee Addleman, municipal marketing manager with Waste Management, Inc. (WMI, Houston), emphasized the point. "Profits are not optional for us," he said. "We are required to pay taxes and insurance, and we cannot cross-subsidize costs to other departments."

But the public sector is not without its disadvantages.

"Yeah, you could say we have an advantage. Lets face it. We're self-insured and don't have to make a profit...But our labor costs are always higher than the private sector's," says George Fratus, chief of the automotive division of Warwick, R.I.'s Department of Public Works,



Assessing the Field Conditions

- ◆ Hire outside consultant to evaluate bids
- ◆ Ensure all bids are sealed
- ◆ Waive internal constraints on public sector (e.g., purchasing requirements)
- ◆ Use full-cost accounting to evaluate all bids
- ◆ Look for cross-subsidization in public sector bids
- ◆ Allocate portion of public sector's shared indirect costs to bid
- ◆ Make subsidies available to all bidders
- ◆ Consider technical qualifications of both private and public sector bidders
- ◆ Require performance guarantees from both sectors and establish penalties for both
- ◆ Monitor service providers throughout contract period
- ◆ Hold pre-bid conferences to iron out wrinkles in requests for proposals

which recently won back collection of the city's waste in a managed competition five years after the city first privatized with a commercial hauler.

Other disadvantages of the public sector, according to Eggers, are that it is faced with inflexible work hours, it has to bid exact cost, it can't move quickly on capital spending, and it is subject to rigid procurement and personnel rules.

And oftentimes where the public sector has disadvantages is exactly where private haulers have expertise.

"No. 1 is experience" with the bidding process, says Adrian Moore, director of economic studies for RPPI. "Managed competition really is a process where savvy helps."

Moore also suggests that private haulers do not have to "play by restrictive rules, even subtle ones like purchasing mandates," which can inflate public sector costs.

No matter what the advantages or disadvantages of the public and private sectors are, according to BFI's Clark, "we are becoming more and more alike."

Clark intimated that the sectors' similarities include goals of improving competition, reducing costs, and try

ing to minimize risk. "We both have forces, or owners, who want more for their investment. Constituent or shareholder pressures are similar," she said.

Assessing field conditions

In the managed competition game, point spreads are not an option, so the local government must do its best in taking certain measures to level the playing field. "You're never going to achieve 100% perfect neutrality, but I think, by following certain guidelines, you come much closer," Eggers says.

Perhaps one of the most important suggestions for cities to consider is: Don't contract the entire city at once, unless you are willing to lose your public sector waste division.

Cities such as Charlotte, N.C., and Phoenix are divided into sections that are contracted out on a staggered basis.

One of the first steps cities should take to make the bidding process as fair as possible, Eggers suggests, is hiring an outside consultant to evaluate the bids. "Especially

"You're never going to achieve 100% perfect neutrality, but I think, by following certain guidelines, you come much closer."

—Eggers

Burgiel.

In Warwick, a small city with a population of about 85,000, "the mayor had us estimate our costs, and they held our bid and wouldn't disclose it until all bids were in," says Fratus. Moore suggests that in managed competition, cities should waive rules like purchasing mandates for the public sector to allow it to be more competitive.

Eggers agrees. In *Competitive Neutrality*, he suggests cities "extend competition as completely as possible into the department."

if it's their first time out," agrees RPPI's Moore.

Hiring outside firms who specialize in public/private competition can more fairly evaluate capital costs, Eggers says. "Sometimes it's easier to find faults when you know where to look."

Sealed bids for all parties are absolutely necessary to keep the competition fair. The downfall of many so-called managed competitions involved cities accepting all private bids, then allowing the public sector to view them and create its own bid, explains R.W. Beck's

Phoenix, Ariz.: Managed Competition's MVP

If you are looking for a managed competition model, look no further than its founder, Phoenix, Ariz.

Since 1979, the city has competed successfully with the private sector for collection services for the city's residential solid waste, winning about half of the contracts. When the public sector first began competing for bids in Phoenix, the city was divided into five districts, in which three of the districts were contracted out. It struck out at its first three at-bats before winning a contract, but it did not give up and instead, gained valuable experience in developing bids.

"The city of Phoenix doesn't promote privatization, but competition," said Juan Martin, director of with the city's Department of Public Works (DPW), at this year's WasteExpo in Chicago.

Since its inception, managed competition has changed in Phoenix. The city is now divided into three major regions with populations of 105,000 each. Each region is split in half, in which one half is serviced by only the public sector, and the other half is contracted out for a period of five to six years.

"Generally, we never bid out more than 50% of the city at one time," says Mark O'Connor, DPW deputy director.

Last month, Phoenix released invitations for bids (IFB) for two regions, totaling more than 100,000 homes. For the first time, the IFBs include recycling services requirements.

The city also is planning to release an IFB for a long-haul contract for which DPW already is preparing a cost assessment, O'Connor says.

However, when the city called for bids to operate its brand new recycling facility that opened last month, DPW did not put in its own bid.

"We didn't have much experience operating one, and decided to leave it to the experts," O'Connor adds. ■

—BB

Full cost accounting of each sector is the only way to ensure that costs are compared as fairly as possible, according to Addleman.

The evaluation of public sector costs becomes the most difficult task in comparing bids, because many costs are hidden due to cross-subsidization, or "in-house costs borne by other departments."

Eggers suggests to "be on the lookout for in-house units trying to subsidize part of their operations that must compete with private firms from protected parts of the unit."

Indirect costs—such as administration costs, payroll and personnel costs, and legal costs—are often shared among many departments in the public sector, so cities should require that a portion of those overhead costs be allocated to the public sector's bid, recommends Ulysses G. Ford, vice president, public sector services for WMI, who cites Phoenix and Charlotte as experts in analyzing total costs for managed competitions.

Other issues in leveling the playing field include allocating subsidies to both public and private sectors, considering the technical and managerial qualifications of both sectors, and most importantly, establishing performance guarantees from both.

"Monitoring is essential," said Juan Martin, director of the city of Phoenix's Public Works Department, earlier this year at WasteExpo '98 in Chicago.

"We expect the public entity to inflict penalties if we don't meet the goal of our bid," said Addleman. But oftentimes, the public sector does not have to worry about strict penalties.

Phoenix has a post-implementation assessment that monitors contractors—public and private—to ensure they are delivering the services promised. Eggers recommends cities establish sanctions if the public team does not meet the level of service agreed upon at the cost bid, as well as establish provisions for loss-sharing and gain-sharing for public units.

Charlotte's public sector, which won the bid for the western quadrant of the city in January, instituted a gain-sharing program in which up to 25% of each employee's gross salary can go back to them if the department's budget falls under its proposed cost, according to Wayman Pearson, key business executive for solid waste services.

If all bids are prepared properly and evaluated fairly, "the true winners in managed competition are the taxpayers."

—Pearson

hundreds of thousands of dollars sometimes in preparing bids, and it soon realizes it's in over its head.

Eggers suggests that the public sector hire a consultant—preferably a separate consultant from the one assessing the bids—to assist the in-house team in preparing its bid.

Internal government constraints, such as the purchasing requirements mentioned by Moore, as well as personnel policies, should be lifted to allow the public sector to be fairly compared to the private sector.

In fact, in Charlotte, the city's solid waste division used the private sector as its model. "We try to run the department like a business," says Pearson. "We benchmark the best practices of the private sector."

For example, in the private sector, there are fewer supervisors, so the city streamlined its employee demographics. The department now operates with fewer employees per household overseen, Pearson says.

Before preparing a bid, the in-house unit should do a full cost accounting survey of its own operations to assess where it can best make improvements. In preparing its bids, Martin explained, Phoenix's solid waste division sits down with the public sector unit and goes over its total costs, identifying where improvements can be made, and it prepares specifications accordingly.

And if all bids are prepared properly and evaluated fairly, "the true winners in managed competition are the taxpayers," Pearson adds. ■

"At six months, we were \$68,000 under cost," he says.

Finally, Ford says, a lot of the bidding frustration can be avoided if cities hold pre-bid conferences after the initial request for proposals. "It allows the private sector to ask questions, offer suggestions, and bring about changes," before the process begins, he says.

Public sector training camp

When cities choose to privatize using managed competition, the in-house unit suddenly is forced sometimes to compete with the big league players who spend

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SOLID WASTE ASSOCIATION OF NORTH AMERICA
WASTECON 1996

Session 14: Public/Private Interface: The Free Market at Play-Part 2
Wednesday, September 25 - 8:30 am -12:00 pm

Municipal Collection Privatization: Cash Cows or Fire Sales?

In the past, municipal collection systems have been under pressure to privatize for reasons including arguably reduced cost associated with eliminating public employee's relatively higher pensions and perquisites and cumbersome public procurement rules. Today, they are additionally under threat to privatize in order to raise money from the sale of system assets (accounts and equipment). Is privatization a cash cow or fire sale? From a fund raising perspective, does it make "cents" to privatize?

Example: A small city in an urban area historically has been providing municipal collection service, but the solid waste enterprise fund is running large cumulative deficits and the city itself is nearly insolvent. Public works employees have been laid off, leaving smaller numbers of workers to handle increasing numbers of residential and commercial accounts. Equipment is old and in poor repair. City council awards additional commercial accounts to the Public Works Department in the hopes of realizing more income, which might subsidize residential collection losses, but service deteriorates further. (It is subsequently discovered that poor billing and record keeping resulted in some commercial accounts receiving free or under-billed service.) State required source reduction and recycling plans and federally required drug and alcohol testing protocols are not prepared or filed. The city needs to implement curbside recyclables and green waste collection to meet diversion goals.

The City's credit is poor, and it concludes it cannot raise capital to upgrade its collection infrastructure. Furthermore, it is difficult to reform the Public Works Department, either from within or without, since its director is also a member of the City council and the city has no conflicts code or policy which would disqualify him from voting on solid waste matters. (And he is a council

colleague.) Consequently the city determines to competitively procure (semi)automated residential and commercial collection services for refuse, recyclables and green waste, with materials processing and marketing, coupled with the sale of its municipal equipment and accounts.

The city's population is 50,000 and its residents and businesses are estimated to generate about 55,000 tons of waste annually. The winning bidder purchases the City's equipment and business for an up-front cash payment of \$2.625 million with additional subsequent payments of \$170,000, plus funding the city's contract administrator for \$80,000 annually over the ten year term of the service agreement.

How does your local government compare to this example? What questions should you ask if you are considering the sale of your collection system? Solid waste administrators may raise the following issues with their elected officials.

If it's broken, can you fix it? First, ask: why are you considering privatization? Do you want to raise cash for your general fund, or do you aim to improve your citizens' collection service?

If you merely want to raise cash, consider the relative costs of public and private capital. (See "What is your credit rating?", below.)

If you desire improved collection service, further ask: is improving service a question of management and departmental reorganization, and/or capital investment in new equipment? Although funding a management study might demand some expenditures, reorganization primarily demands political will. But unless you can fund from capital reserves, capital investment will likely require borrowing. Compare your cost of borrowing at tax-exempt rates through issuing municipal debt with the cost of borrowing, in effect, through the collection system purchase payments from your private service provider. This will depend in part on your credit rating.

What is your credit rating? Look at your credit rating for municipal debt payable from your solid waste enterprise fund and/or general fund. Work with your finance director/treasurer to determine what interest rate you would pay if you issued tax exempt municipal obligations to fund your cash needs. If you want money to pay for salaries and other working capital needs, you may not be able to borrow and view the sale of your collection system as the only cash vehicle. But first discuss with your financial officers and advisors whether it is truly advisable in the long term to sell capital assets to solve short term cash flow problems.

And remember, unless you lack a marketable rating or have a very poor rating, your ability to borrow at tax exempt rates, for governmental purposes, means that your cost of capital is most likely cheaper than a private hauler who must borrow at taxable rates, or at best, at relatively higher tax exempt rates inflated to account for payment of alternate minimum tax. Additionally, regardless of the purchaser's cost of capital, the purchaser will build in its requisite return on investment on the money that it fronts you.

In sum, selling your municipal system merely to realize cash is probably an expensive way of raising money. Unless you have no credit at all, your tax exempt cost of capital will be cheaper than the hauler's cost of capital and profit markup. And your service provider will recover the purchase price it pays you through higher rates or service fees charged to your residents and businesses over the term of the service agreement.

How do your collection rates compare with those neighboring jurisdictions? Comparing rates is often a useless exercise, because rates implicitly reflect differences in service levels and franchise fees. However, your citizens will look at their neighbors' rates without necessarily understanding the reasons for the differences. If you intend to raise money through the sale of your system, your citizens' rates will probably go up. Although your private service provider theoretically may be able to provide more cost efficient service and correspondingly lower rates, it is likely that in conjunction with privatization you will be requiring service program changes (e.g. automation or additional source separated routes) and related capital investment that will result in net rate increases. Any purchase price payment will add even more incremental rate increases. You need to ask: will my ratepayers accept the projected level of rate increases?

Who will compete for your business? If your equipment is obsolete and in poor repair and your collection enterprise is losing money, objectively it may be difficult to attract bidders, especially if they must make significant capital investment. However, they may believe that they can run collection operations more efficiently and turn a profit. Or they may want to expand into your geographic area to consolidate pre-existing surrounding service areas or win a toe hold in a new service area. Solid waste administrators may raise the following questions with their elected officials. Ask: who will compete for your business? The answer will necessarily be unique to your service area. Obviously, if you can generate a bidding war you will realize a larger purchase price. And bidders who really want your business may be willing to accept a lower rate of return on their purchase price investment, yielding lower rates. Or they may be willing to amortize their investment over a period longer than the proposed agreement term, i.e. assume the risk of not fully recovering their investment if they do not secure contract renewals at the end of the stated initial term.

Can you secure procurement process integrity rules? Lastly, when so much money is at stake, the bidders are likely to heavily lobby elected officials. The best-structured competitive procurement will be pursued for nought if bidders make an end run around the procurement team and privately re-structure the service agreement terms with elected officials. In order to assure that all contact with bidders is channeled through a designated staff person or consultant, you might emphasize to board and council members that the local press can make big headlines with even the appearance of impropriety, which can be politically damaging and personally distressing.

Other commentators have focused on control and public health and safety issues raised by privatization. The possibility of large cash buy-outs complicate those policy issues. If faced with a takeover threat, bring the legal-financial expertise onto your team to help raise the relevant comparative economic issues.

CONTRACTING FOR SOLID WASTE COLLECTION SERVICES¹

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In an era when "privatize" and "reinvent government" are the buzz words of change, more and more communities are considering arrangements with private haulers for residential solid waste and recyclables collection services. These collection services are many times bundled to include processing, marketing, and/or disposal functions as well.

Why Privatize?

There are two major reasons why a community may look to the private sector to provide some answers to solid waste and recyclables collection questions -- (1) the community wants or needs to get out of the collection business; and (2) the community wants or needs to get into the collection business. In the first case, the community may be seeking to privatize services that have been provided by public collection crews. In the second case, the community may be seeking to organize collection services that have been "open market" systems in the past to ensure that constituents receive consistent service levels at consistent and reasonable prices.

Getting Out of the Collection Business

The overwhelming reason why local governments consider privatizing collection services is costs. Conventional wisdom says that the private sector can do it cheaper, and political pressure is on in many cities and counties to take a hard look at private sector alternatives. The cost equation has two aspects, capital costs and operational costs. Some of the specific factors which impact the collection system costs and force jurisdictions to consider privatizing collection services include:

Aging Fleets: Equipment replacement funds are frequently one of the first budget items to be cut when money gets tight. With capital for new trucks dwindling, the community may operate its collection vehicles well past their prime. This results in rising

¹Originally presented by J. Frank Bernheisel at the Municipal Waste Management Association meeting on March 29, 1995.

maintenance and repair costs, along with inefficiencies caused from equipment downtime, which make municipal collection programs ineffective.

Need for New Services: Collection services have diversified -- and more and more jurisdictions make multiple separate pick ups for municipal solid waste, recyclables, yard waste, bulk waste etc. These new and revised service levels cause many communities to experience collection growing pains, bringing demands for new equipment and staff to operate them. With budgets tight, contracting out collection services is one way to adjust to the conflicting demands for increasing services and decreasing the size of government.

Management Entrenchment: The collection world is changing. New collection services -- such as curbside collection of recyclables, wet-dry collection systems, automated collection, and pay-per-bag systems, to name just a few -- reflect the new ways that municipal solid waste is thought about and handled. Some communities find that they cannot adjust to these new ways of thinking and providing service. It is easier to turn over collection to private haulers who are motivated by the bottom line to take advantage of these new cost-effective collection approaches.

Labor Agreements: Some jurisdictions have long standing agreements with labor unions and are unable to successfully negotiate contract modifications that allow for more efficient delivery of services. For example, the no mandatory overtime clause in some labor contracts makes it difficult for communities to provide adequately for collection after holidays or handle the volume of materials collected during leaf season. Also, some union contracts have built in work rules which prevent changing to more efficient methods. One way to circumvent these challenges is contracting with the private sector.

Getting into the Collection Business

While some jurisdictions are anxious to shed collection responsibilities, other communities are examining the wisdom of controlling collection services that have traditionally been provided by private haulers operating within their borders. "Open market" collection systems, where waste generators may select the private hauler of their choice without regulation or participation by the local government, predominate in unincorporated areas for residential services and most often for collection from commercial accounts anywhere. Private haulers may be subject to local licensing requirements that do not include minimum service performance or safety requirements. Pricing for the service is whatever the traffic will bear.

Some of the drawbacks of "open market" collection systems include: (1) service levels and prices paid for those services may vary widely within a community; (2) prices paid for a particular level of service may depend more on the number of customers the hauler has than the service level; (3) public policy goals (such as mandatory collection or recycling requirements) may be difficult to enforce; (4) multiple haulers serving the same neighborhood may create noise, traffic, litter, safety, and aesthetic impacts; (5) the duplication of effort by multiple

haulers overwhelms the efficiencies of the private sector; and (6) some haulers operating in a "open market" system may not be able to provide increasingly sophisticated levels of service (separate recyclables collection, separate yard waste collection, and separate bulky waste collection, for example). For these reasons, local governments may choose to assume a role in the collection system through contract or franchise arrangements.

Barriers to Privatization

Privatization is not a silver bullet. There are potential pitfalls and unanticipated costs of privatization that need to be carefully weighed when evaluating collection options. First of all, communities that currently provide collection services are probably offering service levels that will not be replicated fully under a privatized system.

For example, a municipal ordinance may specify that brush setouts must be bundled and limited in length to no more than 4-feet. However, an irate call to a local elected official from Mrs. Jones who has just chopped down half of her yard and has no intention of bundling 100 cubic yards of brush can result in a special exception to the rule. The elected official contacts the solid waste collection department, and the brush is picked up. Mrs. Jones is happy. The elected official is happy. The neighbors who don't want to see the unsightly brush pile at the curb for weeks are happy. The public waste management department pays the price. Under a contract arrangement, the private hauler is typically protected by the scope of services (which will generally reflect local ordinances and setout requirements) from providing such special collection services without additional payment. So when Mrs. Jones wants extraordinary service, she pays for it.

Solid waste collection may be one of the only services that residents receive from their local governments with which they have few complaints. This political capital should not be underestimated, and elected officials should be clear about the limitations of collection arrangements with the private sector.

Another potential barrier to privatization is "what to do with workers and trucks." It is possible to structure privatization agreements to ensure that the private hauler agrees to hire the existing workforce and/or purchase existing equipment. It should be noted, however, that private haulers may have different pay scales, more demanding performance standards, and different seniority systems. In other words, there may still be political fallout from displaced workers. Those workers not hired by the contractor may be reassigned, or the community may choose to wait until attrition reduces its labor force. The full impact of savings due to privatization may thus be delayed.

Certain services provided by municipal collection crews and equipment may not be as easily transferable to privatization. Examples of piggy-backed services include snow removal, sand/salt spreading, special events servicing, emergency response, servicing eviction properties, road repairs, and storm drain and gutter clean out. Local government will need to identify which services are to be retained and assure itself it has the capacity (both equipment and

workforce) to provide those services. Also, the ancillary services identified should be included in the privatization procurement or contracted for separately.

And, privatization is not always successful. Some communities have tried privatizing collection services and determined that public collection met the needs of local residents and businesses more effectively. The motives of public and private collectors are different. Private haulers are in business to provide service and make a profit. Public sector collectors have such goals as providing for public health and safety, providing constituent services that attract residents and businesses to their communities, and achieving public policy objectives. These differing goals are not necessarily incompatible, but their difference should be understood.

Contract vs. Franchise

In a contract collection system, a jurisdiction typically designates one or more contract service areas, develops a scope of services, conducts a procurement or negotiates with one or more haulers to provide the designated services. The jurisdiction then enters into a contractual arrangement with the selected hauler(s) to be the exclusive collection in a service area for a specified period of time. The local government pays the hauler directly for the services provided, and monies to pay the contract costs may be collected in a variety of ways, including: General Fund contributions, service fees or assessments, or variable rate fees charged to generators.

Under a franchise collection system, one or more franchise service areas may be defined, and designated haulers (selected through procurement, negotiation, or an application process) are awarded the right to provide collection services within the franchise area. Franchise agreements may be exclusive, where only one hauler is allowed to operate within a defined area, or may be non-exclusive, where more than one can operate. The number of haulers per service area is generally limited by the franchise agreement. Typically, under the terms of the franchise agreement, fees to be charged for collection services are defined. Unless collection is mandatory, generators may then choose to sign up with a franchise hauler, self-haul waste to a transfer/disposal site, or find another disposal method. Generally, under franchise systems, generators pay franchise haulers directly, and the cost of billing, collections, and marketing are borne by the franchise haulers. The sponsoring government may also receive a franchise fee from the hauler.

Franchise systems are sometimes preferable to municipalities, because the cost of collection services are paid directly by the generator without government taxes or service fees. However, the costs per household under franchise systems may be higher than contract systems. Under a contract system, the number of customers to be served is known, and the municipality has contracted to pay for services for that known customer base. The municipality takes the responsibility to collect the revenue necessary to pay for the service and monitors contractor performance. Under a franchise approach, however, the franchise hauler must market the total potential population of customers within the service area, and invoice and collect fees from customers. At the time of the bidding, proposal, or negotiation process, the number of

customers that will sign up for services may not be known. Given that uncertainty and the cost to invoice and collect fees separately, the franchise collection fees (cost per household) will typically be higher than contract system pricing.

Organized Collection Pitfalls

There are several cries that tend to erupt when a local government considers organizing collection services, including: "You'll drive small haulers out of business" and "The big haulers will low-bid to get the contract/franchise, but we'll be over a barrel the next go around." These concerns are legitimate and need to be carefully addressed.

When local governments intervene in an "open market" collection system, small haulers, particularly "one operator-one truck" firms, may be unwilling or unable to compete to provide the defined service levels and meet insurance and bonding requirements. Some of these firms may indeed be driven out of business.

In addition, particularly in communities where one hauler is selected to serve the entire community, diversity in the collection marketplace may be limited and future procurements may receive limited response.

In spite of these potential barriers, private sector collection can be an effective solution to collection challenges faced by local governments.

Policy Decisions -- Setting the Contracting Stage

One of the first steps in developing effective contracts or agreements for collection is determining goals and policy. What issues are most important in your community:

- lowest possible costs?
- highest levels of service?
- eliminating an inefficient workforce?
- minimizing displacement of workers?
- replacing an aging fleet?
- ensuring diversity in the hauling marketplace?
- political acceptability of collection services?

The answers will be locally-specific and should be addressed at the various levels of the administrative chain.

Some of these issues can be dealt with when collection areas or zones are defined. One approach is to size collection areas in the procurement so that small haulers can compete. Concerns about driving small or minority haulers out of business can be addressed by establishing small or minority hauler set-aside zones or requiring a minimum level of minority participation in collection areas. Other ways to encourage small haulers to compete include

providing workshops for haulers on how to respond to procurements, how to finance equipment, and how to improve efficiency.

If cost-containment and limiting the collection marketplace are both issues, then defining multiple collection areas and limiting the number of routes or zones that can be served by any one hauler is one way to ensure that marketplace diversity and competition are maintained.

Key Elements of Successful Contracts/Agreements

The appropriate contract or agreement terms are essential to ensuring satisfaction with privately provided services. When developing the scope of services for the contract/agreement, the following elements should be considered:

- *Frequency of Collection:* How often will waste or recyclables be collected? Will the schedule vary seasonally?
- *Type of Collection:* What type of services are to be covered by the agreement -- residential municipal solid waste only or commercial accounts as well? Will waste be bagged or will variable sized containers be used? What about automation?
- *Materials To Be Collected:* Does the agreement cover recycling collection? What materials will be targeted and what setout requirements will be used? Will bulky waste collection services be included? What about yard waste?
- *Number of Customers:* Make sure that the contract/agreement allows for periodic adjustment of house counts to ensure that a proper count of those receiving service is monitored and the local government is paying only for those stops being serviced.
- *Service Levels:* Will setouts be curbside, alleyway, or backyard? What special provisions will be included for serving senior citizens or physically challenged residents?
- *Starting and Ending Times:* If neighborhood noise or traffic concerns exist, specifying earliest start times and latest ending times is an important element of the scope of services.
- *Holiday Collection:* Will refuse and recyclables be collected on holidays or will those collections be rescheduled? This consideration is particularly important in communities with once-per-week collection and Monday as a service day.
- *Missed Pick-ups and Response Times:* To ensure the quality of service delivery, contracts/agreements should specify a procedure for handling missed pick-ups.

By establishing a timeframe for responding to missed pick-up requests, the local government can maintain customer satisfaction and provide for specified penalties if the performance terms are not met.

- **Equipment Age/Type:** Some communities specify maximum vehicle age in contracts/agreements to ensure that equipment servicing the community is in reasonable condition. It is also important not to limit contractor ingenuity by too-stringent requirements -- as new equipment becomes available that can improve productivity, local governments should avoid getting locked into outdated contract language that precludes use of different collection equipment.
- **Crew Requirements:** Contracts/agreements should address appropriate crew training, licensure, and substance abuse policies, at a minimum. Other contract language could address interaction between collection crews and customers. For example, language could be included to ensure that collectors are polite and courteous to customers, return refuse cans/carts to the point of setout, avoid damaging lawns, pick up litter, and so forth.
- **Complaint Handling:** Often communities that want to get out of the collection business also want to get out of the complaint business, but complaint handling is an important aspect of the collection contract/agreement. Will all complaints be addressed to the local government and channeled to the collector through some designated communication mechanism? Will complaints be directed to the hauler, with the hauler providing regular reports to the local government about type, number and resolution of complaints? Tracking complaints can provide important data about the quality of service delivery and the nature of public information needs.
- **Public Information:** Who will be responsible for communicating setout requirements, collection day, and holiday collection information to the public? Who will be responsible for notifying residents of improper setouts? If local governments require haulers to handle the public information function, minimum standards should be established and the community should review public information materials prior to distribution for accuracy and adequacy.
- **Containers:** If roll-carts, recycling bins or special bags are to be used for containerization, who will provide them? Who will be responsible for delivery? How will containers be maintained or replaced?
- **Additional Services:** Special services that may be desired should be specified in the collection agreement, including back-up capacity, special community clean-ups, emergency support, and other locally specific collection services.
- **Performance Guarantees and Insurance Requirements:** Bonding requirements and

penalties should be clearly specified in the contract or agreement, along with requirements for insurance coverage and indemnification.

- *Pricing and Escalation Considerations:* Pricing should be fixed for each service, even for services to be provided infrequently, such as emergency response. Unit pricing (e.g., \$ per household per month) is common. Charges are often "bundled,"² which can result in higher charges than if kept unbundled. Escalation of unit prices can be unbundled to apply different escalation factors to various cost components such as labor, fuel/tires, debt service (no escalation), and market indices.

It Doesn't Stop with the Contract

Negotiating an excellent contract or agreement is certainly important; however, the best contract in the world is meaningless unless someone is monitoring performance of the hauler, ensuring that contract terms are being met, and enforcing performance guarantees that have been established to protect the local government and its constituents. Many communities overlook this important function, and the administrative costs of inspection and enforcement should be factored in when evaluating private sector collection options.

Win Win

The private sector is often besmirched by those that cite the "profit motive" disdainfully, but it is important to realize that private haulers can offer valuable collection services only as long as they stay in business. Staying in business means making a profit. Contract or agreement terms need to reflect this bottom-line reality. In addition, local governments cannot contract away their real and perceived responsibilities to provide for public health and safety.

Sound collection contracting and execution that take into account the motives and needs of the various parties involved should provide "win-win" options for everyone.

²Examples of "bundled" charges include: solid waste collection and disposal; and recyclables collection, processing and marketing.

**FINANCIAL CONSIDERATIONS
IN
PRIVATIZING SOLID WASTE ACTIVITIES**

By

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OVERVIEW

This paper is addressed primarily to the public sector staff or elected official who is considering some sort of private sector involvement in the solid waste activities under the jurisdiction of the public sector.

Privatization. What exactly does this word mean, especially with regard to municipal solid waste activities? What can be privatized, and when should a public entity consider privatization? Finally, what are some of the financial considerations that should be addressed? This paper attempts to answer these questions in order to serve as a tool for governmental agencies considering privatization of solid waste activities.

DEFINITION

The term "privatization" is loosely used to mean a variety of activities, including the sale or lease of governmental facilities to a private entity and the municipal contracting for services or operation of facilities by a private entity. The private entity may be a corporation, company, partnership, sole proprietorship, joint venture or consortium. In essence, "privatization" means the assumption by a private sector entity of a function previously provided by a governmental agency. It may or may not entail ownership of a facility.

WHAT CAN BE PRIVATIZED

Basically, any governmental activity can be privatized. However, some functions are more logically privatized than others. For example, it seems more logical to privatize the collection of solid waste than the environmental monitoring and regulation of solid waste facilities. Operationally, most solid waste facilities can be privatized. However, if the facility has been previously financed with tax-exempt bonds, there will be tax and legal considerations that must

be addressed. Any governmental agency considering the privatization of a solid waste facility should also have a legal review conducted to ensure that there are no legal prohibitions against privatizing the facility. These could take the form of deed restrictions or local or state laws or regulations prohibiting the ownership transfer of a publicly-owned facility to a private owner.

HOW TO PRIVATIZE

There are any number of ways in which privatization can occur. However, the most common methods include the following:

- **Extension of services being provided by an existing contractor.** Perhaps the classic case of privatization is where an existing private solid waste hauler, either at the request of or with the blessing of the governmental agency, expands service to provide curbside recycling and perhaps operation of a buy-back center or material recovery facility on behalf of the governmental agency.
- **Unsolicited proposal.** An existing vendor or an outside vendor may determine that there is an opportunity for the governmental agency to privatize activities and submits an unsolicited proposal. Depending upon local statutes and regulations, the governmental agency may be able to enter into sole source negotiations with the vendor.
- **Request for Proposals or Bids.** In this case, the governmental agency determines that it has an interest in privatizing certain solid waste activities and actively solicits proposals from prospective vendors. The proposals may be extremely specific ("what is your price to perform this function subject to the following terms and conditions") or very general ("we are interested in selling, leasing or contracting for private service, what can you do for us"). Occasionally the governmental agency allows the existing governmental solid waste department (or other governmental agencies) to submit a bid in competition with the private vendors.

WHY PRIVATIZE

The primary reasons cited for privatizing are either to obtain an upfront cash inflow from selling or leasing an asset or to produce operational cost savings over time. Other reasons may include the ability to provide better service to customers than those capable of being provided by the governmental agency or (theoretically) to transfer future potential environmental liabilities to a private entity.

FINANCIAL AND BUSINESS CONSIDERATIONS

There are obviously many factors that must be evaluated when privatization is being considered. It is not a decision that should be made lightly, for the decision to privatize may be extremely difficult to reverse in the future. For many public agencies, the logistics of resuming the provision of a service or acquiring a solid waste facility can be extremely daunting.

Because the circumstances for each situation are unique, it is beyond the scope of this paper to outline the criteria for deciding between a sale, leasing a facility, or privatizing only the operation of a facility. Rather, this paper attempts to provide some general business and financial criteria to use when considering any form of privatization. The following discussion of these considerations is by no means complete. Each governmental agency will have its own set of circumstances and concerns. Rather, the factors listed below are intended as a beginning checklist when privatization is being contemplated.

Price or Cost of Services. Perhaps the most logical starting point is to determine what value will be returned to the governmental agency from selling or leasing a solid waste facility, or what operational cost savings can be achieved by privatizing a solid waste activity.

From the vendor's perspective, the purchase or lease price or the price quote to provide service will be based upon the vendor's expectation of the future revenue streams. The vendor will impute a profit margin (or required rate of return) on such revenue stream. This profit margin can vary widely depending upon the particular vendor and the vendor's other revenue opportunities, the competition among vendors for the particular contract, and the type of activity under consideration. For example, profit margins are typically higher for the ownership or operation of a landfill, where there is potential environmental liability, than for solid waste collection services. Since revenues received in the future are worth less than those received today, the vendor will also discount future cash streams by its corporate rate of return.

Governmental agencies should be aware that corporate discount rates are usually significantly higher than those used by governmental agencies. Since a higher discount rate produces a lower present value calculation, the vendor will not place as much value on the future revenue stream as a governmental agency might be expecting. Financial professionals can assist governmental agencies in determining what profit margins and rates of return are being used by prospective vendors.

Many other factors may also enter into the vendor's calculation of the price or cost of service. These can include the potential for future liabilities (especially in the case of a landfill), and the term of the contract. At times, the assurance of an established revenue stream over a significant number of years may have significant value to a particular vendor (for example, if the vendor is intending to issue stock to take the company public in the near future.) These factors can only be determined on a specific case-by-case basis.

Governmental Control. The term "governmental control" covers a broad category of topics and issues, ranging from the certainty of the future cost of services to the adequacy and availability of such services. "Governmental control" may also cover operational issues, such as allowing the importation of outside waste into the jurisdiction or the hours of operation for a particular facility. For many governmental agencies, the displacement of existing employees is a major concern.

Governmental agencies should be aware that privatization need not require complete loss of control over a service or facility. The governmental agency should also be aware that operational

restrictions may impact the cost of service or the price the private company is willing to pay for a particular facility.

For example, a well-known California county is currently considering selling its landfill system. The county's objectives are (1) the highest purchase price; (2) assurance of future landfill availability for the county and its cities; (3) assurance that future landfill rates for the county and its cities will always be economically competitive with the rates of neighboring counties (which could change in the future); and (4) complete transfer of all environmental liabilities to the private vendor. Needless to say, the conditions placed upon this privatization will greatly impact the purchase price that may be proposed since the vendor's potential revenue stream is significantly limited and the liability risk is substantial.

The important point here is that the governmental agency should carefully review the rights and control it wishes to retain over the activity in question, realizing that there are trade-offs to be made. The structure of the particular privatization should reflect the individual agency's own priorities and objectives.

Potential Liability

Many solid waste activities are fraught with potential environmental liabilities. Legal opinion appears to be divided as to whether these liabilities can be truly transferred from a governmental agency to a private entity. Some counsel are of the opinion that the concept of the "potentially responsible party" liability established under the Superfund provisions may also apply to municipal solid waste landfills as well. Certainly governmental agencies represent a potential "deep pocket" for funds if environmental liabilities are discovered in the future. Governmental agencies must consult their own attorneys as to this issue. However, at a minimum, if a governmental agency is considering privatizing a solid waste activity, it should certainly consider the operational and financial capabilities of the prospective vendor to avoid creating future liabilities and/or to make financial restitution for any liabilities created by the vendor's negligence or incompetence.

Operational Capabilities of the Prospective Vendor

It probably goes without saying that the ability of the prospective vendor to operate the facility in question or to provide the proposed service should be carefully reviewed. If the scale of the proposed operation is larger than the vendor has previously provided, this should also be considered. Finally, the governmental agency may wish to review what other business ventures the prospective vendor has pending to confirm that corporate resources are not being over-extended.

Financial Solvency of the Prospective Vendor

The governmental agency should carefully review the financial ability of the prospective vendor to honor its obligations and commitments. This should entail a careful review of at least three years of financial statements (preferably audited) and the latest 10-K filings. Since most

companies form single-purpose subsidiaries to provide a particular solid waste activity, the governmental agency should request financial guarantees from the corporate parent to ensure adequate resources are available. The form of such guarantee should also be reviewed to protect against further dilution due to corporate reorganizations. In the late 1980's, one waste-to-energy vendor restructured its organization and spun off subsidiaries several times in just a few years. The guarantee should not be assignable to another entity without the governmental entity's express approval, which it should be able to withhold for any reason.

Future Flexibility

The governmental agency should also consider what future flexibility it requires. For example, does the governmental agency want the right to restructure service provisions in the future or discontinue use of a particular facility? If so, the contract termination provisions should be structured accordingly. If the governmental agency is concerned about substantial declines in future waste quantities, it may want the right to terminate the contract if the per-ton price of service becomes too expensive.

CONCLUSION

Privatizing solid waste activities -- whether through the sale or lease of a particular facility or system or the contracting for provision of certain services -- appears to be a growing trend under consideration in governmental agencies across the country. The reasons for doing so can be quite valid and varied depending upon the particular jurisdiction. However, it is a step that should be carefully considered and a thorough examination of all the advantages and disadvantages should be made before a decision is reached.

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SWANA

WESTERN REGIONAL SYMPOSIUM, 1998

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CONSENTS TO ASSIGNMENT OF FRANCHISE AGREEMENTS

While some national companies (like Waste Management and BFI) have been divesting themselves of local operations, others (like Republic and USA Waste) have been acquiring companies. The USA / Waste Management merger has been featured not only in waste publications but financial and general news papers as well. If your franchised hauler is a relatively small, family-held concern, it may be a target, but your collection franchise agreements or solid waste codes may contain provisions which give you the right to consent to the acquisition of your franchisee and the assignment of the franchise to the purchasing company. This presentation begins by suggesting how you might structure (or strengthen) such consent provisions in anticipation of takeover requests. It next lists factors you should consider in granting or denying such requests and outlines investigative due diligence measures. Lastly it proposes some terms that you might propose as conditions of consent and previews negotiating issues.

I. FORM OF CONSENT PROVISIONS

Define "Assignment" Broadly. "Assignment" should not only cover its common meaning, but by definition embrace every possible permutation of merger and acquisition, whether stock or assets, which results in changed control and management of your franchisee. For example:

"For the purpose of this Section, "Assign" (or "Assignment") includes:

- (1) *selling, exchanging or otherwise transferring to a third party effective control of Contractor management (through sale, exchange or other transfer or outstanding common stock of Contractor or otherwise) or any of Contractor's assets dedicated to Performance Obligations, unless such assets are promptly replaced with assets of greater or equal value and equivalent function;*

- (2) *issuing new stock or selling, exchanging or otherwise transferring ten percent or more of the then outstanding common stock of Contractor to a Person other than the shareholders owning said stock as of the date hereof;*
- (3) *any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which results in a change of Ownership or control of Contractor;*
- (4) *any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment of an execution, being levied against this Agreement, appointment of a receiver taking possession of any of Contractor's property, or transfer occurring in the event of a probate proceeding; and*
- (5) *any combination of the forgoing (whether or not in related or contemporaneous transactions) which has the effect or any such transfer or change of Ownership or change or control of Contractor.*

***Ownership** (or "Own" or any variation thereof) means ownership as defined in the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date here, provided that (1) 10 percent shall be substituted for 50 percent in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (2) Section 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than 10 percent shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater."*

Where your franchisee is closely held, you may want to specifically provide that transfer of stock by a named individual or individual constitutes "assignment". Contrariwise, if your franchisee is a local family business, you might accommodate their trust and estate plans by excluding specified intra-family transfer from trigger "assignment".

Reserve Right to Consent in Municipality's Sole Discretion. Although it may seem reasonable to agree that you will be reasonable, this is an important instance where you do not want to be second-guessed in court as to whether or not your denial was reasonable. For example, it may be important to your elected officials and citizens that you do business with locally owned and managed haulers. If the proposed acquiring hauler shows billions in assets and credit lines, millions of residential and commercial accounts and many thousands of municipal contracts, a court may find your denial is unreasonable. The bankruptcy court denied the California City of 1000 Oak's petition to deny its franchise transfer.

Reserving the right to consent, in your sole discretion, is preferable, although it may be one of the top-ranked issues (along with term and scope of indemnification) for haulers in franchise negotiations. Understandably, a hauler wants a liquid asset, i.e. the franchise. Although trucks and a maintenance yard have value, the bulk of a hauling companies value lies in its service contracts. Yet from the public interest perspective, reserving sole discretion may be equally compelling. For example:

“Contractor may only assign its rights or delegate or otherwise transfer its obligations hereunder to another Person only with Municipality consent given or withheld in Municipality’s sole discretion. Any such assignment without Municipality consent shall be void. Municipality shall not be obligated to consider any proposed Assignment by Municipality if Contractor is in breach of this Agreement at any time during the period of such consideration. Contractor shall make any request for consent to Assignment in the form and manner prescribed by the Municipality.”

Some franchises continue with a list of documentation that the acquiring company must submit covering the concerns listed in following Section III. Although including a list may not weaken the municipality’s straightforward, contractual and legal right to grant or deny consent in its sole discretion, it may create political or practical constraints on exercising that discretion. The acquiring company may produce documentation demonstrating compliance or reasonable satisfaction of every item on the list, making it difficult to raise unlisted or less quantifiable concerns. If the municipality reserves sole discretion, presumably the acquiring company will be cooperative in providing requested documentation to facilitate consent, whether or not the documentation is itemized in the franchise agreement or merely in a due diligence request letter.

II. DUE DILIGENCE

When your franchisee first requests your consent to assign the franchise agreement, it may deliver a package of materials to introduce you to the proposed acquiring company. You might supplement those materials with a list of requested additional materials to facilitate your due diligence research.

Review Securities Filings and Notes to Audited Financials. Many acquiring companies will be publicly traded and file quarterly, annual and other reports with the Securities and Exchange Commission. These include audited financials. (If you cannot access the public filings, ask the company to provide the financials, e.g. audited financial statements for the immediately preceding three operating years, which should indicate that the Municipality the proposed assignee's financial status is equal to or greater than franchisee's.) Of course, these give you a good picture of the financial creditworthiness of the acquiring company. But furthermore, both the reports and the footnotes to the financials are a good preliminary source of litigation and regulatory action disclosure.

Request Litigation List. Ask the acquiring company for a list of pending litigation nationally, as well as regionally, plus a list of regulatory actions. You will doubtless see many cases related to vehicular accidents for hauling companies, and often related insurance claims. Large companies may also have large numbers of labor and personnel related suits.

On one level, adverse outcomes to pending actions may adversely impact the financial health of the company due to damage payments or imposed cleanup costs. But perhaps more importantly, you may be able to ascertain a pattern of litigation that troubles you. Some communities may be concerned about environmental regulatory violations, so strong compliance-with-law covenants and clear default and termination provisions may become a condition of consent. Others may be sensitive to unethical conduct, and "bad-boy" provisions may be required. (See Section IV below.) Others may worry about litigation against municipalities and consequently strengthen indemnity provisions. Still others may care about flow control. For example, Stanislaus County and the City of Modesto are partners in a waste-to-energy facility, so they have vital fiscal interest in securing waste delivery to their plant. Flow control litigation by an acquiring company may prompt them to pursue in depth discussions of intent with the acquiring company and to secure additional delivery commitments (and damages for breaches) as condition to their granting the assignment.

In sum, the existence of litigation does not necessarily determine that you will withhold your consent, but it may prompt you to condition your consent on amended or added franchise provisions.

Contact Municipal References. This states the obvious. Other municipalities may have already conducted due diligence and almost always share their materials in a gracious and collegial manner. Hearing their experiences can prepare you for issues that may be raised in your community.

Surf the Net. Due diligence just got easier. Helpful sites include "Edgar", which lists securities filings, related news articles and analysts' reports: <http://www.Edgar-online.com>. You can also access news articles for papers located in the relevant local jurisdictions, e.g. <http://www.Latimes.com>. McGraw Hill offers its "Focus" reports on industries, including date of founding, employees, shareholders, subsidiaries, revenues, officers, directors, auditors, banks, news items including new offerings and mergers and acquisitions), as well as litigation lists.

III. CONSIDERATIONS IN GRANTING CONSENT

Require Financial Creditworthiness. Acquiring companies, especially national ones, will likely provide superior financial strength as compared to a local hauler. However, as a consequence of rapid expansion, they may have incurred debt to fund acquisitions and be highly leveraged. You might ask your Treasurer or outside financial advisor to review their financial statements. (See **Secure Parent Guaranties** in Section IV below.)

Evaluate Experience. In most instances the acquiring company will be in the waste business. You will want satisfactory proof that the proposed assignee has at least [ten] years of municipal solid waste management experience on a scale equal to or exceeding the scale of operations conducted by franchisee. If you procured your existing franchise pursuant to a competitive RFQ/RFP you might review the experiential requirements, e.g. number of years in similar business, generally, and type of service, specifically (e.g. types of curbside or source separated programs, types of equipment such as automated vehicles, etc.); number of accounts; recycling/diversion performance, etc. As you look forward to renegotiating the franchise with the acquiring company in the future, you may be interested in the terms of a sampling of its other franchises.

Review Compliance with Law. Look for satisfactory proof that in the last [five] years, the proposed assignee has not suffered any citations or other censure from any federal, state or local agency having jurisdiction over its waste management operations due to any significant failure to comply with state, federal or law (including antitrust and securities laws as well as solid waste management law and regulation). Ask for a complete list of such citations and censures.

Establish Environmental Record. Look for satisfactory proof that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion, particularly in accordance with sound waste management practices in full compliance with all federal, state and local laws regulating the collection and disposal of waste, including hazardous waste.

Ascertain Acquisition Strategies: monopolistic pricing and vertical integration. Review stock analysts reports. They can illuminate whether your community will be vulnerable to price increases for hauling and/or disposal if you consent to assignment. For example, an acquiring company's strategy might be to select a market with local companies; acquire integrated businesses (e.g. hauling and landfill); eliminate redundant overhead and reduce costs; gain market share from small, undercapitalized competitors; raise prices.

Raise Local Concerns. Counties owning landfills or processing facilities may be concerned about waste delivery commitments and disposal competition. Some communities may want MBE participation. Others may want assurances that particular services (like backyard collection or "free" governmental services) are assured. You will have your particularized list.

IV. CONDITIONING CONSENT

Secure Parent Guaranties. Depending upon the results of your financial due diligence, you may require that the regional or national parent corporation provide a financial and performance guaranty and/or revisit levels of performance bonds/insurance requirements. Because realizing performance bonds are fraught with potential untimeliness and uncertainty, increasingly we are allowing substitute performance security, including letters or lines of credit. Note: one strategy

for sizing performance instruments is to calculate how long it would take you to give franchisee notice of a default, allow for the cure period, deliver notice of termination, conduct administrative hearings (if any), and procure new services. Size your bond based upon the estimate the costs you would incur during such time period to secure substitute services, plus your reprocurement costs.

Add Criminal Conduct Provision. The format of this ‘bad boy’ clause will certainly be the subject of negotiations. Geographic scope as well as remedy will be issues. National companies will worry that prohibited activity by an employee a continent away from your community could subject their local franchise to termination. The acquiring company will want the remedy of firing the offending employee, but you may worry that major officers and directors will merely be reassigned and want the remedy of franchise termination. One example which tries to limit the geographical reach by tracing chains of command, follows:

“Criminal or Unfair Business Activity. COLLECTOR shall immediately notify MUNICIPALITY if

(i) COLLECTOR (i.e. the local franchisee) or any of its officers, directors or administrative or management employees,

(ii) any corporation having an ownership interest in COLLECTOR, including a regional holding company, or any of its officers, directors or administrative or management employees directly or indirectly responsible for administration and management of COLLECTOR, and

(iii) [parent company] or any of its officers, directors or administrative or management employees directly or indirectly responsible for administration and management of COLLECTOR

have a criminal conviction, mandatory or prohibitory injunction, or fine from a court, public entity, municipality or regulatory agency of competent jurisdiction with respect to the following events, or make an admission of guilt or pled nolo contendere with respect thereto:

- (a) fraud or a criminal offense in connection with obtaining, attempting to obtain, procuring or performing a public or private agreement, including this Service Agreement; or*
- (b) bribery or attempting to bribe a public officer or employee of a local, state, or federal agency in that officer or director’s or COLLECTOR’s employee’s official capacity; or*
- (c) embezzlement, extortion, racketeering, false claims, false statements,*

forgery, falsification or destruction of records, obstruction of justice, receiving stolen property, theft, or misprision (failure to disclose) of a felony; or

- (d) any other crime or business practice indicating a lack of business integrity or business honesty; or*
- (e) unlawful disposal of hazardous or designated waste; or*
- (f) violation of antitrust laws or unfair trade practices, or conspiracy to eliminate competition or to inflate waste collection, hauling or disposal fees.*

Upon occurrence of such events with respect to the COLLECTOR and those persons described in (a)(i) above, MUNICIPALITY, in its sole discretion, may terminate this Service Agreement upon thirty days written notice to COLLECTOR or may impose such other sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it shall deem proper. Upon occurrence of such events or circumstances with respect to any corporation having an ownerships interest in COLLECTOR or with respect to [parent company] and those persons described in (a) (ii) and (iii) above, the MUNICIPALITY may terminate this Service Agreement following thirty days written notice to COLLECTOR if COLLECTOR does not remove the applicable officer, director or employee from his or her office or employment, any other office or employment, as the case may be, with Related Parties, as described below, and any position of influence and responsibility within such thirty day period .

***Related Parties** means all Persons which are directly or indirectly related to COLLECTOR by virtue of direct or indirect Ownership interests or common management, including a business in which COLLECTOR Owns a direct or indirect Ownership interest, a business which has a direct or indirect Ownership interest in COLLECTOR and/or a business which is also Owned, controlled or managed by any Person (whether a business or individual) which has a direct or indirect Ownership interest in COLLECTOR.”*

These provisions are increasingly common in new franchise agreements, regardless of the historical record of the franchisee.

Name Key Personnel/Franchise Administrator. Some acquiring companies may leave the local staff, with whom you have established possibly long term relationships, in place. Others will remove them as part of their strategy to stream line administration and reduce costs. You may want to require that they obtain your consent to replace named key personnel or franchise administrators. However, since the franchisee cannot force key persons to remain in their

employment they may seek to limit your ability to veto their staff assignments. A compromise may be that you allow new staff a getting-to-know you period, after e.g. three to six months, after which you can ask for substitutions. However, a more stringent position might be as follows:

“COLLECTOR acknowledges that its obligations to provide services under this Service Agreement are personal in nature, and that the identification of key personnel responsible for assuring complete and timely performance of COLLECTOR’s services was a significant factor in MUNICIPALITY’s consent to the merger with [proposed acquiring company] and execution of this Service Agreement. Key positions include COLLECTOR’s general manager and Integrated Waste Management Act coordinator, and the local and regional corporate representatives of [parent corporation]. COLLECTOR shall not change any such key personnel without the prior written consent of the MUNICIPALITY, which, in MUNICIPALITY’s sole discretion, may be withheld [alternatively: which shall not unreasonably be withheld], unless any such personnel shall be deceased, in which event MUNICIPALITY’s consent shall be reasonable.”

Provide Probationary Term. If your franchise features an evergreen term it may be a prime subject for takeover. An evergreen term allows the franchise to continue rolling forward, year after year, unless you garner sufficient political consensus to affirmatively terminate it, often many years in advance. Evergreen terms are valuable from the perspective of the franchisee, who views them as a virtually guaranteed revenue source. But they can be problematic for a municipality. First, if the quality of service is deteriorating but the franchisee is not blatantly in breach, it can be difficult and expensive to terminate the franchise and you may be forced to live with deteriorating service during a lengthy period (e.g. seven, eight, nine etc. years) following a municipal entity’s giving affirmative notice of non-renewal subsequently effective only at the far end of the stated evergreen term (e.g. ten years). Furthermore, evergreen contracts are administratively more cumbersome (e.g. notice, possibly public hearing etc.) than fixed terms. Evergreen terms may politicize the franchise process as compared to a fixed term which requires no vote of the local government’s elected body. “Termination” rather than “non-extension” may be viewed as opprobrious, even though the intent is to secure competitive price bids.

As a condition of consenting to the assignment, especially if you are uncomfortable with litigation history, you might change an evergreen term (with rights to *automatic* extensions) to a fixed term. (Look at the existing franchisee’s present amortization schedule. Five years is reasonable for trucks, as is reflected in the State’s statutory notice-of-termination provision with respect to exclusive contracting. Some automated containers may be on a longer table, but you can offer to purchase them for unamortized value at term’s end.) As compromise, you might allow for *performance based* extensions. For example:

Preconditions. The Service Agreement shall automatically expire on January 1, 2002, 2004 and 2006, respectively, if COLLECTOR has not satisfied following preconditions to sole satisfaction of MUNICIPALITY, as evidenced by written acknowledgment of MUNICIPALITY, during each the term hereof:

1. Complaints. COLLECTOR shall have outstanding and unresolved complaints numbering less than two and one half tenths of one percent (0.25%) of the total annual stops for the prior year the number of unresolved complaints during the periods commencing on September 21, 1997 through December 31, 2001; January 1, 2002 through December 31, 2003; and January 1, 2004 through December 31, 2005 ("Measurement Periods"), which complaints have been substantiated and verified to the reasonable satisfaction of MUNICIPALITY.
2. Recycling diversion. COLLECTOR shall have collected and diverted from disposal [xxx] percent (xxx%) by weight of the solid waste it collects from disposal, where "diverted" means to have diverted from landfill or incineration, pyrolysis, distillation, gasification or biological conversion (other than composting) facilities through recycling and composting activities, all within the meaning of Section 41780 of the California Integrated Waste Management Act, and "recycling" means the process of sorting, cleansing treating, and reconstituting materials that would otherwise become solid waste, and returning them to the economic mainstream in the form of raw material for new, reused or reconstituted products which meet the quality standards necessary to be used in the marketplace. The total amount of waste which COLLECTOR collects shall be based upon weigh records of waste and recyclable materials which COLLECTOR delivers to the Collector Designated Disposal Facility and any other transfer, processing or disposal facility plus recycled materials sales invoices, and the total amount of recyclable materials which COLLECTOR diverts shall be based upon recyclable materials sales invoices, which weight data COLLECTOR shall provide to MUNICIPALITY within five business days of MUNICIPALITY's requests therefor.
3. Recycling participation. COLLECTOR shall achieve participation in COLLECTOR'S residential curbside recyclable program from time to time in effect of no less than [xxx] percent xxx% of [residential premises], as measured by set-outs for collection.
4. Recycling contamination. COLLECTOR shall achieve contamination levels of [ninety five percent] (95%) or less of recyclable materials its collects in its curbside residential recycling program from time to time in effect, where contamination includes, without limitation, materials which are not listed as part of such program's collected materials and such contamination is measured by [sorting of no less than xxx percent of set-outs during the last week of June, September, December and March of each year, which sort shall be conducted at expense of COLLECTOR.

MUNICIPALITY shall have a right to observe such sort and make comments on the protocol and conduct thereof, which comments COLLECTOR shall use reasonable efforts to incorporate.]

5. *Litter. COLLECTOR shall pick up litter along all streets and alleys within a five hundred yard radius of its transfer station, whether or not COLLECTOR's trucks caused such litter, at least one each day following end of receiving hours.*
6. *Rate increases. COLLECTOR shall not have received a service fee increase in excess of [xxx] percent (xxx%) in the aggregate measured over the contract term to date.*
7. *Compliance with franchise and law. COLLECTOR shall be in compliance with the terms and provisions hereof and of the Modesto Municipal Code and all federal, state or local laws, ordinances, rules or regulations pertaining, directly or indirectly, to the COLLECTOR's operations under this Service Agreement; provided, however, that MUNICIPALITY, in its sole discretion, may waive any failure to comply that it deems to be minor and determines that such waiver is in the public interest."*

Strengthen Franchise Performance Guaranties. Depending on your existing franchise agreement, SRRE's and diversion programs, you may want to strengthen recycling commitments. In particular, franchisee's promise to indemnify communities for AB 939 fines is only as valuable as the franchisee's credit and may be subject to enforceability challenges (i.e. void for vagueness if waste stream volume is not clearly allocated, impossibility of performance if recyclables content drops, etc.). You may want to bolster indemnities with quantifiable diversion guaranties: fixed percentages (like item #2 in the preceding section) with corresponding compensatory damages equal to excess hauling and disposal costs for materials which should have been recovered but were disposed.

Recoup Due Diligence Costs. Condition consent on recovering your costs for the instant assignment, and consider adding provision for future instances:

"Contractor shall compensate MUNICIPALITY in the minimum, non-refundable amount of a ten thousand dollars (\$10,000) assignment fee therefor plus any additional MUNICIPALITY's Reimbursement Costs incurred in excess thereof for considering such request, including time spent by consultants, attorneys and MUNICIPALITY staff. Contractor shall further pay MUNICIPALITY its MUNICIPALITY's Reimbursement Costs for attorneys' fees and investigation costs necessary to enjoin or otherwise enforce this provision within thirty days of MUNICIPALITY's request therefor."

V. NEGOTIATIONS

Recognize the Potentially Divergent Interests of Assignor and Assignee Companies. The existing franchisee/assignor wants to maximize his sale price, whereas the proposed franchisee/assignee may want to reduce that price. As discussed above, term may be an issue in the assignment, and the purchase price is dependant on the term.

Remember that Term is Money. You may open discussions on assignment with respect to term as well as some or all of the other conditions noted above. As negotiations progress, you may be willing to move from e.g. a five year fixed term to e.g. a seven or ten year term in exchange for additional performance commitments. Term may be a significant bargaining chip.

Beware of Losing Grandfathered Provisions. If you amend your agreement to include terms discussed above, you may want to make clear that it is not a restatement with a new date, but that the old date is retained. This will ensure that any existing provisions (e.g. indemnification) which may have subsequently become illegal are grandfathered and preserved.

In conclusion, if your franchise asks you to consent to assignment, you may view it as an opportunity to update and strengthen your franchise agreement. At a minimum, consider conditioning your consent on inclusion of provisions which address concerns that may be raised following due diligence of the acquiring company.

CHARLOTTE COLLECTION: ANATOMY OF A PRIVATIZATION

Wayman Pearson, KBE, Solid Waste Services, City of Charlotte
Kathi Mestayer, MBA, Project Manager, Malcolm Pirnie, Inc.

INTRODUCTION/BACKGROUND

On Friday, May 26, 1995, the City of Charlotte opened cost proposals for collection of trash, recyclables, yard waste and bulky waste for one quarter of the City's residents (about 34,000 households). That event constituted a major milestone in the City's Competition and Privatization Initiative, which has pursued competitive alternatives to a variety of City services and facilities, such as transportation and operation of wastewater facilities.

CITY BENCHMARK FOR COMPARISON WITH PRIVATE COST PROPOSALS

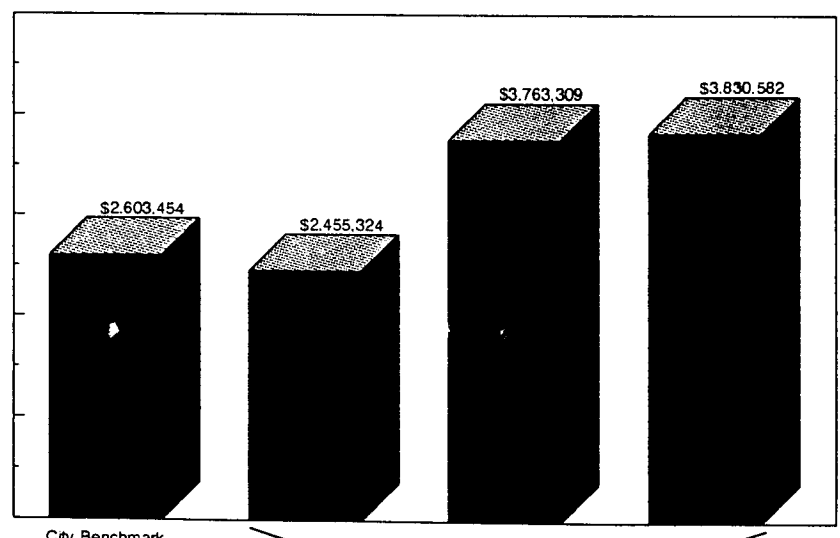
As the City's first major privatization exercise, it is interesting to note that it resembled, in many ways, a competition between the City and the private sector. Although the City collection crews were not directed (by order of City Council) to submit a formal cost proposal, a detailed benchmark cost estimate was prepared by the Department of Solid Waste Services, working with Business Support Services and Cooper's and Lybrand. This cost estimate was submitted to the City Manager on May 25, the day before the formal proposal cost opening, and was therefore "in play" as alternatives were being evaluated. In the final analysis, three City Council members voted not to award the collection contract to the private low bidder, but to keep the services in-house.

CURRENT STATUS OF INITIATIVE

On September 1, 1995, a five-year contract was executed with Browning-Ferris Industries for collection of solid waste in the City's southeast quadrant. Between now and startup day (October 2, 1995) residents in the privatized quadrant will receive information about their new collection company (and, in many cases, new collection day). The Department of Solid Waste Services will also evaluate re-routing opportunities for three-quarters of the City, and notify residents of changes.

During the course of the contract with BFI, the Division of Solid Waste Services will keep tabs on contractor performance using a special staff of contract monitors, as well as their centralized customer complaint telephone line.

Overview: Cost of Solid Waste Collection Alternatives



Notes:

1. Figures do not reflect cost to City of private contract monitoring, transition, etc.
2. Table does not include one non-responsive cost proposal for \$6,364,707 / year.

PRIVATIZATION PRINCIPLES IN CHARLOTTE

Early in the solid waste privatization program, the City set forth the principles under which it would develop procurement documents and conduct the process. Those principles were presented to the Privatization/Competition Advisory Committee, the Public Services Committee, and the City Council. They included:

1. A separate pre-qualifications phase was conducted to determine which companies would be invited to submit cost proposals. After the qualification determination was made, all subsequent proposals were on an equal "qualified" footing.
2. The award would be made on the basis of the lowest responsive cost proposal by a qualified proposer.
3. The service description, conditions, and terms set forth in the RFP were included in the eventual contract. Proposers were notified that they would be required to execute a contract with those terms and conditions or forfeit their proposal bond.
4. Service types and levels were consistent with the City's Solid Waste Ordinance. The City collection crews would also be allowed to adjust their service (downward) to meet but not exceed the Ordinance.
5. "The Show Must Go On." In the event of contractor default, the City would be permitted to use the contractor's equipment and facilities to perform collections. Labor disputes, strikes, etc., were specifically exempted from being considered "force majeure" events.

6. Complaint monitoring is to remain a City function, even in the privatized quadrant.
7. Delivery of all collected materials must be to the City's designated facilities, which may change from time to time.
8. No automatic price increases for private collection services are included in the contract. The contractor must get City Council's approval for any increase, up to a ceiling of 75 percent of the CPI.
9. Input and comments from the vendor community were actively solicited. Prospective proposers reviewed and commented on the draft RFP as well as several key process considerations.

PRIVATIZATION RESULTS

The results of the solid waste collection services privatization are summarized below:

Because the lowest-cost proposal was so close to the City's benchmark, the discussion by City Council about whether to award the contract was heated. In the final analysis, a decision was made to award the contract to BFI, the lowest-cost private proposer, and to track the progress of BFI and the City's cost performance during the next few years before deciding whether to privatize additional quadrants of the City, and whether to structure the next effort to include a formal, competitive cost proposal submittal by the City Department of Solid Waste Services.

*Additional information, including a copy of the RFP, is available by calling
Kathi A. Mestayer at (804) 873-8723.*

Mergers raise garbage fees, might slow recycling

By Jeff Nesmith
WASHINGTON BUREAU

Washington — While the government presses its charges that Microsoft Corp. tried to unfairly dominate America's access to computer software, a rapid consolidation of corporate power is quietly taking place around a humbler but equally pervasive part of life: garbage.

As a result, some critics think your garbage bill inevitably will go up and the national trend toward recycling will reverse.

If a series of announced mega-mergers is approved, the country will enter the next millennium with two companies in control of picking up, hauling off, dumping and recycling more than half its municipal and industrial solid waste.

The two corporations will be Waste Management Inc. of Houston, and the entity created by the merger of Browning-Ferris Industries, also of Houston, and Allied Waste Industries of Phoenix.

They will share more than \$18 billion in annual revenue for handling what's left when we get through with newspapers, coffee grounds, milk jugs and just about everything else.

That's over half the estimated \$35 billion Americans pay every year for garbage collection and disposal. What's left will be divided among local governments, one other national garbage collector and several thousand small local and regional haulers.

The consolidations are being driven primarily by the companies' efforts to deal with depressed revenues caused by a national glut of landfills and have been followed by price increases.

Some experts also say the national trend toward recycling will reverse.

Big solid waste companies lose money every time something is recycled instead of going into one of their landfills, said Peter Anderson, a Madison, Wis., solid waste consultant and recycling promoter.

"The concern I have is that recycling is going to be hitting some rough times," he said. "An oligopoly in waste will naturally extend itself over recycling and put the brakes on."

Not everyone thinks consolidation in the business is necessarily bad for consumers. Large companies may be more efficient and cost-effective than small, mom-and-pop garbage haulers.

"Running a landfill has gotten to be a pretty complex business in a lot of respects," said Winston Porter, president of the Waste Policy Center and a former assistant administrator of the Environmental Protection Agency. "When I was at EPA eight or 10 years ago, there were 6,000 to 8,000 landfills in this country. Today there are 2,900."

Regardless of their size or the size of the company that owns them, all landfills must meet federal environmental standards, Porter said.

Consolidation accelerates

Consolidation in the business of hauling and disposing of municipal and industrial solid waste has been going on for years. It has accelerated in the past decade, first because of new federal regulations for waste disposal, and second because of an unexpected national glut in waste disposal sites, industry analysts say.

The new regulations went into effect in 1989 and 1990, by the EPA. They required that landfills be lined with thick plastic and a layer of compacted clay several feet thick. The landfills also must have systems of collecting and removing the water that leaches through buried waste, wells for monitoring underground water supplies, and systems for managing gases, and principally methane, given off by virtually every landfill.

With the regulations, the local city dump was replaced by a "solid waste landfill," a highly engineered system for managing millions of tons of garbage. As economies of scale took over, the landfills became very large.

HOW WE HANDLE SOLID WASTE

The garbage industry will change with the merger of two major waste companies. One negative result, some critics think, is that recycling will decrease. A look at some aspects of the waste business:

WHAT HAPPENS TO TRASH AND GARBAGE?

Year	Incineration	Landfill	in waste-to-energy plant	Recycling
1980	81.4%	9.0%	1.8%	9.6%
1990	66.7%	16.1%	15.0%	17.2%
1995	56.9%	16.1%	15.6%	27.0%

HOW MUCH IS RECYCLED?

(Percentage in 1996)	1996
Corrugated boxes	66
Aluminum cans	64
Steel cans	59
Newspapers	52
Office papers	45
Plastic soda bottles	38
Glass containers	27

TWO FIRMS DOMINATE THE WASTE COLLECTION BUSINESS

The solid waste collection industry had an estimated \$35 billion in revenues in 1997. If the proposed mergers are completed, the two companies' revenues would roughly equal those of all other public and private waste collection businesses combined.

Waste Management Inc.

(9.2 billion in 1997 revenues)
 In 1998, merged with USA Waste Inc. (\$2.7 billion in 1997 revenues)

- Plans to merge with Eastern Environmental Services (\$133 million in revenue in the first six months of 1998)
- Projected combined 1998 revenues: \$12.9 billion

Browning-Ferris Industries Inc.

(4.2 billion in 1998 revenues)

- Announced plans to merge with Allied Waste Industries (\$1.7 billion in 1998 revenues)
- Projected combined 1998 revenues: \$5.9 billion



GEORGIA LANDFILLS ACCEPTING THE MOST SOLID WASTE

Rank	Name	Operator	County	1997 tonnage
1.	Live Oak No. 2	Waste Management Inc.	DeKalb	1,242,764
2.	Southern States	Allied Waste Industries	Taylor	778,251
3.	Richland Creek	UWI, Inc.	Gwinnett	571,590
4.	Hickory Ridge	Browning-Ferris Industries	DeKalb	520,595
5.	Oak Grove	Republic Services Inc.	Barrow	397,080

Total number of landfills in the state, 1997: 101
 Years of remaining landfill capacity, 5 to 10

Sources: Company reports filed with Securities and Exchange Commission; Waste Policy Center, Leesburg, Va.; State Department of Natural Resources and U.S. Environmental Protection Agency

MICHELLE MACK/Staff

But while city and county governments operate dozens of landfills built or modified to meet the new EPA standards, most facilities are privately owned. Until this year, four companies — Waste Management Inc., Browning-Ferris Industries,

USA Waste Inc., and Allied Waste Industries — owned most of them.

This year, USA Waste, the third-largest company, took over Waste Management, the largest. And last month, Allied Waste Industries, until last year the fourth-largest, announced that it was taking over Browning-Ferris Industries, the second-largest.

"This is the culmination of many years of activity," said Neil Seldman, president of the Washington-based Institute for Local Self-Reliance, a recycling advocacy group. "The large companies have spent years driving small haulers out of business or buying them up."

Seldman said that because they now control so many landfills, the big companies can control the industry by setting the price for dumping.

EPA officials said that when they issued the 1990 rules, they expected large regional landfills to replace smaller local facilities.

"It would not make good economic sense to build a small landfill, if you could get together with your neighbor and build a larger landfill," said Robert Dellinger, director of the EPA division of municipal and industrial solid waste. "We projected there would be a reduction of the number of landfills."

What was not anticipated by the EPA was that a country worried in 1990 about "running out of places to put garbage" would rebuild and suddenly find itself with too many landfills. As they grew and bought competitors, the handful of national solid waste haulers were largely responsible for this development.

Fees start to rise

Anderson said a landfill glut in the past few years has resulted in prices that are depressed by competition. Small haulers, who typically empty their trucks in downtown "transfer stations" operated by regional haulers and landfill operators, could shop for the lowest fees.

But as weaker landfill operators were bought by the national firms, these fees started rising.

After USA Waste took over Waste Management Inc., it lost the former company's name. It did not keep its landfill permit approval of the deal, but USA Waste announced a 40-percent increase at many landfills.

Anderson said that while the Justice Department requires merging companies to divest themselves of landfills in areas where mergers would otherwise depress competition, he believes "price signaling" and other informal means of avoiding competition will inevitably lead to continuing price increases. Pressure on the industry will also demand it, he said.

Anderson said the industries of hauling and disposing of garbage should be divided so haulers compete for local and regional hauling contracts, and landfill operators then compete for the haulers.

"The solid waste industry is about to reach its endgame after nearly three decades of consolidation," he said. "That is the point where two or three major integrated firms control the landfill in many of the major markets."

Meanwhile, the depressed landfill market is only one front in the industry's slide. Recycling is another.

Seldman said studies have shown that hauling a piece of garbage to a landfill is six times as profitable to a waste disposal company as recycling it, even when the company collects an extra fee for handling recyclable materials.

"The only way they do recycling is under duress," he said. According to some estimates, about 27 percent of America's waste stream is now recycled. Steve Ratel, a spokesman for Waste Management, said the company will continue to "grow" its recycling operations. A spokesman for Allied Waste Industries did not respond to telephone messages.

'Tis the season to throw away mountains of trash

By **DAN FELDSTEIN**
Houston Chronicle

Picture the Astrodome parking lot full of 1998 Ford Taurus sedans.

Now picture 13 Astrodome parking lots, overflowing. Those cars weigh as much — 1.12 billion pounds — as the garbage Houstonians throw out in a typical year.

While this is the season for most children to think about presents, garbage collectors are concerned about what the presents came in. The three weeks following Christmas are the top trash and recycling weeks of the year — thanks to toy boxes, wrapping paper, wine bottles, Christmas trees and turkey carcasses.

The city of Houston estimates it collects at least one-third more household refuse during the time. Browning-Ferris Industries, the national garbage firm based in

Houston, says it collects double. "Much of it is large, heavy objects like washers, dryers and sofas. And think of the hundreds of Christmas trees," said BFI spokeswoman Dorothy Beeler.

Beeler said many families get new appliances and furniture for Christmas. When they get around to installing them in the next few weeks, they discard the old ones.

The city of Houston has special monthly pickups for larger items and a special recycling program for Christmas trees. But regular household garbage is still increased by the season.

During normal times, it takes 450 household stops to fill a city garbage truck, said David McCary, deputy assistant director of the Department of Solid Waste Management. The average route is about 900 households, meaning the driver has to visit a dump or transfer station twice a day.

For the next few weeks, most

trucks will have to off-load three times per route, city officials said. That means a truck may visit your house later in the day than normal.

In an average year, Houston scoops up 300,000 tons of regular household garbage, or about 40 pounds per week per household served.

It picks up 200,000 tons of heavy trash in monthly pickups and 60,000 tons of materials for recycling.

The solid waste department has even trooped through the streets at random to figure out exactly what we're throwing away.

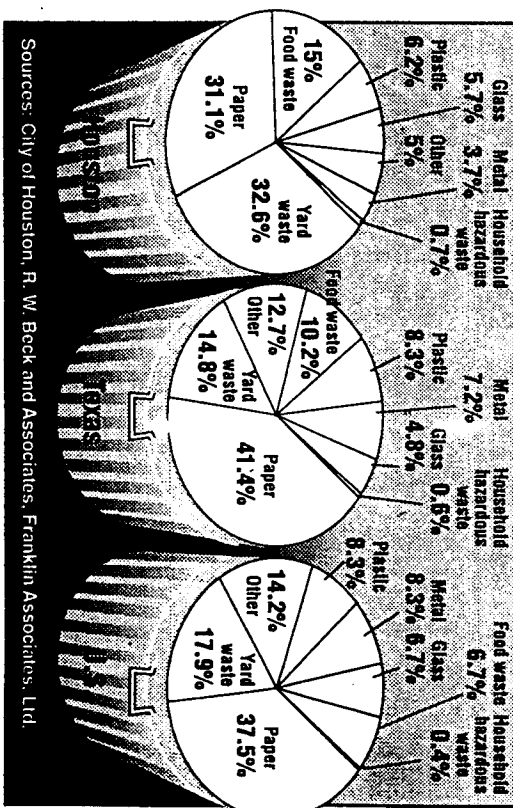
By weight, about 33 percent is yard wastes, 31 percent is paper and 15 percent is food waste. The rest is plastic, glass, metal and "other."

By comparison, the national household average for yard waste

See TRASH on Page 37A.

Trash talking

Houston residents throw out a higher percentage of yard wastes and food in their garbage than Texans as a whole or residents across the country. The tropical climate and long growing season explain the yard wastes.



Sources: City of Houston, R. W. Beck and Associates, Franklin Associates, Ltd. Robert Dibrell / Chronicle

Trash

Continued from Page 33A.

is only 18 percent. It is only 7 percent for food waste.

The larger share of grass clippings and yard waste can be explained by the semitropical climate and long growing season, said Bill Petty, the city's household hazardous waste manager.

But not the wasted food.

"Either we eat more or we're bad housekeepers. We had whole cans of soup, bags of Fritos, frozen chicken," Petty said.

Indeed, the yearlong peek into the city's household garbage was quite revealing, he said.

Some of his most vivid memories: Four dead male blue jays wrapped in newspaper, mice in glue traps that were still alive, 10 pounds of wound dressings, a rock of crack cocaine ("identified by one of my co-workers") and money.

The crews discovered that Budweiser is Houston's favorite beer, Campbell's is the top soup and local residents eat a surprisingly large vol-

ume of generic brand beans, Petty said.

Any city household that receives automated collection — those giant, black, city-issued cans — will be able

'Much of it is large, heavy objects like washers, dryers and sofas. And think of the hundreds of Christmas trees.'

BFI spokeswoman Dorothy Beeley.

to get rid of its Christmas tree at curbside, said solid waste spokesman Ernest DeSoto.

Just place it a few feet from the can, where you would normally put your yard wastes. The city sells both the yard waste and trees to a mulch firm.

Don't leave the stand and don't leave a flocked tree or tinsel, DeSoto said. If you can't get the stand or the sprayed stuff off the tree, you can put the tree out for your normal monthly heavy trash pickup, he said.

Most residents know they can al-

ways recycle newspaper, plastic bottles, aluminum and tin cans and glass, officials said. But they can also leave clearly marked used motor oil either on top of their curbside recy-

cling bin or at city depositories if they don't have curbside recycling service.

Heavy trash, flocked trees and tires are collected seven days a week, 9 a.m.-7 p.m. with proof of city residency, at 5565 Kirkpatrick in northeast Houston, 6023 Windfern in northwest, 9200 Lawndale in southeast and 5100 Sunbeam in the southern section of the city.

Items for recycling are accepted at the Kirkpatrick, Lawndale and Sunbeam locations. They are also accepted at the Westpark Recycling Center, 5815 Southwest Freeway at

Fountainview.

From Monday through J non-flocked Christmas trees if cling will be accepted 9 a.m. Monday-Saturday and 9 a.m. p.m. at Sunbeam, Lawndale patrick and Westpark, plus Mc Park ball fields 4 & 5, Living Technology at 5625 Crawford CJM Soils Supermarket at 1700 way 90A East.

They will be accepted 9 a.m. Monday-Saturday at CJM Soils permarket at 12202 Cullen Roe Living Earth Technology at 15 Industrial Drive (between Southern and U.S. 90).

They will be accepted Saturday 9 a.m.-5 p.m. and Sunday 1-5 p.m. HI&P at 2301 Gears Road and Iris County DAD's Club Park on cent Landing, between Clear City Boulevard and Village green Trail.



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September 2, 1998

Cheryl Mergo
Sr Env Planner
Houston Galveston Area
3555 Timmons Lane 500
Houston, Tx 77027

Re: Use the Internet to get Direct Pricing for Waste Management and Cleanup Services from Any Vendor in the Country and get Cash Back

Dear Cheryl Mergo:

Is it taking way too long to find the best competitive options and get timely price quotations for waste management and cleanup services? Then, you need to know about an innovative electronic purchasing service -- TSD Central® -- sponsored by *Environmental Technology* magazine. TSD Central® harnesses the power of the Internet to take the work out of purchasing industrial waste management services to save you valuable time and reduce your costs.

TSD Central® is not a waste management facility or a traditional brokerage service. It's an entirely new way of doing business that saves you time by eliminating telephone hassles, endless paperwork, and price confusion. TSD Central® provides convenient, direct access to a wide range of competitive prices and treatment options from any hazardous waste management and cleanup company in the country. And, since TSD Central® is not affiliated with any vendor, you are assured of getting the most cost-effective treatment options available anywhere.

TSD Central® also saves money by eliminating obsolete intermediaries and reducing costly overhead for waste management vendors. Because vendors are saving money, there is no cost to you for using TSD Central® to buy waste management services. In fact, you actually share these cost savings with the vendors through a yearly cash dividend which is paid directly to your company, based on a percentage of your annual purchases through TSD Central®. This is just another way that you'll benefit by using TSD Central®.

To get immediate pricing options for your waste stream or cleanup project, go to TSD Central® on the Internet at <http://www.tsdcentral.com> or just fill out the attached Request for Quotation form and fax it back to us. You'll receive competitive prices in an easy-to-read, understandable format that meets your most stringent deadlines. Do it now and use TSD Central® to get rid of your waste, without wasting time!

Sincerely,

A handwritten signature in black ink, appearing to read 'Eliot Cooper'.

Eliot Cooper
General Manager

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(Use this form to receive immediate pricing for your waste management needs or go to www.tsdccentral.com)

Waste Stream Name (one waste stream per form): _____

Quotation Due Date (date quotations should be returned to you): _____

Contact Person: Cheryl Mergo Title: Sr Env Planner

Company: Houston Galveston Area City: Houston State: Tx

Phone: 713-993-4520 Fax: 713-621-8129 Email: _____

Free trial regulatory newsletter subscription? yes no

Services Requested (select all that apply):

- Recovery: cement kiln metals organics other (specify): _____
- Treatment: chemical oxidation fuel blending incineration stabilization thermal desorption
 water treatment other (specify): _____
- Disposal: deepwell injection landfill other (specify): _____
- Onsite Cleanup: bioremediation soil wash stabilization thermal desorption other (specify): _____
- Other (specify): _____

Waste pick up/clean up date: _____ City: Houston State: Tx

Quantity (per shipment): _____ tons drums gallons other (specify): _____

Frequency (of shipments): one time weekly monthly quarterly other (specify): _____

Packaging: bag/box drum 55 gal. rail car rolloff end dump truck tanker truck vacuum other (specify): _____

Waste category (select all that apply): absorbents/oil debris acid alkalis aqueous waste contaminated soil fluorescent lamps mercury PCBs pesticides/herbicides radioactive reactives solvents waste oil other (specify): _____

EPA Hazardous Waste? no yes, EPA Waste Codes: _____

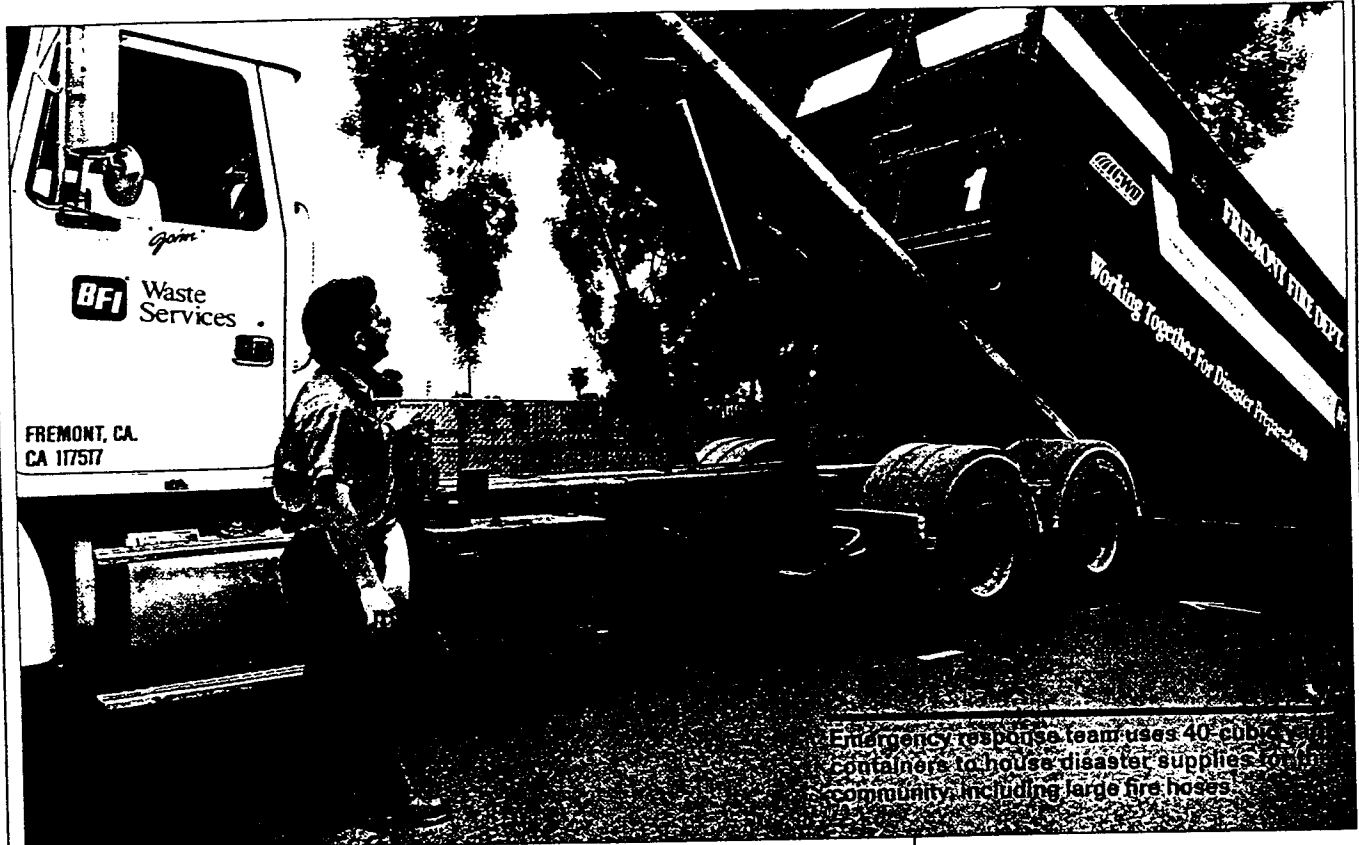
Physical and Chemical Properties: (attach waste profile if available)

- Physical state (at 68°F). liquid semi solid solid
- Heating value (Btu/lb). less than 5,000 greater than 5,000 (specify).
- pH. less than 2 2 to 5 5 to 9 9 to 12.5 greater than 12.5
- Fuel blending data. solids _____ % water _____ % halogens _____ %

Metals:	Total (ppm):	TCLP (mg/l):	Non Metals:	Total (ppm):	Key Constituents:	Weight Percent
arsenic			benzene			
beryllium			bromine			
cadmium			chlorine			
chromium			cyanide			
copper			fluorine			
lead			iodine			
mercury			sulfide			
nickel			sulfur			
			total VOCs			

CITY AND WASTE SERVICES FIRM DEVELOP CREATIVE

Public-Private PARTNERSHIP



Emergency response team uses 40 cubic containers to house disaster supplies for community, including large fire hoses.

Cover and story photographs by: Dave Porter

Mention Silicon Valley, and the word innovation is not far to follow. For the past two decades, Silicon Valley has served as ground zero for development of the latest cutting edge technologies in the computer industry.

The computer industry, however, does not hold a monopoly on great ideas. Tucked in the heart of the Silicon Valley is a community that has developed an innovative public-private partnership with waste services firm Browning-Ferris Industries, Inc. (BFI), Houston, Texas.

Bonnie Moss

Ms. Moss is Divisional Vice President, Community Affairs, Browning-Ferris Industries, Inc., Houston, Texas.

GENESIS OF A PARTNERSHIP

In 1994, Fremont, California issued a request for proposal (RFP) seeking a company to collect, process, and dispose of the city's waste and recyclables. For about four decades, this city of 190,000 residents maintained the same waste services company. After careful consideration, city officials sent the service out to bid to determine if the community could obtain a better price and if it could

improve its recycling efforts.

Recycling was a key factor for Fremont, which is located about 40 miles southeast of San Francisco. City officials knew the compliance dates for Assembly Bill 939 were approaching. The state mandate requires that all California cities reduce their waste 25 percent by 1995 and 50 percent by 2000.

When the city government issued the RFP in 1994, it also issued a challenge to those preparing proposals. For environmental and safety reasons, the city wanted the respondents to propose how each would reduce the number of waste services and recycling trucks traveling the city's streets.

**COVER
STORY**

PARTNERSHIP

THE WINNING SOLUTION

BFI responded to the request with a custom solution that would meet Fremont's needs. The company proposed creating a state-of-the-art recycling collection truck that would collect all categories of recyclables: glass, aluminum, plastic, newspaper, mixed paper, green waste, cardboard, and used motor oil. Previously, more than one truck was used to perform those collections.

Fremont Mayor Gus Morrison said the company's technical proposal, recycling strategy, composting plan, and enthusiasm were instrumental in awarding it the 10-year contract.

Also important were the annual savings the proposal promised to deliver to the city—\$3.5 million over what the residents were paying with the previous waste services provider.

A GREAT START

Following award of the contract, the company allied with a truck manufacturer to develop the truck it had proposed to the city government. The company now serves 45,000 single family residences, 300 multi-family complexes, and 5,500 businesses.

The transition to a new waste services firm was a bold, but also risky venture for the elected city officials. Residents had grown comfortable with the previous hauler and enjoyed the back yard service that it provided. A cornerstone of the new provider's plan was moving from back yard service to automated curbside service.

Also, the transition to the new company was made in September before the November election for city officials. Mayor Morrison said the city received BFI's assurance that the transition would proceed flawlessly.

He said the company followed through on its commitment. "They worked hard to make the transition smooth for the city residents. They brought in extra trucks, and were taking extra precautions to make sure every house was collected."

The customized truck solution and the first few weeks of the contract were just the beginning of a successful relationship between the compa-

ny and the city. The company has worked with Fremont officials to become integrated into the fabric of this growing community.

PARTNERSHIP EXTENDS TO PUBLIC SAFETY

The leaders of Fremont's public safety departments looked to the company as more than just a garbage carrier. They viewed their new waste services partner as a public safety resource.

Fire Chief Dan Lydon illustrated the progressive thinking exhibited by Fremont's public safety department when he proposed that the company's truck fleet become part of the city's earthquake response team. Where some people saw a bunch of garbage trucks, Lydon saw a dynamic fleet of vehicles that could help the city in an emergency.

Fremont sits in a precarious location along the Hayward Fault Line, making the city vulnerable to the violent earthquakes that can jolt the Bay Area. When a disaster strikes, Chief Lydon needs to dispatch equipment to his employees and quickly distribute supplies to the city's residents.

Lydon approached Mark Arsenault, district vice president for the company, to discuss a partnership in which the city could tap into the company's fleet. "When he proposed a partnership, BFI jumped at the chance to further help the community," said Arsenault.

Lydon and the company worked out a plan to strategically place

closed-topped 40-cubic yard containers throughout the city. Many are located at fire houses. Inside the boxes are large diameter fire hoses for connecting broken water mains. In the future, the boxes will also contain blankets, cots, medical supplies, drinking water containers, and other critical supplies that are needed in the first 72 hours following a quake.

Following an earthquake, the company will deploy its fleet of roll-off trucks to collect the containers. Working in concert with the city's Emergency Response Team, the fleet will drop the containers in strategic locations throughout the city.

The company is more than just a garbage carrier to Fremont, said Lydon. "They're an integral part of Fremont's disaster preparedness plan. They've added value beyond the scope of their contract by becoming an active corporate citizen."

WORKING TO MAKE THE COMMUNITY SAFER

The city's police department also viewed the company's fleet of drivers as a valuable asset to the city. Every week, the fleet travels countless miles down the streets of Fremont.

Fremont Police Chief Craig Steckler viewed the fleet as a rolling set of eyes. Because each truck is equipped with a two-way radio, if a driver witnessed an accident or something suspicious, he could quickly get in touch with the proper authorities through the company's dispatcher.

In 1995, the city police and the company formed a partnership known as True Blue Looking Out For You. The partnership called for the police and fire departments to train the drivers on what to look out for and how to report it to the Public Safety dispatchers.

Chief Steckler said this rolling patrol helps supplement the approximately 137 officers patrolling the streets of the 92-square mile city. Since instituting True Blue, company drivers helped save a p

State-of-the-art recycling truck collect all categories of recyclables, including glass, aluminum, plastic, and newspaper



PARTNERSHIP

whose car drove into a creek and police to nab a car thief.

"We have more than 400 miles of roadway in Fremont. Our officers can't be everywhere," he said. "BFI provides us more eyes out on the street so if an emergency happens we are more effective at addressing it quickly."

GIVING BACK TO THE COMMUNITY

Part of the company's collaboration with Fremont is a "bulky item" collection program. Previously, the city picked up bulky items (washing machines, etc.) once a year. Now residents simply contact the company when they have a bulky item for pick-up. The company will make two bulky item collections per household each year at the customer's convenience.

In conjunction with the bulky item collection program, the company has teamed with Carnales Unidos Reformado Adictos (CURA), a non-profit organization that helps rehabilitate those with chemical dependency.



On the Cover. Pictured (left to right) are Mark Arsenault, BFI; Jan Perkins, City Manager; Fire Chief Dan Lydon; and Mayor Gus Morrison.

CURA examines the materials collected by the company and determines which items can be repaired and donated to those trying to get back on their feet. Of the remaining items, the company recycles what it can and landfills what it cannot.

A WINNING PARTNERSHIP

By viewing the company as more than a vendor, Fremont has successfully created a collaboration that

goes beyond waste services. This type of creative thinking is one reason Fremont was recognized as an All-American City in 1997.

Fremont believes that working closely with the waste services provider and its other vendors will help the city government improve customer service to its constituents.

"The city of Fremont is trying to discover and determine new ways of doing business. Our number one priority is customer service," said Norm Ploss, an environmental services engineer for the city. "We have found that partnerships improve the delivery of service to our customers."

INCREASED RECYCLING

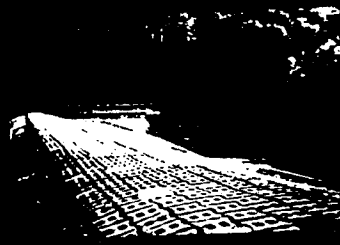
Since the company took over the contract, the city has achieved a residential recycling rate of just over 50 percent, according to BFI's Mark Arsenault. Fremont's residential recycling rate is nearly four times higher than it was before the company began providing the service for the city. **PW**

Securing the Environment

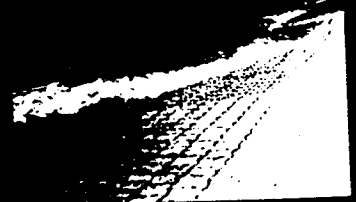
One Job at a Time...



Shoreline Protection



Dam Overtopping Protection



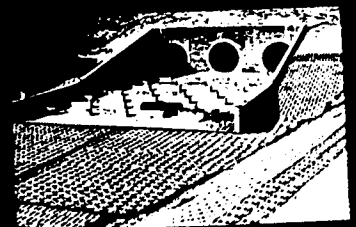
Coastal Protection



Embankment Protection



Boat Ramps



Storm Channel Lining

Editor's Comments

it difficult to raise capital. What's needed is federal support, such as inclusion in the Section 45 program (presently occupied by wind-power interests), incorporation of a requirement of a renewable energy portfolio within federal energy legislation, and monitorization of pollution prevention credits. One of a handful of bright spots in what was—in most respects—a disappointing year was Toyota Motors' agreement to pay a \$1 million premium for its California activities to use electrical energy from 100% renewable fuel sources—a strong indication that there are companies interested in increasing their identification with environmental projects.

Ringling Down the Curtain on a Century of Change

Meeting the Challenges of Consolidation is not just a public-versus-private-sector matter, despite the fact that it's where many of the battles will take place. Often trivialized to "loss of public-sector jobs" and "private-sector efficiencies," the issues are more fundamental and the consequences more far-reaching than just who signs the paycheck or who can put the garbage out of sight for the least amount of dollars. While there are obvious advantages in the economies of scale that come from spreading administrative and capital costs across an aggregation of smaller entities, the associated risks to effective management place limits on just how much consolidation makes sense. Where the driving force is the provision of more and better service for the price, the public is well served, but where the bottom line has to do with a corporate balance sheet and the welfare of stockholders, sooner or later there are bound to be consequences that must be addressed by the public through its elected representatives. The trouble with waiting until problems come to the surface and mature is that by then the public sector might no longer have the talent and machinery available to step in and rectify the situation.

It seems likely that those who will succeed in making the transition will do so through (1) the talent and force of managers and staff to subject every activity to

intense scrutiny for its relevance and contribution to the overall mission of the organization, (2) the support of public officials for their role in solid waste management, (3) the rigorous application of such valuable methodologies as full- and incremental-cost accounting, (4) the development of programs to increase employee skills in areas heretofore thought to be the province of the private rather than the public sector, (5) alliance with private-service providers that aren't captive to outside economic interests, and (6) reliance on assistance by qualified experts to establish and guide the development of programs and tasks that lie outside the normal experience levels of regular staff.

Who Speaks for Recycling? Once the darling of environmentalists, recycling programs fell on hard times during the recent recession, finding fewer and fewer champions today, particularly in the private sector where the rush to bolster balance sheets favors meat-and-potato programs. But has the public given up? Not on your life! So here are both opportunity and challenge for MSW managers who find that while they no longer have to fight to gain support for programs, they're hard-pressed to find ways to make them more cost-effective. The public's continuing enthusiasm for taking an active role in recycling, as well as its expectation that diversion goals will be met, must not be underestimated.

What's Going On With Transformation Technologies? Despite its central position in waste management strategies in Europe and the Far East, WTE shows no signs of a revival in the US or Canada...nor is one likely so long as energy prices remain depressed. Despite some promising pilot activities, few examples of the rather vague category of transformation processes—pyrolysis, vitrification, extrusion, and a host of bio-fuel syntheses—have managed to move from the experimental stage into full-scale operation. Yet hope for these technologies remains alive in the face of rock-bottom landfill prices. It appears that economics, technology inhibiting policy (as in the case of California's AB 939, which precludes the use of such processes in diversion calculations), and the native conservatism of waste

managers rather than technical uncertainties lie at the heart of the matter. As consolidation continues to reduce the competitive options in the landfilling arena open to municipalities and nonvertically integrated private haulers, the threat or reality of higher pricing might provide the spark needed to bring stalled projects to life.

Landfill Issues: Cold Storage, Recirc, Bioreactivity, and Reclamation. Debate over the wisdom and efficacy of dry-tombing brings into bold relief the amount of information we lack and the degree to which the lack of an ongoing and effective R&D effort in the field hampers our ability to make informed decisions in matters that are crucial to our efforts to address long-term consequences of landfilling. Noting that today's wonderfully well-designed and -constructed landfill is tomorrow's prospective Superfund site, the list of proponents of enhanced bioreactivity is growing. So too is our retreat from cautions that launched us down the road to the classic Subtitle D landfill in the first place. Many landfill owners who once resisted the notion of introducing moisture to the confined mass of waste now see the economic advantages of recirculating leachate, thus avoiding at least some of the costs of treating the vetch. Clearly the long-term threat of dry-tomb landfilling is real, but just as clear is the need to answer questions about the consequences of a wholesale shift into largely uncharted waters, and addressing these uncertainties should be the first order of business. There are several studies underway investigating not merely the addition of moisture to enhance anaerobic digestion but of introducing air into the waste to turn the process aerobic. The times are exciting and hopefully the results will bring about the kinds of answers needed to move into the future with confidence.

It's my hope that *Elements 1999* will provide food for thought in understanding and coming to grips with the challenges and opportunities that lie ahead. As part of this I invite you to share with us your thoughts and experiences through our Internet Web site (www.mswmanagement.com) or e-mail (editor@forester.net).

MS

How to Decide Whether to Privatize Solid Waste Management Services

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INTRODUCTION

Managing solid waste has become a complex, challenging, and costly public service. Numerous technological, legal, economic, environmental, and emotional issues must be recognized and addressed for solid waste programs and facilities to operate in an environmentally safe and cost efficient manner. Considerable political pressure and public debate has recently been focused on the cost of solid waste management services. For many rural or small municipalities, the cost for solid waste services is one of the largest items on their municipal budget. One approach municipalities choose to control costs involves privatizing the ownership or operation of solid waste management facilities and services. Privatization is seen as a way to get rid of the problems associated with solid waste management and as a method to reduce its cost to the municipal government.

This paper presents information and a format for making a factual, analytical decision between whether to continue solid waste management as a public service or to privatize the service. Political, environmental, and emotional issues that should be recognized and discussed before a decision is reached are identified. These issues include, but are not limited to: long term financial and environmental risks; loss of local control; and loss of competition. Common sense, financial "rules of thumb," useful in helping to recognize what is needed to provide cost competitive services and facilities are also presented.

This paper does not favor either public or private management and ownership. This paper is based on the premise that, given the current regulatory environment and the public pressure, it is critical to make solid waste management services not just cost efficient but cost competitive. The tax paying, fee paying public deserves nothing less. This paper suggests that being cost competitive is not the exclusive domain of private sector waste management companies. It recommends that governments think of their solid waste management system like a business and either begin to operate like a business or consider contracting with private companies or other governments for solid waste services.

SELECTING PUBLIC OR PRIVATE OWNERSHIP AND OPERATION

It is important that the solid waste management system be established within the appropriate regulatory framework. The system must be backed by sufficient authority, adequate financing, efficient operating ability, and have the flexibility to adapt to meet changing conditions. Within this framework, there are several alternative public and private sector ownership and operation options that can be implemented. These include:

Public sector ownership and operation;
Public sector ownership and private sector operation;
Private sector ownership and operation; or
Joint municipal or regional public sector authority ownership and operation.

Each of these alternative management systems can function successfully. Each has advantages and disadvantages from the perspective of a municipal government. There is no one best alternative for every municipality. In order to determine which alternative is the best arrangement for a municipality it is important to understand the facts and realities that can make each alternatives effective, environmentally safe, cost competitive or profitable, and politically acceptable to the municipality and public it is to serve.

There is no one right or wrong system. Making a decision as to the alternative that best suits a municipality must be based on the individual goals and values of that government. The only wrong answer is to enter into an arrangement or continue the current system without: understanding the facts; and discussing the potential long-term impacts, advantages, and disadvantages of each alternative.

FACTS AND REALITIES

- Some aspects of a solid waste system can be managed profitably. Private sector waste management companies want more business because it can be profitable. Solid waste management can be profitable if it operates efficiently, managing only wastes and quantities between distances that are profitable.
- Municipal government has the responsibility to manage all solid waste. This includes non-profitable items like disposal of white good, non-profitable programs like recycling, as well as smaller than profitable quantities of waste generated in geographically dispersed locations. Municipal government will always remain, in part responsible for the environmentally safe, equitable collection and disposal of wastes. This responsibility remains beyond the 5, 10, or 20 years of any contract or management plan.
- There is an income potential for providing solid waste services. This potential income is from collection fees and tipping fees. It is available to both public municipalities or agencies and private companies. The public ultimately pays the fees either through taxes or direct fees. The public therefore has the right to receive environmentally safe solid waste services at the lowest cost.
- While environmental safety, and the responsibility for managing all waste (not just profitable items) remains the responsibility of municipal government, efficiency is not the exclusive domain of the private sector.
- By removing the profitable, income producing solid waste management programs and services, the remaining programs and services become costs, most likely operating in the "red." These non-profitable programs and services remain the

responsibility of municipal government. If they are not combined with the profitable programs there is little to no potential for them being paid for through potential profits. While some of these non-profitable programs and services could be dropped, many must remain for political or legal reasons.

FINANCIAL RULES OF THUMB

For this cost-centered analysis, solid waste management facilities and services are divided into three parts: collection, transfer or hauling, and disposal. To operate and manage these facilities and services in a cost competitive manner, waste must be generated within certain quantity and distance parameters. The following "rules of thumb" are based on analytical studies conducted during the past year by the author for previous clients, data presented in recent professional publications, discussions with private waste management companies, and a review of the sizes of profitable privately owned and operating facilities. References are provided at the end of this paper. The numbers and costs are averages or "rules of thumb" and should not be considered precise estimates. The numbers are based on generalized assumptions and may not be accurate in all situations.

Collection Rule of Thumb

It is not cost competitive to collect waste on a unit by unit basis if the area to be served has less than 40 to 50 people per square mile. Rural drop-off or convenience centers are the most cost effective way to collect waste from these areas. (Note: Extensive research and several computer based models are available to analyze the most efficient collection routing. This information is beyond the scope of this paper.)

Transfer or Hauling Rule of Thumb

For a transfer station to be cost competitive, it must accept and manage at least 100 tons of waste per day (preferably 200 tons per day) from an area within 30 to 50 miles. It can then cost competitively transport the waste out to a disposal facility within 200 miles.

If less than 100 tons per day of waste is generated or of the direct haul distance to a disposal facility is less than 30 to 50 miles, the waste should be hauled directly to the disposal facility.

Baling waste increases the cost to process it by approximately \$8 per ton.

Subtitle D Landfill Disposal Rule of Thumb

For a Subtitle D Landfill to be cost competitive, given the absence of flow control, it must be able to be constructed, operated, and maintained for a tipping fee between \$20 and \$35 per ton. To achieve the \$35/ton cost, a facility must accept at least 100,000 tons per year. To be profitable, a facility should take in approximately 300,000 tons per year.

The following table is from a 1994 analysis conducted by the author for the Isothermal Planning Commission in North Carolina and information presented in an article by Kenneth G. Gallagher in the September/October 1994 issue of *Solid Waste Technologies*. These two independent financial analyses resulted in similar cost conclusions.

Comparison of Cost to Size of Subtitle D Landfill

Tons/ year	Tons/day	Acres	Tip Fee in \$/ton	Source
10,000	30-40	10	\$119	Gallagher
15,000	40-45	17	\$97	Gad
35,000	80	26	\$60	Gad
100,000	270-380	50	\$35	Gad & Gallagher
300,000	800-1200	100	\$20	Gallagher

POLITICAL, FINANCIAL, AND LEGAL ISSUES AND RISKS

Evaluating public versus private solid waste services requires considering more than the immediate costs for collection, transportation, and disposal of waste. Even if a municipality contracts out for services, the municipality retains the responsibility for equitable and environmentally safe delivery of these services. This responsibility goes beyond the scope and length of most contracts and beyond the immediate need to save money or cut costs. In deciding whether to continue solid waste management as a public service or to privatize the service, each of the following issues should be discussed.

Financing

- Public financing for a new solid waste management facility, through bonds, may be easier to get and cost less than private financing and interest. This may translate into lower costs for the facility's operation and maintenance.
- Private financing frees the municipality of up-front capital costs.
- If a solid waste facility or equipment is privately financed, the majority of the financial risk is assumed by the private owner.
- The ability of a private company to receive private financing for a facility or equipment, is a good indication that the company demonstrated to the financial community that it is accountable, reliable, and credit worthy.

- If a facility or equipment used for solid waste management is privately owned, the private owner remains committed because of the financial investment.

Income Potential

- Ownership and operation of facilities and services can provide tipping fees as a source of income and profit.
- Public operations do not need to make a profit so either a lower tipping fee can be charged or the extra income could be used to off-set the cost of other solid waste services.

Experience and Efficiency

- Private sector companies generally employ and maintain experienced and efficient personnel and equipment.
- Government purchasing of equipment may take a long time. However, governments may be able to receive a lower rate for equipment purchases.
- Private sector companies may not replace equipment because it reduces their profits.

Potentially Creating a Monopoly or Weak Negotiating Position

- Contracting for service with one company may destroy or reduce the competition among other private companies in the area or create a monopoly. This may leave a municipality in a weak negotiating position.
- Completely getting out of the ownership and operation of solid waste services and facilities may reduce or eliminate the possibilities of getting back into the business if a municipality would want to at some time in the future. (i.e. No staff, no equipment, no facility, and no experience would make it hard to begin again.) Again, this puts a municipality in a weak negotiating position.
- Tipping fees will probably rise over time. Unless alternative facilities and services are available, fees may rise based on supply and demand and not the actual cost for services.

Location of Facility

- Sending solid waste outside the municipality is often a welcome alternative and people may be willing to pay more to be rid of the problem.
- The responsibility for and risks associated with a public or private closed facility within a jurisdiction remain with that jurisdiction and its residents.

- The cost to haul waste outside the region is effected by fuel costs.

Jobs and Money

- Contracting with a non-local, private company may result in sending local tax money outside the region rather than keeping it circulating locally.
- Private sector jobs will be created to replace public sector jobs lost by changing from public to privatized services. No net new jobs may result.

Monitoring the Contract

- Municipal officials will need to continually monitor contracts for solid waste services. This can reduce the number of staff that need to be managed.

Control of the System

- If the system is privatized, the municipality will loose control over how it is managed, loose some accountability for it, and may not be able to control the equitable delivery of services.
- If the system is privatized, there is no guarantee that the low bidder can do the job or won't cut corners.
- If the municipality retains ownership of all facilities and equipment and operation of collection, transportation and disposal, they can continue to control the system.

Environmental Risk and Responsibility

- Contracting for private solid waste services such as operation and ownership of solid waste facilities, provides a municipality the ability to share the environmental risk.
- Long term financial, legal, and environmental responsibility always remains with the municipality for the closed landfill, collection, storage, an transportation of solid waste.
- Failure to comply with recycling and disposal bans, waste screening, and ground water and gas monitoring may result in a private company loosing its permits and require closure of its facilities. But, the municipality they contracted with, will still need to find another way to manage the waste.
- Potential negative impacts and long term responsibility of even a closed private facility remains with the municipality in which it is located.

Ownership

- If a private facility is used, the final ownership of the facility, when the debt is paid and facility closes, remains with the private company. Any residual value of the land and facility remains with the private company.
- If a facility or service is publicly owned, final ownership of the collection and disposal equipment, and the facility sites will be retained at the end of the bond term. Even if the facility must be reconstructed, it is still a resource with some residual value.

ADVANTAGES AND DISADVANTAGES TO A MUNICIPALITY

Different combinations of private and public management and ownership provide different combinations of advantages and disadvantages to a municipality.

Public Ownership and Operation

Advantages	Disadvantages
Less complicated financing	Assumes entire financial risk
Control of system	Assumes entire environmental risk
Potential for income from tipping fees	Personnel efficiency may be lower than private companies
Retain ownership of equipment & facilities when debt is paid	Capital expenditures may take longer to process
Money for solid waste services stays in the region	System may be susceptible to political interference and short-term benefits

Public Ownership and Private Operation

Advantages	Disadvantages
Can take advantage of private sector experience and efficiency in operation	Assumes entire financial risk
Retains some control over system	Assumes most of the environmental risk
Potential for income from tipping fees	Must manage the contract
Retain ownership of equipment and facilities when debt is paid	

Private Ownership and Operation

Advantages	Disadvantages
No up-front capital costs to municipality, less strain on the municipal budget	Financial rewards occur to private owner, solid waste is a cost without potential for generating income, tax dollars leave the region
Financial risk assumed by private owner	Must share the environmental risks
Private owner remains committed because of financial investment	Must manage contract, financial difficulties and contract problems may hinder service
Can take advantage of private sector experience and efficiency in operation	Once a municipality is out of the solid waste business it may be difficult to get back in business, weaken negotiating position for future
More flexibility in establishing management structure	Do not own facility or equipment after debt is paid
Less susceptible to political interference	Loss of control over system

Joint Municipal / Regional Public Sector Authority Ownership and Operation

Advantages	Disadvantages
Retain some control over system	Will loose some control over system
Can take advantage of economies of scale	Local politics may make it difficult to negotiate with neighboring municipalities
Waste may be removed from municipality	Cost to haul waste may be effected by fuel costs
Can share financial burden and income with other municipalities	Retain financial, legal, and environmental risk and responsibilities
Can take advantage of municipal bond financing	If regional landfill is in your municipality, you end up with others waste and large facility

MAKING A DECISION

The decision to privatize the ownership or operation of solid waste management facilities services should be made based on facts and an understanding of the potential impacts resulting from privatization. It is recommended that the decision be based on the overall goal of providing a cost competitive service. Unless the quantities of solid waste being managed and the area it is being collected from are within the parameters described above under the "rules-of-thumb," a municipality should seriously consider reorganizing their solid waste services by either privatizing services, contracting with a neighboring jurisdiction, or participating in the development of a regional or joint solid waste management program.

CONTRACTS

If a municipal governments chooses to privatize its solid waste services it will probably enter into a contract with another municipality or a private solid waste management company. The contracting municipality should remember that the private company probably has more experience at writing this type of contract. Before agreeing to a contract, the municipality should contact other municipalities who have worked with the private company. The municipality should hire a contract specialist. They should gain an understanding of what other solid waste management services are available to them. They should recognize the probability that signing the contract may reduce their future negotiating position and may reduce other local solid waste management competition in the area. They should try to avoid ending up in a position that their municipality can never return to operating their own facilities and services. They should avoid "put-or-pay" contracts that requires a municipality to pay for a specified tonnage of waste whether it uses that level of service or not.

CONCLUSION

Municipalities should not think of privatizing solid waste services as a way of getting rid of a problem. Contracting out does not relieve a municipal government of its responsibility to ensure the quality and environmental safety of service nor that services are being delivered equitably.

There is no one best way to manage solid waste services, no right answer for public or private ownership that fits all sizes and shapes of municipalities. In the final analysis, what best suits a municipality is an alternative that results in trade-offs having more advantages than disadvantages.

REFERENCES

Gad, Suzann, Project Manager, *Regional Solid Waste Management Plan 1993-2020*, prepared for the Isothermal Regional Planning and Development Commission, April 1994 by Camp Dresser & McKee, Raleigh, N.C. and William Lapsley & Associates.

Gallagher, Kenneth G. Exploring the Economic Advantages of Regional Landfills, *Solid Waste Technologies*, September/October, 1994, pages 44-48.

Pferdehirt, Wayne, et.al., Waste/Recycling Collection Course, ten-part series, *Waste Age* January -October, 1993.

Rodrigges, Lee E. Privatizing MSW: Not Necessarily the Answer, *MSW Management*, July/August 1994, pages 118-120.