Today’s Agenda

8:30 am   Welcome and Introduction
8:45 am   Procurement Process
9:15 am   General Contract Provisions
10:00 am  Collection Contract Provisions
10:30 am  Processing Contract Provisions
11:30 pm  Industry Panel
12:15 pm  Concluding Remarks
Guidance to procure any combination of solid waste and recycling services

- Collection Services
- Processing Services
- Disposal Services
Introductions

Scott Pasternak, Senior Project Manager, leads the Southwest Solid Waste and Resource Recovery Practice

Veronica Roof, Senior Environmental Policy Specialist, is a licensed attorney

NCTCOG is North Central Texas Council of Governments
Utilize Innovative Strategies

Insight for Partnerships

History of completing RFPs in a timely manner
Introductions: Name, organization, position

Question: What is the #1 issue that you would like to be addressed in today’s workshop?
Procurement Process
Steps to a Successful Procurement

1. Develop Procurement Approach
2. Define Scope of Services
3. Develop Evaluation Criteria
4. Develop RFP

5. RFP Release
6. Pre-Proposal Conference
7. Issue Addenda
8. Proposals Received

10. Interviews
11. Contract Negotiation
12. Contract Award

13. Transition and Implementation Based on Contract

City/Stakeholder Engagement
Steps to a Successful Procurement

1. Develop Procurement Approach
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4. Transition and Implementation Based on Contract

City/Stakeholder Engagement
1. Who should be on the procurement team?

2. What is the timeline?

3. Should you use an Invitation for Bids, Request for Proposals, or two-step process?

4. Should you issue a separate, integrated, or open-ended solicitation?
# Selecting the Procurement Team

<table>
<thead>
<tr>
<th>Potential Procurement Team Members</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Recommended</strong></td>
</tr>
<tr>
<td>- Public Works or Solid Waste Department</td>
</tr>
<tr>
<td>- Solid Waste Coordinator</td>
</tr>
<tr>
<td>- Recycling Coordinator</td>
</tr>
<tr>
<td>- City Manager or designee</td>
</tr>
<tr>
<td>- Billing and Customer Service</td>
</tr>
<tr>
<td>- Purchasing Department</td>
</tr>
<tr>
<td>- Legal Department or outside counsel</td>
</tr>
<tr>
<td>- Solid waste and recycling procurement advisor</td>
</tr>
<tr>
<td><strong>Optional</strong></td>
</tr>
<tr>
<td>- Elected officials</td>
</tr>
<tr>
<td>- Citizen group representatives</td>
</tr>
<tr>
<td>- Consultant or outside advisor</td>
</tr>
</tbody>
</table>
Team Member’s responsibilities may vary. Key responsibilities are:

- Development of Request for Proposals
- Facilitation of procurement process
- Evaluation of proposals

Recommend 5 to 9 team members (odd number) evaluate proposals

Burns & McDonnell is a non-voting resource throughout the procurement process
Developing the Procurement Timeline

Procurement timeline varies based on type of services and other factors.

Collection Services Procurement Timeline

- Develop RFP: 2-6 months
- Vendor Develop Proposals: 1-3 months
- Proposal Evaluation and Contract Negotiations: 2-3 months
- Transition and Implementation: Minimum of 3 months

Processing or Disposal Services Procurement Timeline

- Develop RFP: 2-6 months
- Vendor Develop Proposals: 1-4 months
- Proposal Evaluation and Contract Negotiations: 2-4 months
- Transition and Implementation: Immediately to 18 months
Handout 1: Procurement Timeline Tool
# Bids vs. Proposals

<table>
<thead>
<tr>
<th>Invitation for Bids (IFB)</th>
<th>Request for Proposals (RFP)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Definition</strong></td>
<td></td>
</tr>
<tr>
<td>Evaluation is based on <em>minimum standards</em> and <em>lowest price</em>.</td>
<td>Evaluation is based on <em>best value</em>, which includes a variety of and criteria defined by city.</td>
</tr>
<tr>
<td><strong>Works Well When</strong></td>
<td></td>
</tr>
<tr>
<td>- Services can be specifically defined</td>
<td>- City is receptive to different approaches to service</td>
</tr>
<tr>
<td>- All bidders are qualified</td>
<td>- Price is not the only evaluation criteria</td>
</tr>
<tr>
<td>- Sole evaluation criteria is price</td>
<td></td>
</tr>
</tbody>
</table>
# Bids vs. Proposal

<table>
<thead>
<tr>
<th></th>
<th>Invitation for Bids (IFB)</th>
<th>Request for Proposals (RFP)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Pros</strong></td>
<td>▪ Simple evaluation process</td>
<td>▪ Evaluation based on factors beyond price</td>
</tr>
<tr>
<td></td>
<td>▪ Little risk of protest from unsuccessful bidders</td>
<td>▪ Allows proposers to present alternatives</td>
</tr>
<tr>
<td><strong>Cons</strong></td>
<td>▪ City obligated to select lowest bidder</td>
<td>▪ Complex evaluation process</td>
</tr>
<tr>
<td></td>
<td>▪ No incentive for bidders to present alternatives or higher level of service</td>
<td>▪ Higher risk of protest from unsuccessful proposers</td>
</tr>
</tbody>
</table>

- **Pros**:
  - Simple evaluation process
  - Little risk of protest from unsuccessful bidders

- **Cons**:
  - City obligated to select lowest bidder
  - No incentive for bidders to present alternatives or higher level of service
One-Step vs. Two-Step Process

- **One-Step** – Proposals are opened all at once and in-depth analysis is conducted for all proposals.

- **Two-Step** – Only proposals that meet minimum qualifications are evaluated.
# One-Step vs. Two-Step Process

<table>
<thead>
<tr>
<th>Pros</th>
<th>Cons</th>
</tr>
</thead>
</table>
| One-Step | Can independently select collection, disposal and processing providers  
Can increase competition | Risk of unqualified proposal being selected due to low financial proposal  
All proposals must be evaluated in detail |
| Two-Step | Early elimination of unqualified proposers  
Reduced time for evaluation  
Eliminates risk of unqualified proposers being selected due to low financial proposal | Can’t see the “full picture” for proposers that are eliminated  
Potentially longer timeline |
City of Fort Worth: Two-Step Process

▶ Step One: Qualifications
  • Minimum experience
  • Financial Information
  • Certificate of insurability
  • Proof of ability to acquire bonding

▶ Step Two: Evaluation
  • Company history and ownership
  • Subcontractors and MBE participation
  • Relevant experience and reference projects
  • Financial capacity
  • Personnel
  • Proposed approach
  • Diversion potential and added value
  • Financial proposal
  • Performance and litigation history
Separate, Integrated, or Open-Ended

- **Separate** – Proposals solicited for separate providers of collection, disposal, and processing service. Also known as “un-bundled” services.

- **Integrated** – Proposals solicited for a single provider of collection, disposal, and processing service. Also known as “bundled” services.

- **Open-Ended** – Proposals solicited for collection, disposal, and/or processing. Proposers may propose on any or all services.
## Separate, Integrated, or Open-Ended

<table>
<thead>
<tr>
<th></th>
<th>Pros</th>
<th>Cons</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Separate</strong></td>
<td>▪ Can independently select collection, disposal and processing providers</td>
<td>▪ Separate procurements require more time/effort</td>
</tr>
<tr>
<td></td>
<td>▪ Can increase competition</td>
<td>▪ Manage and negotiate three contracts</td>
</tr>
<tr>
<td><strong>Integrated</strong></td>
<td>▪ One procurement and one contract</td>
<td>▪ Can minimize competition by eliminating companies that only provide one service</td>
</tr>
<tr>
<td></td>
<td>▪ Relationship between collection, disposal and processing providers</td>
<td></td>
</tr>
<tr>
<td><strong>Open-Ended</strong></td>
<td>▪ Can independently select collection, disposal and processing providers</td>
<td>▪ Complex evaluation</td>
</tr>
<tr>
<td></td>
<td>▪ Can analyze all options</td>
<td>▪ Risk to not receive proposals for all services</td>
</tr>
</tbody>
</table>
Steps to a Successful Procurement

1. Define Scope of Services
2. Develop Evaluation Criteria
3. Develop RFP

4. RFP Release
   - Pre-Proposal Conference
   - Issue Addenda
   - Proposals Received

5. Technical and Financial Reviews
   - Interviews
   - Contract Negotiation
   - Contract Award

6. Transition and Implementation Based on Contract

City/Stakeholder Engagement
Gather Input from Stakeholders

- Prospective Vendor Questionnaire
- Prospective Vendor Interviews
- Customer Surveys
- Public Forums
- City Council Meetings
- Benchmark Analysis
- Studies of Potential Program Options
- Staff Procurement Options and Strategies Workshop
City of Tulsa: Prospective Vendors Provided Critical Insight

16 prospective vendors interviewed for input on:
- Collection services
- Processing services
- Recovery of energy services

Provided critical insight as to:
- Interest in proposing to provide any or all services
- Procurement process timeline
- Contract terms (i.e. length of contract, subscription vs. universal program, performance bond)
- Program requirements (i.e. collection frequency, automation, out of cart set-outs)
- Factors that increase/decrease costs
Handout 2:
Procurement Scope and Scope of Services Tool
Factors that Increase/Decrease Fees

<table>
<thead>
<tr>
<th>Factor</th>
<th>Increase Base Fee</th>
<th>Decrease Base Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Performance Standards</td>
<td>Strict</td>
<td>Lenient</td>
</tr>
<tr>
<td>Collection Frequency</td>
<td>Increased</td>
<td>Decreased</td>
</tr>
<tr>
<td>Size of Service Area/Quantity of Material</td>
<td>Small</td>
<td>Large</td>
</tr>
<tr>
<td>Contract Term</td>
<td>Short</td>
<td>Long</td>
</tr>
<tr>
<td>Public Education</td>
<td>Payment required</td>
<td>No requirements</td>
</tr>
</tbody>
</table>
Steps to a Successful Procurement

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City/Stakeholder Engagement
Developing the RFP: Background and Objectives

➤ Gives the contractor the complete picture to meet the city’s needs

• Geographic and demographic data
• Reasons why the RFP is being developed
• Goals and objectives of the program
• Historical program data, including material quantities and composition
### Developing the RFP: Scope of Services

- Clearly state baseline services as well as any alternatives

<table>
<thead>
<tr>
<th>Baseline Services</th>
<th>Alternatives</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract term</td>
<td>Personnel requirements</td>
</tr>
<tr>
<td>Description of services</td>
<td>Equipment requirements</td>
</tr>
<tr>
<td>Location of facilities</td>
<td>Public education and outreach responsibilities</td>
</tr>
<tr>
<td>Hours of operation</td>
<td>Performance standards</td>
</tr>
<tr>
<td>Customer service responsibilities</td>
<td>Performance assurances</td>
</tr>
<tr>
<td>Program materials</td>
<td>Payment procedures</td>
</tr>
</tbody>
</table>
Assign weights or points to each criteria to indicate relative importance to city. Criteria can include:

- Cost
- Experience and qualifications
- Proposed approach (e.g. facilities, personnel, equipment)
- Financial stability
- Litigation history
## City of Missouri City: Best Value to City

<table>
<thead>
<tr>
<th>Evaluation Criteria</th>
<th>Percent of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Letter of Intent and Company Overview</td>
<td>Prerequisite</td>
</tr>
<tr>
<td>Proposed Approach</td>
<td>25%</td>
</tr>
<tr>
<td>Experience</td>
<td>20%</td>
</tr>
<tr>
<td>Financial Stability and Exceptions to Contract</td>
<td>5%</td>
</tr>
<tr>
<td>Financial Proposal</td>
<td>50%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>
Developing the RFP: Instructions for Proposers

- The RFP should include clear instructions for vendors
  - Deadlines and key milestones
  - Format of submittal
  - Content to be included
  - Standardized forms
  - Location of submittal
  - Contact person for questions
Developing the RFP: Proposal Content Requirements

 ► Experience and qualifications
   • Require that proposers provide most recent references for similar service
   • Not just company experience but experience of personnel assigned to the project

 ► Project approach and implementation
   • Description of facilities
   • Description of personnel and equipment
   • Demonstrate that they have resources to service the City

 ► Financial proposal
   • City should provide a form for financial proposal
   • City should state preferred fee structure
Steps to a Successful Procurement

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Transition and Implementation Based on Contract

City/Stakeholder Engagement
Identify & Contact Potential Proposers

► Formal announcements
  • Ads in local publications and media
  • Ads in solid waste and recycling publications
  • Direct communication

► When directly communicating with potential proposers
  • Use knowledge of local market to generate list of companies to be contacted directly
  • Companies should be contacted at same time and in same manner
A pre-proposal meeting provides the opportunity to:

- Explain the desired services to vendors
- Address questions and comments from vendors
- Receive feedback on scope of services (issue amendments as needed)

<table>
<thead>
<tr>
<th>Pros</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mandatory</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Ensures all vendors have the same information</td>
</tr>
<tr>
<td>Provides City an idea of how many proposals to anticipate</td>
</tr>
<tr>
<td>Voluntary</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Creates a more competitive environment (vendors do not know who will propose)</td>
</tr>
<tr>
<td>Does not disqualify vendors that have scheduling conflicts</td>
</tr>
</tbody>
</table>
Steps to a Successful Procurement

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9. Evaluation, Negotiation and Award
10. Technical and Financial Reviews
11. Interviews
12. Contract Negotiation
13. Contract Award

14. Transition and Implementation Based on Contract

City/Stakeholder Engagement
## Technical Evaluation: Identify Strengths, Weaknesses and Clarifications

### Example Technical Considerations

<table>
<thead>
<tr>
<th>Collection</th>
<th>Processing/Disposal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Collection days (i.e. all services offered on same day, no Saturdays)</td>
<td>Available capacity</td>
</tr>
<tr>
<td>Average households per route</td>
<td>Distance from City to facility</td>
</tr>
<tr>
<td>Collection equipment (i.e. manual vs. automated, used vs. new)</td>
<td>Priority access and truck turnaround time guarantees</td>
</tr>
<tr>
<td>Additional services in excess of RFP requirements</td>
<td>For processing, expansion of program materials</td>
</tr>
</tbody>
</table>
## Example Financial Considerations

<table>
<thead>
<tr>
<th>Collection</th>
<th>Processing</th>
<th>Disposal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential costs</td>
<td>Recyclable revenue share</td>
<td>Disposal fee</td>
</tr>
<tr>
<td>Commercial and roll-off costs</td>
<td>Processing fee</td>
<td></td>
</tr>
<tr>
<td>Public education contribution</td>
<td>Public education contribution</td>
<td></td>
</tr>
<tr>
<td>Total program costs</td>
<td>Net costs/revenues in low, average, or high commodity markets</td>
<td>Collection cost impacts</td>
</tr>
<tr>
<td></td>
<td>Collection cost impacts</td>
<td></td>
</tr>
</tbody>
</table>

Steps to a Successful Procurement

1. Develop Procurement Approach
2. Define Scope of Services
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4. Develop RFP

Develop RFP

- RFP Release
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Vendors Develop Proposals

- Technical and Financial Reviews
- Interviews
- Contract Negotiation
- Contract Award

Evaluation, Negotiation and Award

Transition and Implementation Based on Contract

Transition and Implementation

City/Stakeholder Engagement
Negotiate and Award the Contract

► Include draft contract in RFP
  • Minimizes contract negotiations
  • Proposers to include any exceptions in the proposal document

► Option to move to next highest ranked proposer if negotiations are unsuccessful

► Can also negotiate with two proposers simultaneously if permitted by City Purchasing Department
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City/Stakeholder Engagement
Key Transition and Implementation Issues

Collection Services
- Changes in services
- Changes in collection days
- Distribution of carts and commercial containers
- Training of contractor staff

Processing Services
- Addition of Materials
- Construction of MRF

Disposal Services: generally minimal issues
General Contract Provisions
Use of Workshop

- The Workshop is not meant to be used as a substitute for legal counsel in procurement or contract negotiation.

- We strongly recommend consulting with City Attorneys or outside counsel.

- The Workshop does not constitute legal advice, recommendations, counsel, or guidance.

This presentation discusses many options for provisions and requirements that can be placed on contractors.

Important to understand that *increased requirements on the contractor result in increased cost to provide service.*
General Provisions for All Contracts

► Definitions
► Contract term
► Performance assurances
► Fee Adjustments
► Liability assurances
► Ownership and Risk of Loss
► Contract enforcement and remedies
► Dispute resolution
► Assignment/subcontracting
► Compliance with laws

Sample contract language may be found in the North Central Texas Council of Governments Recycling Contract Negotiation Guidebook.
Handout 3:
Sample Contract Provisions
Definitions

- Provides clarification on key terms and terms that could be misleading or ambiguous

- Example processing contract definitions:
  - Program Recyclable Materials
  - Single-Stream
  - Recovered Materials
  - Residuals
  - Contamination
  - Processing
  - Marketing
  - Processing Facility
  - Disposal
  - Disposal Facility
  - Load
  - Unaccepted Load
  - Processing/Marketing Fee
  - Recyclable Revenue Share
# Contract Term

<table>
<thead>
<tr>
<th>Description</th>
<th>Initial Term</th>
<th>Renewal Term</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Initial Term</strong></td>
<td>Begins on date that service begins</td>
<td>Begins on date that prior term ends.</td>
</tr>
<tr>
<td></td>
<td>Recover capital costs</td>
<td>Usually shorter</td>
</tr>
<tr>
<td><strong>Collection</strong></td>
<td>Vehicle life: 7 years</td>
<td>Typical: 1-3 years</td>
</tr>
<tr>
<td></td>
<td>Typical: 5-10 years</td>
<td></td>
</tr>
<tr>
<td><strong>Processing</strong></td>
<td>Facility life: Up to 30 years</td>
<td>Typical: 1-3 years</td>
</tr>
<tr>
<td></td>
<td>Equip. life: Up to 15 years</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Typical: 3-15 years (depends on need for new facility equipment)</td>
<td></td>
</tr>
<tr>
<td><strong>Disposal</strong></td>
<td>Facility life: Varies</td>
<td>Typical: Consistent with initial term of collection contract</td>
</tr>
<tr>
<td></td>
<td>Typical: Consistent with initial term of collection contract</td>
<td></td>
</tr>
</tbody>
</table>
Renewal Term

► **Automatic Renewal**: Unless there is notice given to contractor a certain number of days before expiration, contract will automatically be renewed.

► **Optional Renewal**: Allows city the option to renew the contract. Optional renewals can be at:
  - City’s sole discretion;
  - Mutual agreement; or
  - City’s option if contractor does not provide notice a certain number of months before expiration that contractor elects to not renew.

**Recommendation: Optional Renewal Term**
## Performance Assurances

| DURING THE CONTRACT TERM | • Assure contract compliance  
|                         | • Evaluate program and services  
|                         | • **Burns & McDonnell Recommends:** Recordkeeping, reporting, administrative charges, auditing, and inspection rights |
| AFTER THE CONTRACT IS TERMINATED | • Covers cost associated with early termination  
|                                | • **Burns & McDonnell Recommends:** Performance bond or letter of credit |
## Recordkeeping and Reporting

<table>
<thead>
<tr>
<th>Collection Contractor</th>
<th>Processing Contractor</th>
<th>Disposal Contractor</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Improper set-outs</td>
<td>• Gross and net weight delivered to MRF by route</td>
<td>• Gross and net weight delivered to MRF by route</td>
</tr>
<tr>
<td>• Participation and set-out rates</td>
<td>• Results of composition audit</td>
<td>• Rejected loads</td>
</tr>
<tr>
<td>• Customer complaints</td>
<td>• Estimated tons by commodity</td>
<td>• Rejected loads</td>
</tr>
<tr>
<td></td>
<td>• Commodity pricing</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Estimated tons of residual/contamination</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Rejected loads</td>
<td></td>
</tr>
</tbody>
</table>
Performance assurances for after the contract is terminated (performance bonds and letters of credit) need to be priced to cover all costs associated with early contract termination, including:

- Termination costs
- Re-procurement costs
- Interim services costs
May be established to compensate city for the cost of non-performance

Payment methods include:

- **Withholding from monthly payment**: City subtracts administrative fees from monthly payment to contractor.
- **Escrow account**: City may draw upon account for payment of administrative fees.
- **Standard invoicing**: City may submit a standard invoice to contractor for administrative fees.
Administrative Fees for Collection Services

Example administrative charges for collection contracts:

- Unresolved customer complaints
- Failure to provide services during hours of operation
- Non-collection of individual residences or neighborhoods
- Commingling of materials
- Disposal of recyclable materials
- Property damage
- Failure to distribute public education
- Failure to submit reports
- Failure to submit accurate invoicing
- Failure to maintain a local office
Fee Adjustment

- Important to compensate contractor for increases in cost to provide service
  - Solid waste and recycling contracts are medium to long term
  - Any fee can be subject to escalation

- Most common method is index-based
Selecting an Index

- **Consumer price index (CPI):** Measures changes in average prices paid by consumers for goods and services.

- **Producer price index (PPI):** Family of indices that measure the average change in selling prices received for goods.

- Important to identify specific index that you want to use (see Guidebook for details).
Fuel-Related Adjustments

- Recommended for collection services and disposal services and generally not for processing services
- Recommended to decide ahead of time on methods to adjust fees based on fuel cost
- Utilize a percent-cost method
  - Determine the percent of the fee that can be adjusted based on fuel
  - Fuel portion can increase or decrease
  - Schedule adjustments to be semi-annual
Liability Assurances: Indemnification

Identifies the party responsible for defending against legal actions as the result of contractor’s actions or omissions.

• Example: Provision may require hauler to pay for property damages caused by hauler’s employee even if claim is filed against city

• Recommended coordination with City Attorney
Liability Assurances: Insurance

- **General insurance requirements** may include:
  - Payment of insurance premiums and deductibles
  - Submit copy of insurance certificate to city
  - City to be named as additional insured
  - Notification of material change or cancellation of coverage
  - Notice of accident or occurrence to city

- **Specific insurance coverage requirements** may include:
  - Worker’s compensation
  - Employer’s liability
  - Commercial general liability
  - Automobile
Ownership & Risk of Loss

- **Ownership**: Defines who owns (or has title) to materials.
- **Risk of loss**: Defines which party bears the burden of loss of or damage to materials.

At what point does ownership (and the risk of loss) for materials transfer?

<table>
<thead>
<tr>
<th>Point of Collection</th>
<th>Acceptance at MRF or Disposal Site</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Integrated Contracting</strong></td>
<td>City → Contractor</td>
</tr>
<tr>
<td><strong>Separate Contracting</strong></td>
<td>Remains with City</td>
</tr>
<tr>
<td></td>
<td>Contractor → MRF</td>
</tr>
<tr>
<td></td>
<td>City → MRF</td>
</tr>
</tbody>
</table>
Contract Enforcement & Remedies

Payment withheld: City withholds payment until a particular circumstance is resolved

Right to terminate:

- Termination for cause: Allows for termination in case of breach
- Termination for convenience: Allows termination without cause
- Termination for unavailability of funds: Allows for termination in the event that funds are not allocated to the program

Recommendation: Payment Withheld and Termination for Cause
Dispute Resolution

For disputes involving judicial system, provision should include:

- Whether city is required to participate in mediation/arbitration
- Responsibility for attorney’s fees
- Laws governing the dispute
- Where judicial proceeding will be held

For disputes between parties, provision to include:

- Provision of services during dispute
- Entity responsible for deciding outcome of dispute
- Appeal process
Assignment & Subcontracting

- Local government may allow or prohibit assignment or subcontracting
  
  - **Assignment**: Ability of the contractor to assign part or all of the responsibilities under contract to a third party
  
  - **Subcontracting**: Ability of the contractor to assign part or all of responsibilities to a third party, while *contractor remains liable*
Compliance with Laws & Regulations

► All contractors are subject to federal, state, and local laws and regulations

► Many local governments include a provision requiring contractors to be informed of and comply with all applicable laws and regulations
Collection Contract Provisions
Types of Collection Contract Provisions

- Operational obligations
- Administrative obligations
- Diversion incentives
Operational Obligations

- Customer base
- Residential collection services
- Residential collection method and frequency
- Collection schedule
- Collection vehicles
- Collection containers
- Disposal/processing of materials
- Non-collection
Customer Base

Single-family residential

Other Customers

• City buildings
• Multi-family residential
• Commercial refuse
• Commercial recycling
• Temporary roll-offs
• Other roll-offs
## Customer Base: Single-family vs. City-wide Program

<table>
<thead>
<tr>
<th></th>
<th>Pros</th>
<th>Cons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single-family Customers Only</td>
<td>• Understanding of cost of service for residential services</td>
<td>• Higher overhead costs per customer</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Inclusion of Other Customers</td>
<td>• Generally lower costs for residential services</td>
<td>• If currently not franchised, higher legal risk</td>
</tr>
<tr>
<td></td>
<td>• Lower overhead costs per customer</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Lower administrative burden on City (i.e. one versus multiple vendors)</td>
<td></td>
</tr>
</tbody>
</table>
Residential Collection Services

- Refuse
- Recyclables
- Yard Trimmings
- Bulky/Brush
- HHW and Electronics
Residential Refuse Collection Method

Containers

Manual

Semi-automated

Fully-automated

Trucks
Residential Refuse Collection Frequency

Once a Week
- Less expensive
- Requires 60-90 gallon rolling carts for storage of materials and ease of use
- Many cities have replaced twice per week refuse with once per week refuse and recycling
- Cities with once week refuse: Houston, Austin, Dallas, Fort Worth, The Woodlands, Carrollton, and Allen

Twice a Week
- Inefficient use of labor and equipment since second collection day is “lighter”
- If manual service, more injuries and higher worker’s compensation costs
- More trucks traveling across City and in neighborhoods; increased vehicle emissions; negative impact on roads
- Cities with twice week refuse: Pasadena, League City, Missouri City, Pearland, and Sugar Land
Residential Recycling Collection Method

Containers

- Single Stream
- Dual Stream
- Source-Separated

Trucks
Residential Recycling Collection Frequency

**Every Other Week**

- Less expensive
- Requires 60-90 gallon rolling carts for storage of materials and ease of use
- Some cities have replaced once per week recycling with every other week recycling
- Cities that provide every other week with recycling: Houston, Missouri City*, and Bastrop*

**Once a Week**

- More trucks traveling across City and in neighborhoods; increased vehicle emissions; negative impact on roads
- Cities that provide every other week with recycling: League City and Pearland

* Services to be provided under contract recently awarded.
Residential Yard Trimmings Collection Method

Customer-provided rigid container

Program-provided rolling cart

Compostable paper bag

Compostable plastic bag
# Residential Yard Trimmings Collection Frequency

<table>
<thead>
<tr>
<th>Description</th>
<th>Seasonal</th>
<th>Every Other Week</th>
<th>Weekly</th>
</tr>
</thead>
<tbody>
<tr>
<td>Collection is provided during only certain times of the year when material is generated.</td>
<td>Collection is provided every other week.</td>
<td>Collection is provided weekly (same as refuse schedule).</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Pros</th>
<th>Seasonal</th>
<th>Every Other Week</th>
<th>Weekly</th>
</tr>
</thead>
<tbody>
<tr>
<td>Focuses resources on heaviest seasons</td>
<td>• Convenient for residents</td>
<td>• Convenient for residents</td>
<td></td>
</tr>
<tr>
<td>Greater collection efficiency when operating</td>
<td>• Lower operating cost than weekly</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Cons</th>
<th>Seasonal</th>
<th>Every Other Week</th>
<th>Weekly</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residents may generate material out of season</td>
<td>• Higher operating cost</td>
<td>• Highest operating cost</td>
<td></td>
</tr>
<tr>
<td>Higher need for resident education</td>
<td>• Potential for low route density</td>
<td>• Potential for low route density</td>
<td></td>
</tr>
</tbody>
</table>
Residential Yard Trimmings Excludes Disaster Debris

Reasons to exclude disaster debris from yard trimmings service:

- Costs not included in base fee
- Requires specific equipment
- Ensure federal reimbursement if available

Reserve right to negotiate provision of disaster debris services with contractor or contract with other vendor

Recommendation: Reserve the right to negotiate disaster debris services
Residential Bulky/Brush Waste Collection Method

► Set-out limits
  • Number of items
  • Volume
  • Unlimited (not recommended)

► Collection Frequency
  • Weekly
  • Monthly
  • Seasonal

► Scheduling
  • Scheduled collection day/week
  • Call-in basis
Residential Bulky/Brush Waste Collection

**Volume Limits**

On-call & Seasonal programs can result in reasonable set-outs

**No Volume Limits**

Programs providing collection once a month or more can result in unreasonable set-outs
Residential HHW and Electronics Collection

► Program Materials
  • Televisions, Computers, etc.
  • Household Cleaners
  • Paint
  • Cooking Oil

► Collection Location
  • Special Events
  • Customer location

► Scheduling
  • Scheduled collection day/week
  • Call-in basis

► Other Program Protocol
  • Batteries
  • Automobile Products
  • Sharps and Medical Waste
  • Other HHW and Electronics
# Residential Collection Schedule

<table>
<thead>
<tr>
<th>Options</th>
<th>Considerations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Service Areas</td>
<td></td>
</tr>
<tr>
<td>• One service area</td>
<td>• Size of City</td>
</tr>
<tr>
<td>• Multiple service areas</td>
<td>• Public education</td>
</tr>
<tr>
<td>• Size of City</td>
<td>• Number of days which collection vehicles are in City</td>
</tr>
<tr>
<td>Same Day Service for all Services</td>
<td></td>
</tr>
<tr>
<td>• Recycling services provided on refuse collection day</td>
<td>• Public education and vendor training</td>
</tr>
<tr>
<td>• “Green” day</td>
<td>• Fewer days with collection vehicles in neighborhood</td>
</tr>
<tr>
<td>• “Green” day</td>
<td>• City aesthetics</td>
</tr>
<tr>
<td>Saturday Collection</td>
<td></td>
</tr>
<tr>
<td>• Saturday vs. No Saturday</td>
<td>• Potential for reduced service costs</td>
</tr>
<tr>
<td>Holiday Collections</td>
<td></td>
</tr>
<tr>
<td>• Impacted service area only vs. all service areas for remainder of week</td>
<td>• Potential for Saturday collection</td>
</tr>
<tr>
<td>Amend Collection Days</td>
<td></td>
</tr>
<tr>
<td>• Require approval</td>
<td>• Public education</td>
</tr>
<tr>
<td>• Provide justification</td>
<td>• Customer satisfaction</td>
</tr>
<tr>
<td>• Provide notice</td>
<td></td>
</tr>
</tbody>
</table>
### Collection Vehicles

<table>
<thead>
<tr>
<th>Baseline Requirements</th>
<th>Additional Issues (see Guidebook for additional issues that can be addressed regarding collection vehicles)</th>
</tr>
</thead>
<tbody>
<tr>
<td>▪ Sufficient front-line and spare vehicles to provide service</td>
<td>▪ Vehicle age requirements (new, average age, maximum age)</td>
</tr>
<tr>
<td></td>
<td>▪ Identification with contractor’s name, phone number, and truck number</td>
</tr>
<tr>
<td></td>
<td>▪ Minimum frequency for cleaning and deodorizing vehicles</td>
</tr>
<tr>
<td></td>
<td>▪ Compliance with U.S. EPA noise emission regulations</td>
</tr>
<tr>
<td></td>
<td>▪ Alternative fuels</td>
</tr>
</tbody>
</table>
Residential Collection Carts

Cart Issues to be Addressed in Collection Contracts

Purchase → Deliver* → Store → Maintain → Replace → Own

*For carts assembly is required before delivery.
**Options for Residential Cart Ownership**

**Option 1:** City purchases carts and manages carts during contract term. Contractor liable for damaged carts caused by contractor’s employees.
Options for Residential Cart Ownership (cont.)

**Option 2:** City purchases carts and contractor manages carts during contract term. Contractor liable for damaged carts caused by contractor.
**Option 3:** Contractor purchases carts and manages during contract term. Contractor liable for all damaged carts. Ownership transfers to local government at the end of the contract.
Options for Residential Cart Ownership (cont.)

- **Option 1:** City purchases and manages containers.
  - City needs personnel and staff
  - Gives city complete control over containers

- **Option 2:** City purchases and contractor manages containers.
  - City does not need personnel and staff
  - Contractor has vested interest in condition of containers

- **Option 3:** Contractor purchases and manages containers. Ownership transfers to city at end of contract.
  - City does not have to make capital outlay
  - Smooth transition at end of contract (no removal of containers)
City of Cedar Park: City Purchased Carts

- Highest-ranked vendors would provide carts for $1.00 - $1.15 monthly (per cart)
- City-purchased carts cost residents $0.56 monthly (per cart)
- Contractor manages delivery, ongoing repair, replacement, warranty issues, etc.
Texas cities have the right “to provide, or contract with a private company to provide, exclusive garbage collection services within the city limits”

- Adopt Rules for regulating solid waste collection - Health and Safety Code § 363.111(a)
- Assure that solid waste collection services are provided to all persons within the city - Health and Safety Code § 363.113
- Enter into contracts to enable it to furnish or receive solid waste collection services - Health and Safety Code § 363.116(a)
- Contract for solid waste collection services - Health and Safety Code § 363.117

H.B. 1251 should arguably have no effect on municipal solid waste franchises
Disposal and Processing of Materials

- If using separate contracting, can approach in two ways
  - If known: Specify facilities and addresses
  - If unknown: Specify that facilities will be within a certain number of miles of city

- If using integrated contracting, disposal and processing facilities are at discretion of contractor
  - Example: City of Missouri City*

* Services to be provided under contract recently awarded.
Non-Collection

► When is it acceptable for the driver to not collect a set out?
  • Visible non-acceptable material (ex. HHW in solid waste set-out or solid waste in recycling set-out)
  • Improper cart set outs

► Who should be notified of non-collection?
  • Customers should receive written notice
  • Local government
Types of Collection Contract Provisions

- Operational obligations
- Administrative obligations
- Diversion incentives
Administrative Obligations

- Public education
- Customer service
- Residential Rate Structure
- Billing & Payment
- Local office
- Personnel standards
Public Education

► **Be specific:** Requirements can include
  • Appearing at certain events
  • Conducting a certain number of presentations
  • Maintaining a website
  • Development, printing, or distribution of materials

► **Maintain control:** Ensure City right to review and approve all materials

► **Require funding:** Include provision for contractor and/or city to provide funding
City of El Paso: Public Education Partnership

- Developed single-stream recycling program in 2007
- First year public education budget: $375,000
  - $2.34 per household
  - Funding required by City and Friedman per contract
- Marketing firm developed messaging for all media
  - Firm responsible for design, media placement, research, art preparation, etc.
  - “Drop it in the Blue”
Example: City of El Paso (cont.)
Example: City of El Paso (cont.)
Example: City of El Paso (cont.)
City of Missouri City: Commitment to Public Education and Outreach

- Contractor will provide:
  - Internet website
  - School and other group programs
  - Recycling assessments
  - Other education and outreach

- City to approve all public education and outreach

- In addition, Contractor to contribute $1.14 per household per year to City
Customer Service: City vs. Contractor

City-operated customer service call center

• Preferred if city has personnel, capabilities
• Greater level of control and monitoring

Contractor-operated customer service call center

• Establish mechanisms for ensuring proper handling of complaints
• Conduct periodic surveys
• Cities should utilize right to audit
Customer Service: Contractor Provided

If contractor-operated, city should specify

- Operating hours of the call center
- Amount of time allowed for complaint resolution
- Local telephone number
- Procedure for recording and notifying city of complaints

Important to monitor customer service

- Auditing of records
- Periodic customer surveys
Residential Service Rate Structure

► Variable Rates: Rates vary based on cart size
  • Requires rolling carts
  • Creates financial incentives to encourage recycling and reuse
  • Provides the most equitable rates for small and large generators
  • May increase illegal dumping and recycling contamination
  • City with Variable Rates: Fort Worth

► Flat Rates: Same rate regardless of cart size
  • Base level of service can be offered uniformly to all residents
  • Additional service can be added to base service at cost
# Residential Service Rate Structure

<table>
<thead>
<tr>
<th>Description</th>
<th>Universal</th>
<th>Subscription</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>All residents receive same level of service</td>
<td>All residents receive base level of service and may subscribe for additional services</td>
</tr>
<tr>
<td>Pros</td>
<td>- Greater collection efficiency</td>
<td>- Residents pay for services utilized</td>
</tr>
<tr>
<td></td>
<td>- Lower cost per household in comparison to subscription service</td>
<td></td>
</tr>
<tr>
<td>Cons</td>
<td>- Residents pay for services not utilized</td>
<td>- Increased public education</td>
</tr>
<tr>
<td></td>
<td>- Decreased incentive to recycle</td>
<td>- Lower collection efficiency</td>
</tr>
<tr>
<td></td>
<td></td>
<td>- Higher cost per household for subscription services</td>
</tr>
</tbody>
</table>

**Recommendation:** Universal Service Rate Structure
Billing & Payment

► Most common for cities to collect residential base service fees from customers and contractor collect all other fees

► If city collects residential base service fees, recommended that payment to contractor should be based on

  • Active accounts on a monthly basis (not physical households)
  • Accounts receivable (not services performed)
  • Deduct administrative fees
Some cities choose to require contractor to maintain a local office

- Hours of operation
- Location (distance from City Hall)

May or may not be call center location

- May not be practical for the operation
- Discuss with contractor
Intended to protect local governments and the contractor’s employees

Example personnel standard requirements:

- Personnel be qualified to perform duties
- Provide service in a courteous and professional manner
- Adhere to Federal, State, and local laws
- Standards for uniforms and/or safety equipment
- New employee training
- Regularly scheduled operational and safety training
Processing Contract Provisions
Provisions in Processing Contracts

- Operational obligations
- Diversion incentives
Operational Obligations

- Processing method
- Marketing requirements
- Facility provisions
- Rejected loads
- Recycling material audits
- Addition or removal of materials
- Commingling
Recycling Processing Method

- Single-stream is the predominant processing method in Houston-Galveston Area
- Contracts should identify materials included in the program
Yard Trimmings Processing Method

Mulching

Composting

- If City has a preferred yard trimmings processing method, identify the preferred yard trimmings method in the RFP
Contractor is generally responsible to:

- Develop market specifications
- Provide copies of marketing agreements
- Assure materials are not landfilled or disposed
- Develop protocol for managing materials that do not have markets
Facility Provisions

- Processing capacity
- Identification of alternate facility
- Staging, dumping, maneuvering
- Facility specifications
- Truck turn-around time
- Scale house capabilities
- Litter and odor
## Rejected Loads

<table>
<thead>
<tr>
<th>Contract Should Include</th>
<th>Example Provision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Threshold of non-recyclables that is considered unacceptable</td>
<td>Threshold is typically less than 5% for yard trimmings and between 15-25% for recycling</td>
</tr>
<tr>
<td>Whether a city representative must be present</td>
<td>City can require a representative to be present to confirm unacceptable amount exceeds X%</td>
</tr>
<tr>
<td>Procedure for notifying city of rejected loads</td>
<td>Within a certain time frame</td>
</tr>
<tr>
<td>Whether the City has the option to pick-up and dispose of material</td>
<td>City may reserve right to dispose of material, especially if they have a landfill and hauling operation</td>
</tr>
<tr>
<td>Who is responsible for disposal costs</td>
<td>Contractor will pay for a number each month, City will pay for the rest</td>
</tr>
<tr>
<td>Fees associated with rejected loads</td>
<td>City should not pay processing fees for rejected loads</td>
</tr>
</tbody>
</table>
Rejected Loads

- Contractor will incur disposal costs associated with contamination and residuals.
  - Cost of doing business
  - Contractor should be responsible for disposal costs
- Important to establish threshold for rejecting loads so that Contractor does not have to dispose of excessive contamination.
Recycling Material Audits

- Refers to a materials characterization of a city’s recycling stream
- Critical for processing contracts that include revenue sharing
- Two types utilized
  - Manual audit
  - Mechanized audit
Handout 4: Example Recycling Material Audit Protocol
Provisions in Processing and Disposal Contracts

- Operational obligations
- Processing Contract Diversion incentives
Revenue Sharing and Rebates

Revenue sharing: City receives a percentage of revenues based on market prices for recyclable materials and Contractor retains the remainder of revenues.

- Focus of this project.
- Best if part of separate processing agreements.

Rebates: City receives a fixed payment based on incoming tonnage and Contractor retains the remainder of revenues.

- If using rebates, may not have a processing fee.
- Can be structured to increase based on volume.
Residual Allowance

Residual Allowance: City may be responsible for disposal of residuals over a certain threshold

Two questions

• How much of the contaminated material is the city responsible for?
• What price should be paid for disposal?
Diversion Incentives

- Incentives to maximize efficiency
- Incentives to maximize volume
- Incentives to develop markets
Incentives to Maximize Efficiency

► If the contractor receives revenues from recovered materials, the contractor has an inherent incentive to:
  - Maximize volume of material collected
  - Minimize contamination and residuals

► If there is a need to provide additional incentive, can include a provision for:
  - Residual allowances
  - Material Audit
Contractors have opportunity to increase volume by
- Supporting city’s efforts as a technical advisor
- Providing funding for public education

Increase financial incentive to maximize volume by
- Increasing revenue sharing to contractor with increasing tonnage levels
- Choose a fixed rebate to city rather than revenue share
Cities expressed interest in increasing efforts to develop markets

Cities can incent market development

- Allow contractor to keep 100% of revenue from new materials
- Pay a cash bonus for developing a market
- Increase revenue share to contractor for all materials if new market is developed
Revenue Sharing

Critical to develop financial terms that are fair in “good” and “bad” markets

Consider financial terms that include a processing fee and revenue share

- Processing fee: compensate processors for cost to provide service, typical range of $50–85 per ton
- Revenue share: Based on market prices and/or actual sales price for recyclable materials, typical range of 40–80 percent
Handout 5:
Example Revenue Sharing Basis
Southcentral USA Weighted Average Commodity Pricing

Variability of Market Prices

[Graph showing the variability of market prices from July 2009 to April 2015.]
Recommended Revenue Share Formula

\[
\text{Net Revenue} = \frac{\text{Material Market Value} - \text{Processing Fee}}{}
\]

- City Share (%)
- Processor Share (%)
# City of Moscow, Idaho: Contract Language can Substantially Impact Revenue Sharing

## Formula to Determine City’s Revenue Share

<table>
<thead>
<tr>
<th>City of Moscow Formula</th>
<th>Recommended Formula</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commodity Volume (example)</td>
<td>1,000 tons</td>
</tr>
<tr>
<td>Weighted Commodity Sales Price (Contract ceiling price)</td>
<td>$115</td>
</tr>
<tr>
<td>Weighted Commodity Sales Price (Contract ceiling price)</td>
<td>$115</td>
</tr>
<tr>
<td>Revenue From Sale of Recyclables</td>
<td>$115,000</td>
</tr>
<tr>
<td>Revenue From Sale of Recyclables</td>
<td>$115,000</td>
</tr>
<tr>
<td>City’s % of Revenue Share</td>
<td>60%</td>
</tr>
<tr>
<td>City’s % of Revenue Share</td>
<td>60%</td>
</tr>
<tr>
<td>City’s Revenue Share</td>
<td>$69,000</td>
</tr>
<tr>
<td>City’s Revenue Share</td>
<td>$69,000</td>
</tr>
<tr>
<td>Processing Cost</td>
<td>($60,000)</td>
</tr>
<tr>
<td>Processing Cost</td>
<td>($60,000)</td>
</tr>
<tr>
<td>City’s Net Revenue Share</td>
<td>$9,000</td>
</tr>
<tr>
<td>City’s Net Revenue Share</td>
<td>$9,000</td>
</tr>
<tr>
<td>Net Recyclable Revenue</td>
<td>$55,000</td>
</tr>
<tr>
<td>Net Recyclable Revenue</td>
<td>$55,000</td>
</tr>
<tr>
<td>City’s Net Revenue Share</td>
<td>$33,000</td>
</tr>
<tr>
<td>City’s Net Revenue Share</td>
<td>$33,000</td>
</tr>
</tbody>
</table>
# City of Hypothetical, Texas:
Pricing Submitted in Response to RFP

<table>
<thead>
<tr>
<th></th>
<th>Company A</th>
<th>Company B</th>
<th>Company C</th>
</tr>
</thead>
<tbody>
<tr>
<td>Per Ton Processing Fee</td>
<td>$25</td>
<td>$40</td>
<td>$75</td>
</tr>
<tr>
<td>Revenue Share Percentage to City</td>
<td>25%</td>
<td>35% and when average revenue per ton is greater than $100, 75% share to the City</td>
<td>75%</td>
</tr>
</tbody>
</table>
Hypothetical Example

Comparison of Results

<table>
<thead>
<tr>
<th>Weighted Average Market Rate ($/Ton)</th>
</tr>
</thead>
<tbody>
<tr>
<td>$70</td>
</tr>
<tr>
<td>Company A</td>
</tr>
<tr>
<td>$100,000</td>
</tr>
</tbody>
</table>

Payment / (Cost) to the City

- Company B
- Company A
- Company C
Payment Limitations

Recycling processing contracts should specify what happens if value of material falls below processing cost.

Many ways to minimize downside risk:
- Specify that city will not pay more than a certain net amount per ton
- Specify that city will not pay more than a certain lump sum amount
- Charge losses against future revenue sharing
Confidential Client: Considered Current and Short term Commodity Markets
Disposal Contract Revisions
Operational Obligations

- Disposal method
- Facility provisions
- Rejected loads
Disposal Method

- Transfer station vs. direct haul
- Disposal methods
  - Landfill
  - Waste-to-energy facility
  - Alternative technologies
Facility Provisions

- Disposal capacity
- Identification of alternate facility
- Staging, dumping, maneuvering
- Facility specifications
- Truck turn-around time
- Scale house capabilities
- Litter and odor
## Rejected Loads

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<td>City should not pay disposal fees to contractor for rejected loads</td>
</tr>
</tbody>
</table>
Industry Q&A Panel
<table>
<thead>
<tr>
<th>Name</th>
<th>Organization</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bill Atkinson</td>
<td>City of Missouri City</td>
</tr>
<tr>
<td>Lynne Aldrich</td>
<td>The Woodlands</td>
</tr>
<tr>
<td>Shanna Lopez</td>
<td>Waste Management</td>
</tr>
<tr>
<td>Scott Lukach</td>
<td>WCA</td>
</tr>
</tbody>
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Questions?

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