Best practices for negotiating government contracts

Municipalities and waste service providers can set a strong foundation by implementing best practices during contract negotiations.

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A well-crafted contract between municipalities and solid waste providers can lead to years of collaboration and a fruitful partnership for both parties. But contracts written without proper oversight can result in a lapse in service, confusion among community members and even legal disputes between the parties involved.

Across the U.S., 78 percent of municipalities contract with private companies to provide solid waste collection to their residents. In the Public Interest (ITPI), a research and policy center based in Oakland, California, examined 10 of these contracts between city governments and private waste companies to gain a better understanding of current policies and practices in outsourced municipal waste provision.

The organization put together a report of municipal waste contract best practices that Shahrazad Habibi, ITPI’s research and policy director, presented during a recent webinar hosted by the Northeast Recycling Council of Brattleboro, Vermont.

Habibi says it’s important for municipal contracts with waste companies to not only cover the basic services that will be provided, but also carefully address issues that will affect service, the community and the city’s finances. According to Habibi and ITPI, the best solid waste contracts contain four main priority areas: municipal control, good management, workforce stability and environmental protections.

“A well-designed contract protects the city, protects residents and presents clarity for the contractor,” Habibi says.

Municipal control

As municipalities are the entities seeking and accepting bids, they retain the right to have control, Habibi says. For this reason, many of ITPI’s recommendations are put in place to establish the locality’s best interests over those of contractors.

That’s why the first of the four priority areas, municipal control, is the foundation of most contracts. This section lays out the basics, such as the scope of the work, disposal facility requirements and tonnage audits. In this section of the contract, it’s important to outline the exact services to be performed and the required conditions of each service.

While this section often contains numerous components, Habibi pointed to the scope of work as one of the most critical.

"The clearer and more detailed a contract is in laying out the basics, such as scope of work and pricing schedules, the greater the ability for a city to set the stage for contractor expectations. “At a minimum, scope of work should specify the type of collection the contractor is responsible for, processing methods the contractor will use and disposal requirements.”

This component lays the foundation for the work a contractor will be expected to perform and establishes a core for the subsequent elements of the contract, such as a pricing schedule.

Pricing schedules establish the rate of payment to the waste company for each line of service provided and outline stipulations for any changes to the schedule. ITPI reiterates the National State Auditors Association’s recommendation to “describe the methods of payment, payment schedules and escalation factors, if applicable.”

ITPI says detailed scenarios pertaining to individual compensation issues, such as adjustments in rates for changes in disposal costs, can ensure all parties fully understand pricing consequences should those events occur. These details can prevent or clarify disputes around compensation during the contract term.

"Contracts that promote a stable workforce also promote stable and reliable service. “ – Shahrazad Habibi, ITPI research and policy director

This section of the contract should also spell out what happens when the contract is not followed.

“When the contractor defaults on their responsibility, it’s important the city has remedies available to it, including the right to terminate,” Habibi says.

A force majeure component should also be included in this section to detail what happens after uncontrollable circumstances occur that may lead to a breach in the contract, such as acts of terrorism or natural disasters. This should not include issues like labor disputes or strikes. Habibi says, it should include language to establish a timeline to resume service after an event.

Good management

While the first section of a good contract should spell out the contractor’s responsibilities, the second should further detail actions the municipality can take to ensure consistent, quality service.

This section is typically shorter than its predecessor, though it needs to be just as detailed.

The good management section should include a component that details the steps customers can take to submit service complaints, how long the vendor has to reply and resolve the complaints, and any fines that may be assessed if the complaints aren’t resolved.

“ Including contract provisions that specify how complaints will be processed, tracked and resolved, and clearly assigning the responsibility, ensures that residents know where complaints should be sent and that a fair process exists to address them,” Habibi says. “In most places, the city will give the contractor responsibility for handling customer complaints.”

Habibi also recommends the good management section include a schedule of fines for a
Workforce stability

Labor stoppages, local labor requirements and prevailing wage requirements are all issues that can affect waste companies, but the most effective contracts include language that prevents these issues from negatively impacting service.

"Contracts that promote a stable workforce also promote stable and reliable service," Habibi says. "The city and contractor should take all possible steps to prevent service disruption."

ITPI cites a workforce stability portion of contracts typically address strikes, slowdowns and lockouts, staffing levels, local labor requirements, prevailing wages, non-discrimination, domestic partner benefits, and payment of labor and set-off rights.

The organization recommends including language with individual provisions that hold the contractor responsible for labor peace agreements, work stoppage restrictions and arbitration.

"While municipalities may not regulate labor-management relations (which are under federal jurisdiction), they may act to preserve their financial interests as a proprietor, which includes requiring labor peace as a condition to contracting," ITPI says in the report.

Language specifying staffing levels should also be included in the contract, ITPI says, in order to increase service quality and allow the municipality to enforce quantitative requirements.

"This provision can prevent contractors from cutting corners by lowering staffing levels," Habibi says.

ITPI also recommends including language that encourages or requires contractors to hire local labor, especially in cases where city workers' jobs were affected by the new contract. Doing so can build and sustain a strong local economy. The report suggests the contractor provide "salaries and benefits that are equal to or greater than those the city provided its employee in cases where contractors replace previous city services.

A portion of the contract containing labor payment and set-off rights allows the city to pay wage claims against the vendor and deduct that money from the payments due to the vendor. This ensures workers are paid for the work they have done by allowing the city to have legal recourse and recoup wages if contractors default.

Environmental protections

The final, and perhaps newest, recommended component of municipal contracts outlines the environmental safeguards waste contractors must take in their businesses. This includes education, routing, contamination and auditing.

ITPI found education was the most common environmental contract provision. The best contracts reviewed included the contractor's budget for education programming, along with a detailed outline of how it would inform the public about the community's solid waste program, its waste reduction initiatives and the positive impacts of such initiatives.

"The contract should detail the amount of money and time the contractor is required to spend on educational initiatives," Habibi says.

The Massachusetts Office of Energy and Environmental Affairs suggests education programs and activities should be included in the contract "even if it increases the cost, because it makes these services less vulnerable to budget cuts."

ITPI says the contractor should fund and implement the program with the approval and oversight of the city.

Routing is another environmental contract consideration that must be assessed, as inefficient routing of trucks can cause air and noise pollution, along with pavement damage and traffic congestion. ITPI recommends a provision that requires the contractor to supply the city with a map of the collection area showing the days of the weak each material will be collected from each sector.

White contaminated loads remain a central challenge for waste management companies, they're also an environmental concern. ITPI suggests addressing them in this portion of the contract, spelling out that contractors are neither required nor permitted to haul loads that are visibly contaminated. The organization also suggests a provision that requires waste contractors to examine loads upon arrival at the transfer station and reject them if they surpass a preset threshold of contamination.

Although none of the contracts examined by ITPI included a section outlining audit practices, the organization suggests including it as a best practice. By including content audits in the contract, ITPI says a city would be able to verify that the contractor isn't accepting contaminated loads and verify the accuracy of the contractor's tonnage reports.

By implementing ITPI's recommended best practices, along with more specific components tailored to the city and its needs, a contract can assure services run smoothly for years to come. More detailed recommendations, including sample contract wording for each component, can be found at http://bit.ly/itpienvpractices.

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