

Sent via e-mail to: allen.langdon@circularmaterials.ca

May 26th, 2022

Nicole Fischer, Chair
c/o Allen Langdon, President & CEO
Circular Materials Ontario
800-1881 Yonge Street
Toronto, Ontario
M4S 3C4

Dear Ms. Fischer:

RE: Proposed Blue Box Master Service Agreement and Accompanying Statements of Work

We are writing to provide a high-level response to CMOs agreements including the Master Services Agreement and Statements of Work (e.g., Residence and Facility, Depot, Public Space and Promotion and Education) that have been posted on your website. We provide these comments with an understanding:

- Each municipal government will make their own decision on whether they want to continue to provide Blue Box services; and
- Producer responsibility means producers making their own decisions as to how to best set up a system to collect and process blue box materials.

We do, however, believe it would be helpful for producers to understand why municipal governments may find it difficult to provide services to assist producers in seamlessly transitioning the Blue Box based on our interpretation of some of the terms provided.

We want to be clear that we are seeking further clarity from CMO on some of the Terms as for many this is not the preferred position - municipal governments are ready to support producers in transition and have a vested interest in seeing the Blue Box system, which they have operated for over thirty years, transition successfully and smoothly. Many of our members want to provide operational support as a temporary or longer-term part of the solution, whether it be for the transition period or beyond.

There are four main areas of concern that have been raised and the details on each is not meant to be exhaustive but instead illustrative:

1. The terms provided introduce potential new requirements for current contracts that would mean municipal governments may need to re-negotiate with service providers at their own cost. As you can appreciate these contract terms would not align with the service and costs entered in the datacall being proposed by CMO to be used for payment for services or add new capital project management and delivery costs. Historically, minor changes to existing contracts resulted in significant cost increases to municipal contracts – and numerous amendments may be required to align with CMO’s terms proposed in the agreement documents. These potential new requirements include, but are not limited to:
 - GPS tracking system for collection vehicles with a web-based interface;
 - Posting of signs or logos provided by CMO and installed by the Contractor at no cost to CMO (e.g., trucks and depots);
 - Ministry of Labour approved system to protect workers from pinch points installed and permanently maintained on all collection vehicles¹;
 - A dedicated toll-free telephone service with capability of transferring calls to CMO’s telephone system with operation between 7:00am to 6:00pm;
 - Collection vehicles disinfected inside and outside on weekly basis;
 - Uniform requirements for staff;
 - Requirements for depots to provide protection from the elements for fibre stream;
 - On-call depot employee must respond to CMO within 15 minutes of receiving communication or within 30 minutes of start of day if received outside of working hours;
 - If contamination is over 4% for curbside collection and 20% for public space containers for six rolling months, the requirement for a remediation plan approved by CMO (CMO already knows based on current data this number is unattainable for most but will require a plan with no limitation on the work required it may entail);

¹ Note the Ministry of Labour has a mobile compacting equipment safety guideline (<https://www.ontario.ca/page/mobile-compacting-equipment-safety-guideline>) which employers are required to adhere to but it does not appear that they approve systems

- New procedures for routing, missed collections, inspections, unloading of blue box materials, non-compliant material, other reporting requirements;
- Requirements to submit extensive contingency planning and remedies for any potential work disruption (e.g., strike, lock-out, labour disruption, pandemic related issues, fire);
- New health and safety training requirements (i.e., to be developed by CMO);
- Insurance values that may be higher than typical contracts;
- Notification and reporting requirements (e.g., all accidents involving personal injury to the Contractor's personnel or the public, or damage to any property, must be reported to CMO within one hour);
- Restrictions on the use of spare vehicles, i.e. spare vehicles can be used for 75 days or less per calendar year; and,
- Revisions to the type of containers being used by Multi-Residential Buildings and Facilities.

The terms do not seem reasonable for the transition period if your intent is to utilize existing contracts as you have communicated through various channels including webinars. Producers and their PROs will have the ability to introduce whichever terms and conditions you prefer under new procurements and contracts. However, it is highly unlikely the terms and conditions you have proposed and as highlighted above can be accommodated or re-negotiated into existing contracts at no additional cost or additional administrative or contract management efforts. While the intent may be to create consistent terms across the province, a one-size-fits-all approach during transition will not work with using existing contracts.

2. The terms add a number of potential new financial risks for municipal governments to administer current contracts, including, but not limited to:
 - The rejection of truckloads of blue box materials with over 4% contamination from receiving sites with costs to manage these materials falling back to the municipality;
 - Liquidated damages for issues that might not be a part of current contracts or operations (e.g., employee behaviour, unscheduled downtime, scavenging, inaccurate/failure reporting);
 - Additional and unknown damages and/or termination for exceedance of \$10,000 in service level credits during any rolling six (6) calendar month

period, in addition to the application of such service level failure credits;
and,

- Reimbursement of the value of lost or damaged blue box material in delivery (e.g., truck fire).

While we partially understand the intent of the proposed terms, they will add risk for many municipalities if providing service or where these are not included in any existing contractual agreements. It is not understood why these terms are required during the transition period to allow existing contracts or services to continue to be maintained.

3. The Master Services Agreement terms provides CMO with extraordinary powers and add unnecessary burden on municipal governments if they choose to be the contractor or could frustrate the municipal application and management of existing collective bargaining agreements:

- CMO has sole discretion:
 - to remove any supervisor or employee and the contractor will forthwith designate another supervisor or employee acceptable to CMO (Further consultation is required, but it is expected that there would be legal ramifications to allowing the removal of unionized staff by a third party);
 - to find any work to not to be in compliance with the MSA, and the contractor at their own expense shall rectify the issue and pay costs to CMO to monitor, observe and inspect the work;
 - to approve the contractor's health and safety program and safety plan; and
 - to force replacement of the subcontractor at their cost.
- High burden on documentation and proof of health and safety training.
- The change management process is weighted heavily to CMO, requiring significant and open-ended information from the contractor:

"...use of competitive quotes with its subcontractors to minimize any increase in costs and maximize any reduction in costs, demonstrating that any expenditure to be incurred or avoided has been determined in a cost effective manner, and any other evidence deemed appropriate by the Contractor and CMO" with tight timelines (10 business days).

- Allows CMO the use of contractor's equipment, vehicles and facilities in case of a contract default, however it is unclear if municipal contracts

could/would provide CMO right to their collection contractor's equipment, vehicles and facilities.

- CMO can direct an increase in the number of collection vehicles at any time after Work Effective Date.
- Gives flexibility for CMO to extend any statement of work under current terms and conditions of the MSA, including outdated financial compensation, for up to three years with only 90 days notice to municipalities. This would again require the renegotiation or amendments with existing service providers to extend the contract period, with municipalities expected to absorb the financial burden.

These types of conditions may be difficult for municipal governments to accept (e.g., impacts on union agreements, administrative and financial risks), especially as this agreement is only meant to assist with the transition period.

4. The compensation terms may also cause issues for some municipalities:

- Payments are quarterly which requires municipalities to cash flow costs when most pay their contractors monthly and contractors are not entitled to any interest on account of delay in payment by CMO.
- Record keeping and reporting requirements, which tie to payments, seem complex, highly burdensome, and may require some technology support and costs to create.
- Administrative costs are based on current Datacall information (i.e., 3-5% of the contract) which does not accurately reflect actual costs to administer contracts, manage staff and resources and provide additional services such as customer service and delivery of containers² and the proposed terms from CMO further dilute this allowance.
- The current formula to establish a per stop collection cost incorrectly deducts ineligible sources as the costs to service these collection sites are not included in the reported Datacall – a similar issue also exists for the depot formula.
- In some cases, the simplified approach to curbside and depot may not be possible or accurately reflect the true cost to provide the collection services. Such cases may include:

² Publicly-traded waste management companies regularly report selling and administrative expenses ranging from 10-15% of their costs which is closer to what Municipalities have experienced throughout the year of operating the program. The bulk of these administrative cost are related to collection.

- Where a Municipality has issued a new contract during part of 2020 or later;
- Where a Municipality cannot extend the contract until December 31, 2025;
- Where a Municipality can extend the contract but the extension costs are greater than the proposed adjustment; and,
- Where a Municipality has a contract that includes post-collection services.

Many of our members would be interested in a dialogue with you to further discuss practical solutions to have them continue to provide services during the transition period. The key issues they have identified are:

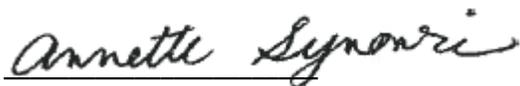
- Simplified terms and conditions that recognize servicing during transition is intended to maintain current programs and service delivery the community currently offers. If municipalities are to continue to provide servicing it will be completed primarily using existing contracts. This is unlikely if significant re-negotiations are required to accommodate the scope of new terms and conditions outlined in the MSA and SOW's; and
- Fair compensation that recognizes their incurred costs.

Please let us know if you have any questions or require further details. We look forward to further discussion with you.

Best Regards,



Dave Gordon
Senior Advisor, Waste Diversion
Association of Municipalities of Ontario



Annette Synowiec
Director, Policy, Planning & Outreach
Solid Waste Management Services
City of Toronto



Kealy Dedman
Chair, Regional Public Works
Commissioners of Ontario



Melissa Kovacs-Reid
Chair, Municipal Waste Association

cc: Mike Chopowick, Ontario Waste Management Association
Gordon Day, Ryse Solutions
Nicole Willett, Resource Recovery Alliance