



Competitive Neutrality in Solid Waste Collection and Disposal Services

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When local governments compete with the private sector for provision of garbage collection and disposal services, they have an unfair advantage if the bidding process does not ensure that all organizations, public and private, are treated equally. Equal treatment of all competitors in the market is called "competitive neutrality."

DEFINING COMPETITIVE NEUTRALITY

In a competitively neutral environment local government authorities should not enjoy a market advantage over the private sector by mere virtue of ownership. The concept of competitive neutrality appears simple; however, ensuring a level playing field is difficult because it requires government entities to rethink the policies by which they operate. For example, the public sector must give up the protections and special privileges that are inherent with public ownership. Barriers created by institutional constraints should also be removed to allow public entities to increase productivity.

Government entities are often criticized when trying to ensure competitive neutrality because of their anti-competitive practices. These practices include setting prices without fully accounting for the costs of providing garbage and recycling services and offsetting costs through subsidies such as taxes or other financial mechanisms that are unavailable to private-sector companies. In addition, localities often gain an unfair advantage by adopting ordinances that impose regulatory costs on the private sector that do not have to be paid by the government such as requiring performance bonds. Sometimes, the bidding process creates unfair competition by allowing the public sector to adjust their bids after seeing the private company bids.

RECENT TRENDS

Managed competition is the most significant recent trend in garbage collection and disposal services. In managed competition, city departments and private contractors compete to win public bids. When the competition is designed with a set of policies and legal

arrangements that ensure that all organizations, public and private, are treated equally, then, in theory, the most competitive bid wins. Success requires that any aspect of government operations that are not available to the private sector be eliminated. These include:

1. Consideration of taxes. Private entities must include taxes in their cost allocation. Because governments do not pay taxes, they could have a competitive advantage. Under managed competition, government entities should pay an equivalent amount or account for the difference.
2. Consideration of health and safety regulations. Private entities must comply with federal Occupational Safety and Health Administration rules in which the public sector is exempt. The cost of these regulations is significant. In a managed competition, a public entity should account for the difference or comply as if they were a private company.
3. Creating an arms length relationship with the purchaser. The mere fact that the bidding government entity is a subdivision of the purchasing body can create a suspect situation. To ensure that all bids are considered fairly, in-house bidders should be institutionally separated. For example, the government body responsible for opening and considering the bids cannot also be involved in developing the public sector bid.
4. Fully accounting for solid waste service costs. According to the Reason Public Policy Institute, the public sector often underestimates in-house costs by as much as 30 percent. This occurs because costs for garbage collection and disposal are not always entered into the garbage collection budget. Some examples include:
 - The cost of vehicles and equipment may be entered on a separate equipment budget;
 - Interest on municipal bonds is usually not calculated into garbage collection budgets;
 - The costs for fuel, oil, tires, and other supplies, as well as labor costs for vehicle maintenance and fringe benefits may appear on other government budgets such as central vehicle or labor accounts;

- The salaries of workers borrowed from other departments to cover employee leave usually remains on the originating department's budget or on a general labor budget for the municipality;
- Overhead costs from city executive and administrative staff are often not calculated into the accounts for garbage collection; and
- Insurance and liability costs are sometimes entered separately in city legal and insurance budgets.

SOLUTIONS TO THE PROBLEM

Methods for ensuring fair competition include privatizing and full cost accounting.

Privatizing. This is when local governments outsource garbage collection and disposal services to the private sector. By privatizing, competitive neutrality does not become an issue. The potential for unfair competition simply disappears. In return, local communities should receive fair costs for garbage service because of open market economies. They may also gain better knowledge of what it costs to collect and dispose of their waste. If the process of privatizing is implemented based on reasonable procedures accepted in the market, the increased competition by private companies should ensure and may increase the quality of garbage collection and disposal service. There may also be greater management efficiency because of competitive techniques in hiring workers and in ensuring lower absentee levels. In addition, industry assumes primary responsibility for general liability and environmental compliance.

In privatizing, a local government does not shirk its accountability to its citizens for garbage collection and disposal. Instead, it becomes a partner with the private sector. When outsourcing, the local government uses its resources to create an atmosphere of competition, monitor the quality of service provided by the private sector contractor, and ensure environmental protection. Local governments remain responsible for solid waste management, but they do not need to own and operate the equipment and services.

There are a number of obstacles to implementing a privatization decision. Perhaps the biggest impediment is the fear of lost public-sector jobs. Many pri-

vate companies have offered to hire displaced public-sector employees. However, the public-sector is often skeptical about whether the jobs will be equivalent in salary and benefits.

In addition, because waste management is an essential and necessary public health service, some municipal governments believe that they must be involved in performing the service rather than simply regulating it. Other communities fear that they will be unable to save dollars and benefit from private-sector services because they lack the expertise to form effective collection and disposal arrangements or to properly analyze the quality of service they receive from private companies. Government employee groups also question the reliability of data showing estimated savings because tracking this kind of data is difficult.

Full Cost Accounting. Another solution is to ensure that when local authorities compete, they fully account for their costs. Full cost accounting requires a local government to identify all of the costs associated with providing garbage collection and disposal services, both direct and indirect, regardless of when related disbursements or expenditures occur. Direct costs are those that are clearly and exclusively related to providing solid waste services such as salaries, bonds, software, supplies, equipment, and utilities. Indirect costs include expenses that benefit solid waste management activities, but would still exist if those services did not exist. For example, maintaining government boards, legal services, budgeting and budget management services, personnel administrative costs, public information services, and data processing services.

Full cost accounting also requires identifying expenses that are most often ignored by local authorities such as predevelopment costs. These costs include engineering, planning, legal, permitting, and design expenses. For example, in a managed competition, a local authority would need to account for expenses incurred in developing its bid. In addition, local authorities must account for landfill closure and post-closure care costs required under Subtitle D of the federal Resource Conservation and Recovery Act.

All of the expenses would then be offset by any fees for solid waste management activities such as income from the sale of recyclable materials and old equipment. The resulting cost is the amount of money required by a community to pay for government-pro-

vided services. This amount must be compared to private-sector costs when deciding which option provides the best service at the least cost.

Despite the fiscal credibility that full cost accounting ensures, some localities argue that they have a responsibility to ensure appropriate garbage collection for residents using all available resources even if those resources come from non-trash accounts. In addition, developing appropriate accounting systems can be complicated. For example, if an employee's duties are not exclusively associated with solid waste management services, the accounting system must apportion the salary and fringe benefits. This may not be easy if the employee's time is split informally.

LEGISLATING A SOLUTION

Because of the difficulties in ensuring competitive neutrality, industry has looked to legislation at the state level. Two recent pieces of legislation include changes to Arizona and Florida laws. These laws are designed to level the playing field when local authorities operate outside of their boundaries such as when:

1. Providing services to unincorporated areas; or
2. Acting like the private sector by entering the market.

In Arizona, the legislation requires full cost accounting on city and town garbage collection services performed outside the boundaries, including making in-lieu tax payments in the same amount that private companies would be charged and preventing the use of subsidies to cover garbage service costs. See ARIZ. REV. STATS. tit. 9 § 9-511.03 (2000).

The Florida law does not define full cost accounting. Instead, the law requires that a local government providing solid waste collection services outside its jurisdiction be prohibited from establishing "predatory pricing." In addition, the law specifically requires that a local government engaging in competition comply with the same environmental, health, and safety standards applicable to a private company. See FLA. STAT. tit. 12, § 171.062, *as amended by* H.B. 1425 (FLA. 2000).

A Florida locality is also prohibited from adopting or enforcing licenses, permits, and registration procedures, or collecting associated fees from private companies unless the same requirements apply to the local government's services. In addition, a local authority cannot take market advantage of private companies by imposing licenses, permits, registration requirements, or fees. The law does not apply to zoning, land use, or comprehensive plan requirements.

For more information on competitive neutrality and other local issues on solid waste collection and disposal services, contact NSWMA's regional offices:

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