

IE6.3 - CONFIDENTIAL ATTACHMENT 1: Issuing Authority's Procurement for Collection Services in Toronto - made public on October 12, 2023

CONFIDENTIAL INFORMATION OR ADVICE

Under provincial legislation, municipalities do not have a role in the new Extended Producer Responsibility (EPR) structure for the Blue Box Program. If a municipality wishes to seek a continued role, they must compete with other private sector service providers for a contract. There is no guarantee a municipality will be successful in achieving an executed agreement. City staff have undertaken a detailed review of the RFP requirements and determined that the current City Blue Box collection operations, technology and services provided by the City, cannot reasonably be modified in a manner that will meet the collection service requirements sought by Circular Material and Reverse Logistics Group in the timeframe required and without significant risk exposure to the City. To that end City staff will not submit a bid for a post-transition Blue Box Program collection contract.

It should be noted that the City's service provision of blue box diversion services to non-eligible sources, such as City agencies, corporations, and facilities (Civic Centres, recreation centres, arenas, et cetera) as well as to small commercial businesses can continue unaffected by EPR because the Province has not yet required producers to collect and manage blue box materials from these sources.

Staff are leaving the door open to the Issuing Authority if they approach the City for direct negotiations prior to December 31, 2023, staff will consider the feasibility of achieving a collections contract on the City's terms. However, beyond this date, the City would not have enough time to alter its plans and be ready for 2026 and it would also jeopardize the City's own contracted service provision timelines.

Direct Negotiations Discussions with System Administrator

Staff made a concerted effort to offer continued Blue Box service provision and maintain its good working relationship with the System Administrator. On **April 28, 2023**, staff offered the System Administrator a proposal to initiate direct negotiations that would provide continuity and reliability of service delivery in the largest city in Ontario, allowing producers to focus their attention on preparing for the introduction of a province-wide common collection system.

Following meetings between the City and the System Administrator, on May 11, 2023, the System Administrator responded and declined the City's request for direct negotiations, citing their responsibility as the System Administrator to ensure full transparency and fairness, they were electing to issue a competitive procurement process to select service providers.

While appreciating the System Administrator requires demonstrated transparency through a tender process that may have the potential to return competitive bids based on market conditions, it is staff's professional opinion that this approach may not result in cost containment for producers and that a continued relationship with the City would provide considerable benefits to both parties, ensuring a seamless post-transition phase.

Staff drafted a second letter to the System Administrator requesting they give further consideration into how continuing to work with the City could reduce costs for producers, minimize risk, and ensure that 20 per cent of the province successfully transitions to the common collection system in 2026 without residents being impacted at the curb. Staff believe the System Administrator could reduce costs and save valuable time by allowing the City to undertake its own competitive procurement process, which is in strict compliance with purchasing policies and legislation, to ensure equitable, effective, ethical, and transparent procurement standards are upheld in selecting a service provider. The City's procurement processes could satisfy the System Administrator's need for transparency and market competition as the City's tender call would be publicly posted for bidding.

On July 25, 2023, the System Administrator declined the City's second offer of direct negotiations and reiterated their plan to undertake their own a competitive procurement process through issuing a Request for Proposals (RFP) for City of Toronto Districts.

General Request for Proposal Details

Request for Proposal Timeline

The new Issuing Authority is comprised of Circular Materials and Reverse Logistics Group (RLG). Both parties collectively issued the RFP. The System Administrator has also retained RLG to perform contract management duties during the transition phase and RLG will continue in this role for the post-transition phase.

The RFP has outlined the term of the contract to be seven (7) consecutive years from January 1, 2026 to December 31, 2032. In addition, there are three, one-year option years that would be exercised at the sole discretion of the Issuing Authority, potentially extending the contract to December 31, 2035.

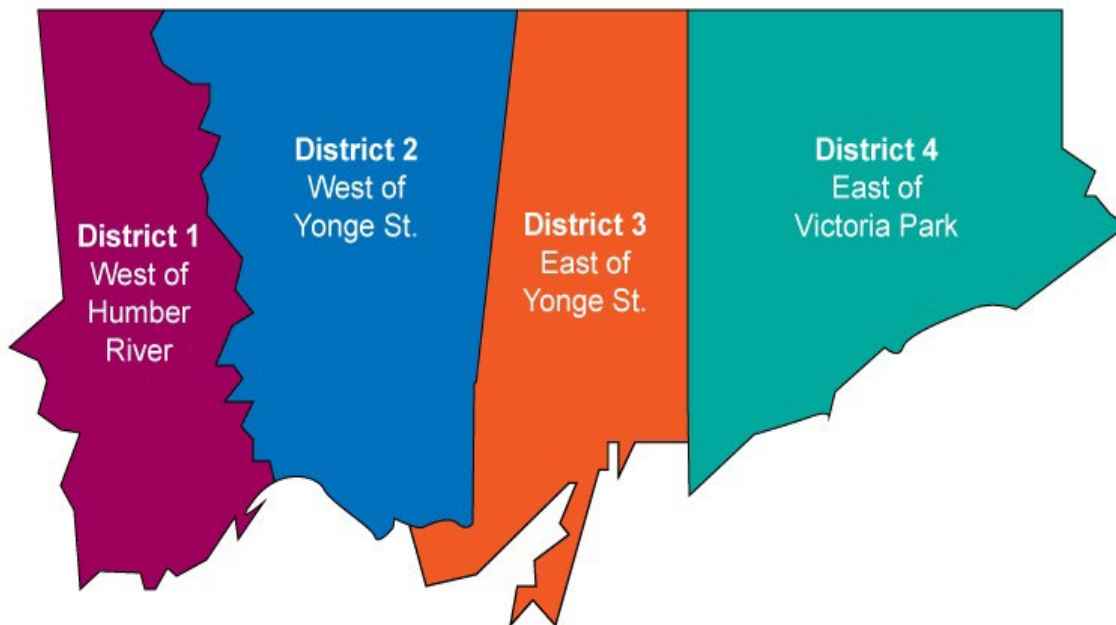
The RFP closes on November 29, 2023 and an anticipated response from the Issuing Authority to bidders is not expected until March 31, 2024. The Issuing Authority reserves the right to cancel or suspend the RFP or the Work at anytime.

Collection Area and Eligible Sources

The Issuing Authority has drafted the RFP as a single call document covering the collection of Blue Box Materials from single-family homes, multi-residential units, schools, long term care homes, and retirement homes across the entire City. The divides the City into four (4) similar collection districts, with the collection boundaries being slightly different than those currently used by the City. Front-end serviced multi-

residential buildings are also incorporated into the four districts. This incorporation differs from how the City is currently providing service for these locations, meaning that multi-residential collection becomes district-based. This is an important element of how the collection services are being sought, and as a result potential proponents can choose to bid on collection services in several ways. For example, bids can be submitted for one (1) or more districts, part of a district, or combinations thereof.

Figure 1: Current City of Toronto District Boundaries



The RFP only contemplates service to multi-residential buildings currently serviced by the City of Toronto. In 2026, all multi-residential buildings become eligible sources when they register with the Resource Productivity & Recovery Authority, which has the potential to increase this sector's customer count by approximately 40 per cent.

Collection of Materials and Containers

All Blue Box materials are required to be collected as a single-stream as is currently the case in Toronto. Where the eligible source utilizes carts as a collection container (for example, single family homes), the contractor is to supply carts. These carts are to remain at the eligible source.

For eligible sources that do not use carts for collection (for example, multi-residential buildings), the contractor shall provide appropriate collection containers that consider the anticipated quantity of Blue Box Material to be collected, the collection schedule and collection vehicle, and how the Blue Box Materials is managed on-site. These collection containers shall be the property of the contractor and shall be removed from the eligible source upon expiry of the agreement.

The RFP provides the contractor with options include in their bid price the cost to provide new carts to all eligible sources or approach the City to obtain its recycling bins. Solid Waste Management Services' recommends selling recycling bin assets as work is

currently underway to prepare and issue a competitive process to procure new curbside bins.

The RFP requires that the contractor maintain collection bins and ensure the replacement of missing or damaged bins within two (2) business days. The contractor retains ownership of any collection bins supplied for bulk collection at the end of the term of the agreement, but single-family bins will remain for use at curbside eligible source.

Customer Service and Promotion and Education

The contractor is required to provide a customer service call centre to manage customer questions, concerns, or complaints. However, there are no mentioned requirements for public education or resident engagement included in this RFP. While there is no mention of the provision of collection schedules or public education requirements in the RFP, Part VIII of the Regulation stipulates public education requirements.

Services That Are Not in Scope

The collections RFP does not include requirements for parks and public space collection and it is anticipated that a separate RFP will be issued for this service. The collections RFP does not consider transfer station consolidation services or haulage of Blue Box material to a material recovery facility. The City is currently providing services during transition. There is also no specific mention of collection from Toronto Islands or nighttime collection, which require unique processes to access the materials for collection.

Service Level Requirements in Request for Proposals

Figure 2 provides an overview of key service level requirements identified in the Request for Proposals.

Figure 2: Service Level Requirements in the Request for Proposals

Service Area	Service Level and Impact
Set out (materials to be collected)	All blue box materials are set out together (as in single-stream). Contractor must collect all blue box materials that is set out on collection day.
Non-compliant materials	If the container contains non-compliant material (as in contaminants), the container must be left behind with a tag indicating why it was left behind.

Service Area	Service Level and Impact
Separate collection of recycling from eligible and non-eligible sources	Blue box materials from commercial locations and other non-residential sources cannot be collected with materials from residential locations. This impacts locations on nighttime collection as separate bins are needed.
Special Needs Residents Provisions	No change, contractor is required to continue side-door collection
Collection hours	Daytime collection - between 7 a.m. and 6 p.m. Locations currently on nighttime collection should remain the same, as the RFP notes hours should be the same as it is just before January 1, 2026.
Collection Schedule	No change, collection should take place on the same day and schedule that the location was on just before January 1, 2026.
Containers (locations suited for cart-based collection)	Bidders can provide new carts or approach the City to utilize its bins. At the end of the contract, the carts are to remain at the eligible source.
Containers (locations that are not suited for cart-based collection such as multi-residential buildings)	Bidders must provide appropriate containers to these locations. These containers are the property of the contractor and are to be removed at the end of the contract.
Container replacement	Contractor is responsible for replacing a damaged or missing container, when requested within two (2) business days
Missed Collection	If the Contractor becomes aware of a missed collection by 2 p.m. on the scheduled collection day and the set out matches the criteria for collection (as in free of contaminants), the container must be collected the next business day.
Customer Service	Contractor is responsible for providing a dedicated phone number for the public, available on days when collection is taking place between 7 a.m. and 6 p.m.

Service Area	Service Level and Impact
Promotion and Education	<p>Not within the scope of the contractor's work. It is likely that this service will be delivered by another party.</p> <p>City will encourage any service provider to go beyond what's required in the Blue Box regulation (Minimum English and French) and translate materials into more languages</p>

Staff Comments on the Request for Proposal Requirements

This section of the report provides an overview of staff comments from the multi-divisional review of the Request for Proposals.

Insufficient Timeline to Prepare for Requirements in Request for Proposals

Bidders have approximately three (3) months to prepare their submission. Not only is there an extensive list of materials to prepare and provide to the Issuing Authority by November 29, 2023, but significant research, financial analysis, procurement, and documentation preparation are required prior to the submission being finalized.

Furthermore, there is significant risk to the City in rushing a bid submission through the various City authorities, protocols, and review procedures, including, but not limited to: collective bargaining agreement considerations; privacy review; professional services to understand and deliver the extensive technology requirements; and the financial risk of such efforts that may not result in a full contract award for the entire city. Three (3) months simply does not provide adequate time to undertake these actions, determine the feasibility of current practices and contracts being altered to meet the necessary requirements, and pulling together all contracting details and pricing for the collection of Blue Box Materials from nearly 900,000 eligible sources.

When the City issues collection tenders, the requirements are very different. For District 1, which was recently tendered, a collection service provider is already in place, so their agreement would need to be altered to account for these additional requirements, resulting in additional financial implications. For District 2, which staff will shortly begin preparing for tendering collection services, these requirements would need to be incorporated into the City's procurement process. But there is no guarantee that the City would be successful in achieving a contract with the Issuing Authority and those services may not be required.

With an anticipated contract award occurring in Spring 2024, that leaves the successful bidder with less than two (2) years to procure, implement, and test all the technical and vehicular requirements as well as train staff in their new roles. This is short timeline is inadequate to complete these tasks and be ready for post-transition beginning on January 1, 2026. In addition, this uncertainty of the timing of the award for some or all of the work places the City at risk with other contracts that require tendering now.

Performance Monitoring: Access to Staff, Contractors, and Equipment

A section of the RFP is dedicated to ensuring RLG and its agents have access to the Work, including access to staff and equipment used to perform the Work, and to monitor, observe, audit, and inspect at RLG's sole discretion. This may be in direct conflict with the Collective Bargaining Agreement. Supervisors will also be required to accept direct instruction from RLG which, depending on the nature of the instruction, may or may not be contemplated in existing collective bargaining agreements if the instruction pertains to collection work (for example: working outside of core hours, collecting outside of assigned areas, et cetera).

Collection in Districts 1, District 2, and from front-end multi-residential buildings are currently delivered by contractors that are managed by city staff. The RFP requirements for access to the Work would extend to the City's contractors as well.

As the successful operator of the largest recycling program in Canada for nearly four (4) decades, the City of Toronto is the most capable party to effectively and efficiently managing its personnel and contracted collection service providers. Engagement by RLG in personnel matters, some of which are represented by various Collective Bargaining Agreements, cannot be agreed.

If RLG finds a subcontractor fails to deliver the Work of the agreement or is the cause of complaints it may direct the contractor to replace that subcontractor at its own cost. Furthermore, the contractor may only employ a subcontractor for the Work that RLG has approved that subcontractor to perform.

Extensive Technology Capability, Reporting & Fleet Requirements

The RFP has an excessive list of information and technology requirements that need to be met by City staff and any subcontractors. Any change orders required of our contractors to comply with the agreement would result in additional unknown costs to the City and it is also unknown whether the existing contractor would be amenable to the change or be able to meet the implementation timelines.

All RFP respondents must provide in their bid the costing for Artificial Intelligence camera technology that provides real-time access and videos to identify the presence of any contamination for each collection event. In addition to these requirements there are timelines in which proponents would need to identify all locations and additional details where contamination was identified.

The technical equipment requirements for Automated Vehicle Location (AVL)/Global Positioning Systems (GPS) have been determined to be achievable. However, the level of additional information requested may impede staff privacy and implementation timelines are extremely difficult to achieve without significant additional corporate Technology Services Division resourcing to ensure readiness for the required contract date. To that end, it should be noted that resourcing and financial preparation to submit the bid exposes the City to risk due to the uncertainty of contract award city-wide.

Some technological requirements seem unnecessary and go beyond the capabilities of the City's and its contractors' current systems operations. Many technologies and specifications are new to the City and there is limited time to research, procure, obtain, and establish a viable outcome required in the RFP.

There are significant privacy concerns associated with the use of the data and information the technology that will collect, particularly as it relates to recording staff and the inclusion of their name. There is a high likelihood of disputes with the union if the intent is to monitor vehicle operations.

The maintenance associated with such high-tech equipment has many unknown factors, such as how maintenance tasks are to be performed and what priorities and strategies will be necessary to minimize downtime. In addition, this type of technology has not been tested in our fleet, therefore the reliability factor is unknown. As such, the City would likely require additional spare units if downtime becomes excessive.

Operational management will be impacted by the addition of the required technologies. For example, the role and responsibilities of drivers will shift to incorporate the new technologies in the scope of their work. Supervisors will also be responsible for more physical assets including potentially mobile phones or tablets. In addition, technology will have to be constantly monitored for connectivity and functionality.

New IT architecture (storage, data integration, et cetera) will need to be developed to support these requirements and will take a significant amount of time and funding to put in place. In addition, all aspects of the required technology (hardware, software, cloud solutions) will have to be assessed by Technology Services Division and Chief Information Security Office, which could mean long lead times to pilots or implementation.

The technical requirements identified in the RFP will necessitate a major transformation for many Divisions, not only Solid Waste Management Services. Meeting these technical requirements would require a sizable City investment and cross-Divisional dedicated team to research, procure, implement, and test all new equipment and fleet. Furthermore, to be performance ready by January 1, 2026, this work would need to start immediately. There is considerable financial risk in moving forward with this undertaking without knowing if the City is successful in its bid until Spring 2024.

Financial Risk with Bidding on the RFP

There is significant financial risk to the City in responding to this RFP:

- The City would have to make a significant financial investment (many millions of dollars) to implement a robust solution that will meet the requirements outlined in the RFP.
- All RFP requirements apply to both the contractor and their subcontractors. In Toronto's case, the City would need to negotiate change orders for two (2) different contracts (District 1 and Front-end collection) to ensure they're in alignment with the agreement. This is a very time-consuming and costly undertaking. The financial

implications of those change orders would not be known prior to responding to this RFP, increasing risk exposure.

- The City will shortly begin preparations to issue a Request for Quotations (RFQ) for the collection of garbage, organics, and yard waste in District 2. If the City decides to procure Blue Box collection for District 2, it will have to either prepare a separate RFQ for recycling because the City cannot issue a procurement for work that it does not own (producers now own Blue Box Material from eligible sources) or negotiate with the successful bidder hired to provide collection services for the other material streams. There is financial risk associated with issuing a separate collection tender for Blue Box Materials when the City cannot guarantee whether it will be awarded. It is dependent on whether the City is the successful bidder for the Issuing Authority's RFP. Full cost accounting will not be possible because the City's actual cost of service for District 2 will be unknown at the time of bidding on the Issuing Authority's RFP. This added layer further increases the City's financial risk exposure.

Collective Agreement Bargaining Considerations and RFP Requirements

The City's current Collective Bargaining Agreement expires on December 31, 2024, which is during the transition phase (2023 - 2025). It is anticipated that the next Collective Bargaining Agreement will expire on December 31, 2028 and potentially every four (4) years thereafter. If the City submits a bid for this RFP, the City will not know the final outcome of financial impacts of the Collective Bargaining Agreement discussions, making it even more difficult to accurately cost the bid.

Understanding this is a risk for service provision continuity, the RFP notes several conditions if there is a lawful or legal labour disruption. Specifically, the contractor shall, at the contractor's cost and expense, use commercially reasonable efforts to continue performance of the Work. This likely means hiring replacement workers, which will prove extremely difficult and controversial and could even pro-long a labour disruption. This also draws a third-party into the disputes.

Regardless of the cost recovery outcomes of the Collective Bargaining Agreement, the RFP stipulates measures that expose the City to additional financial risk, including covering the costs of a lawful or unlawful labour disruption, potential termination of the contract, and covering the costs of replacement services.

Uncertainty in Transfer Station or Receiving Facility Locations

The City has a network of six (6) transfer stations which receive Blue Box Materials¹ after collection. Transfer station services are not part of the service sought in the collections RFP. Furthermore, proponents are asked to prepare their bids without knowing where collection vehicles will be required to unload collected Blue Box materials other than what can be described as vague consideration of the Issuing Authority's potential travel times. Successful proponents will not be provided with actual locations of receiving facilities until 90 days prior to the service commencement date. This lack of detail results in great difficulty in estimating costing for collection routes.

¹ For consolidation and shipment to a Materials Recovery Facility.

Toronto's collection routes have been optimized for efficiency based on the City's transfer station network. Adding this unknown variable poses significant risk to operational costs, complexity, and efficiency as well as risk in preparing a bid submission to achieve full cost recovery.

In addition, once identified, these transfer stations could be located outside the City of Toronto's boundaries, which may pose complexities with insuring City vehicles crossing the border into other municipalities to use their transfer stations.

Unreasonable Contamination Outcomes

Contractors are to use reasonable commercial efforts to reduce the quantity of Non-Blue Box Material in collected material to no more than four (4) per cent by weight. The City currently operates at a contamination rate of approximately 30 per cent. Despite extensive public education and outreach campaigns, no noticeable difference in the contamination rate has been achieved. It is virtually impossible for the City's Blue Bin Program to ever achieve four (4) per cent contamination, resulting in continual non-compliance with the term of the agreement.

There are no service level failure credits associated with failing to meet the contamination rate, however, the contractor must submit and implement a plan at their own cost. Quarterly reporting to RLG is required as is establishing changes recommended by RLG.

Again, there is an absence of promotion and education details in the RFP. It is unclear if the contractor will be required to undertake this function or if it will be provided by RLG and Circular Materials. This will have an impact on the contractor's ability to reduce contamination.

Outcome of RFP Process

The flexibility afforded to proponents in the RFP allows for the submission of various system design and bidding opportunities. It is not an all-or-nothing RFP, which would have been advantageous to the City due to its capacity to manage the vast quantity of customers, customer types, and material volume City-wide. There is no guarantee the City would be successful in being awarded any collection contract(s). There is also no guarantee that the City would be successful in securing an agreement for all districts or eligible sources. Since response bidding is to be based on districts, the City may only succeed in achieving an agreement for a single or partial district, if any at all.