

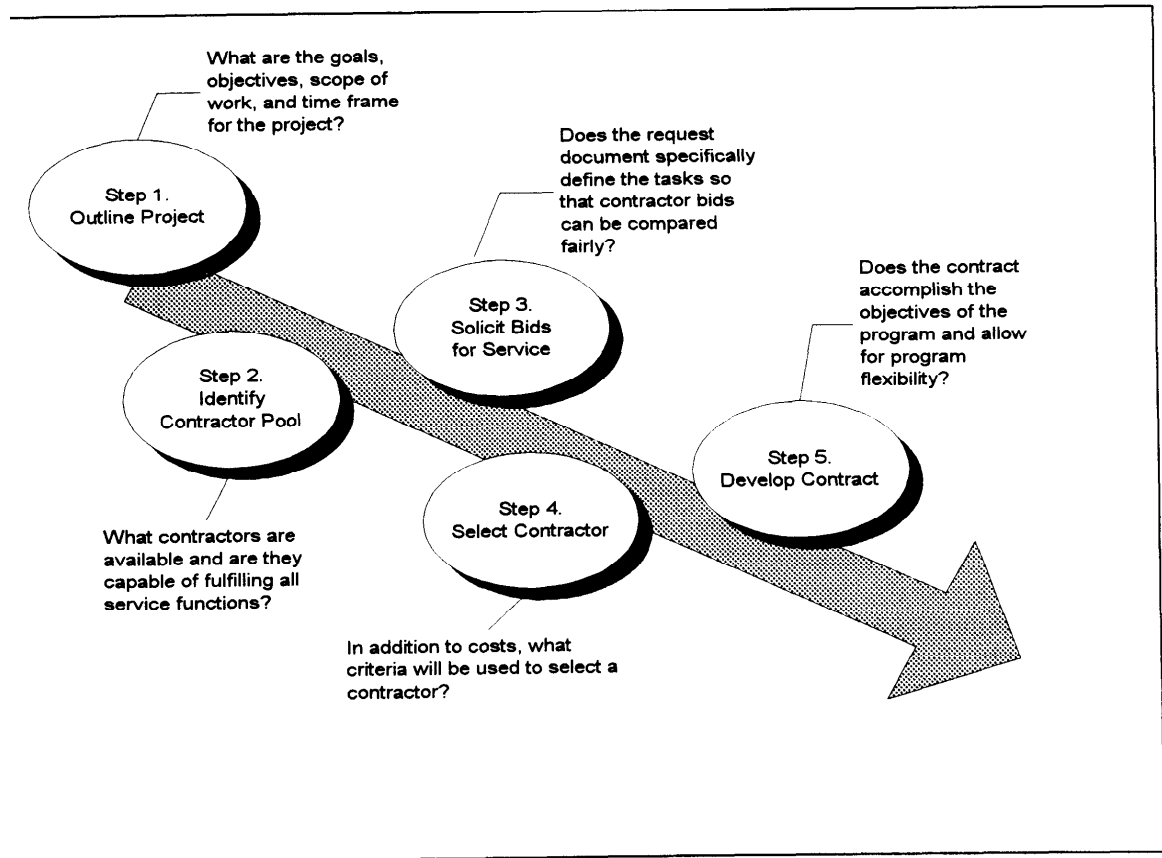


# Contracting for Local Government Solid Waste Management Services

# FACT SHEET

The viability and performance of local government solid waste management programs depend on several important decisions. Some of the most critical decisions involve the selection of the individuals and organizations that will perform the many tasks necessary to design, implement, and operate each program. Some tasks may be best performed by an outside contractor. This Fact Sheet is designed to assist local governments as they explore and develop contracts for services. It discusses in detail each step in the process. Figure 1 outlines the steps required from the initial planning stages to the development of the contract.

Figure 1. Step-By-Step Approach to Contracting for Services



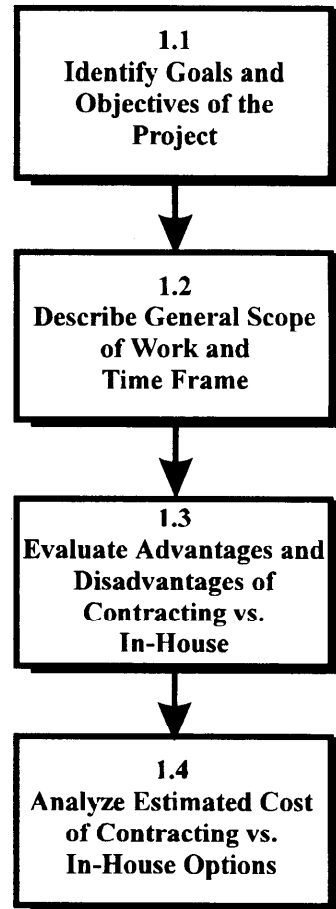
NC Division of  
Pollution  
Prevention and  
Environments  
Assistance  
PO Box 29569  
Raleigh, NC  
27626-9569  
(919)715-6500

**Step 1.  
Outline Project**

The decision to contract for service(s) should be made in the context of a solid waste management plan. (See the Planning Resource Manual on local government solid waste planning produced by the NC Division of Pollution Prevention and Environmental Assistance.) Through a careful planning process, a local government can integrate the components of its solid waste management program and, at the same time, ensure efficiency and coordination of resources.

In conformity with its solid waste management plan, a local government should outline specific components of its solid waste management program. The outline should identify goals, including specific objectives, a basic scope of work, and a time frame for implementing the project. The outline should also indicate service requirements that are absolute and those that are open to suggestion by the contractor. A good outline will help organize efforts in the next two steps of the contracting process: identifying the contractor pool and soliciting bids. A local government can also develop a contract to meet its unique situation. For example, a local government may find it most efficient to contract for only part of a service while performing the remaining part in house; or, it may contract for services for a given period of time under a plan to perform the service in house in the future.

Once the project has been outlined, the advantages and disadvantages of contracting for the service can be evaluated. Figure 2 lists typical advantages and disadvantages of contracting.



**Figure 2. Advantages/Disadvantages of Contracting for Services**

**Advantages**

- Contractor may have more experience with delivering services.
- Contractor may be more efficient than the public provider of service, especially if companies bid competitively to perform the service.
- Contractor may assume risks associated with fluctuation in market prices.
- Local government has fewer personnel responsibilities.
- If there is no existing program, the local governments may be able to avoid (1) initial expensive capital purchases and (2) intensive start-up work to initiate a program.

**Disadvantages**

- X Local government loses some control of daily operations.
- X Laborers do not have the flexibility to perform small tasks outside the contract parameters.
- X It may be difficult to make changes to contract once it is in place.
- X Local governments must still monitor contractor's performance closely.
- X Local government may need to lay off current personnel.
- X If it sells off capital assets, the local government may be slow to start up in-house services in the future.

Cost, of course, is always a critical factor in local government decisions to provide services directly or through a contractor. When options are compared, it may not be possible to estimate potential contracting costs accurately, especially if a new program is being initiated. One way to help estimate such costs<sup>1</sup> is to contact potential contractors or other local governments with existing programs. Also, a Full Cost Analysis of the current local government solid waste management program may help highlight costs and plans for the future.<sup>2</sup>

A **pilot project** may be a helpful and appropriate way to further evaluate an option, and a pilot project may not require a request for bids or a complex contract. In a pilot project, a local government could offer a new service, such as recycling curbside, to a portion of the community for a short-term period. Through such an effort, costs and benefits can be better measured. A pilot project can be followed up with a survey to assess citizen reaction to the new program, which could help smooth the transition to the new program for all citizens in the jurisdiction.



**Step 2.  
Identify  
Contractor Pool**

In Step 2, the pool of contractors that could potentially perform the needed service is identified. A list of qualified vendors may be obtained from the following sources:

- Vendors pre-qualified through the list of vendors provided by the purchasing office.
- Recommendations from other local governments that have contracted for similar work.
- Advertisements in trade journals and telephone book yellow pages.

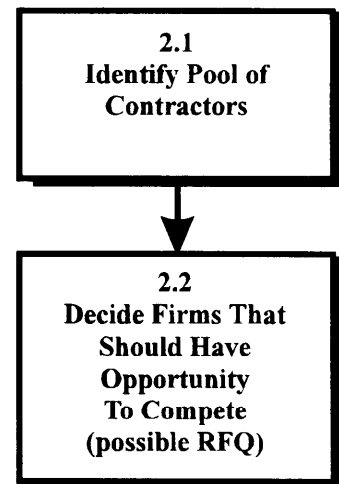
In addition to these sources, a local government may consider advertising in the newspaper for qualified candidates. Depending on the location and nature of the project, there may only be a few contractors interested or qualified to perform the service. In other cases, the number of contractors available may be so large that criteria should be developed to narrow the pool. Selection criteria may include qualifications such as previous experience, financial strength of the company, and recommendations from other clients.

**Note that state law does not require advertising during the contracting process, but the process cannot be arbitrary or discriminatory.**

One way to formally narrow the pool of candidates is to issue a Request for Qualifications (RFQ.) An RFQ is a publication that outlines the project and the expertise needed to perform the service. Interested companies complete the RFQ, and they are evaluated according to pre-set criteria to determine the

companies that will be asked to submit a bid or proposal. Although RFQs are issued only infrequently, they may be appropriate in the following cases:

- There are so many potential candidates that it is necessary to narrow the field before a request for bid or proposal is issued;



<sup>1</sup> To minimize recycling costs, a local government should explore ways to maximize quantities of material collected to help achieve an economy of scale. Small local governments especially should consider regional cooperative arrangements to achieve economies of scale and market leverage for recycling commodities.

<sup>2</sup> See the Full Cost Analysis Worksheet produced by the Division of Pollution Prevention and Environmental Assistance.

- An engineering surveying, or architectural project that does not require a request for bid or proposal but does require a ranking of potential candidates by qualifications; and
- The local government wants input from qualified candidates before a final proposal is developed.

**Step 3.  
Solicit Bids  
for Service**

In Step 3, the local government solicits bids for the service(s). Bids can be solicited through a number of methods:

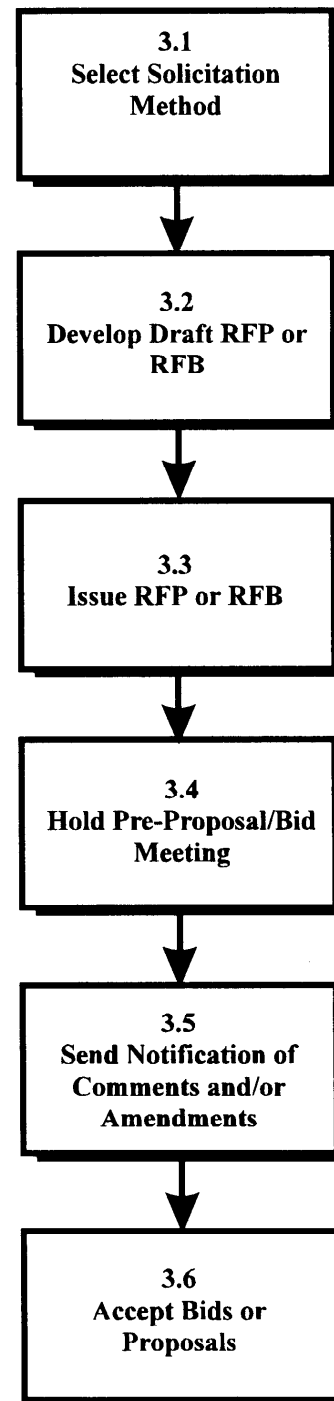
- **Non-Competitive Negotiations:** This method involves negotiation of a contract with only one company. Such a procurement method may be appropriate for renewal contracts or relatively small contracts. However, a lack of competition does not motivate a contractor to submit his/her lowest bid.
- **Request for Bids (RFB):** In a RFB, the service is narrowly defined, and the contracting candidate responds with a bid to perform the service.
- **Request for Proposal (RFP):** An RFP is similar to an RWB except that there is latitude for the candidate to propose various methods and levels of service.

Local governments should be certain of the following when they are negotiating a non-competitive contract:

- A competitive process is not required by law (see side bar on following page);
- The local government is comfortable that it is getting a good-faith, economical quote from the contractor;
- Companies that could provide competitive quotes are not being unfairly excluded; and
- The fairness of the decision and the potential political ramifications of a non-competitive process have been considered

Even when competitive bids are not required, it is frequently a good idea to issue them because (1) they improve a local government's chance of getting the best deal and (2) they limit potential criticism about unfair contractor selection practices.

While there is no standard format for writing RFBs and RFPs as part of a competitive process, it is helpful to review a variety of requests previously developed and select the appropriate elements. To see examples of RFPs, RFBs, RFQs, and contracts, call local governments with similar demographics or contact the Division of Pollution Prevention and Environmental Assistance to see such documents that are on file.



Clarity and consistency in a request will help ensure that bids and proposals are compared fairly. On the other hand, parameters that may disqualify an otherwise capable candidate should not be added.

Some local governments hold a meeting of potential contractors to help develop an RFB or RFP. Such a meeting can be held after the request document has been issued (as indicated in Step 3.3) to give potential contractors an opportunity to ask questions. Other local governments prefer to hold such a meeting earlier to facilitate development of the RFP or RFB.

Requests may include some or all of the following components:

- Project summary.
- General information on the local government and present waste management practices.
- Necessary qualifications of bidder.
- Legal parameters.
- Project description.
- Other service expectations from contractor such as responsiveness to inquiries, education, recordkeeping reporting incentive programs, etc.
- 
- Disposition of revenues from the program.
- Evaluation criteria.
- Format of bid or proposal including any fill-in-the-blank forms or qualitative framework.

The most important aspect in a good RFP or RFB is clear and unambiguous language so that every candidate provides quotes with the same understanding. Parts of the proposal may state that contractors should propose suggestions beyond the parameters listed in the RFP or RFB.

Also, the RFB or RFP should be carefully standardized; for example, a request may require that all bids be calculated on a per-household or a per-ton basis to ensure fair comparison of contracts. The local government attorney can be a valuable asset in development of a request and should know all the legal caveats that should be included.

For a significant contract, the local government should consider holding a pre-bid or proposal meeting soon after the RFB or RFP has been issued. Such a meeting gives candidates an opportunity to ask questions and make suggestions and ensures that candidates have a clear understanding of all components of the bid or proposal. Some local governments make such a meeting mandatory. Others only allow questions at this forum or require that questions be written beforehand; summaries of any discussions are documented and sent to all candidates. Also, as a result of a pre-bid meeting, the local government may make amendments to the request, which should then be sent to all candidates. Some local governments interview the “short list” of top candidates before making a final decision. If a contract is small and no

### **Competitive Bidding Process and North Carolina Law<sup>3</sup>**

- **Purchase Contracts:** Any expenditures of \$5,000 or more of public funds for (1) construction or repair work or (2) purchase or lease purchase of equipment or supplies require a competitive bidding procedure.
- **Service Contracts:** Competitive bids are not required for service contracts, although a competitive process may still be a good idea.
- **Mixed Contracts:** Depending on the dominant aspect of the contract, contracts that require both services and purchase components may require competitive bidding.
- **Engineering Contracts<sup>4</sup>:** Need for engineering, surveying, and architectural services must be announced and a qualified list of firms selected before a contract with the best candidate is negotiated.

#### **Also note:**

- The general rule on whether to go out to bid is to err on the side of a competitive process.
- It is good policy to consult with the local government attorney and Board of Commissioners before issuing any requests

<sup>3</sup> (Language taken from Bluestein et al, *An Outline of Statutory Provisions Controlling Purchasing by Local Governments in North Carolina*.)

<sup>4</sup> It is public policy of the State that (1) requirements of architectural, engineering, and surveying services by public agencies be announced; (2) for each project, the public agencies develop a list of qualified firms selected without reference to fee; and (3) agencies attempt to negotiate a contract with the best qualified firm on the list. If unable to negotiate a contract, the local government then moves to negotiate with the next-best qualified firm. Governing boards may exempt themselves from this policy [GS 143, Art 3D]

## Step 4. Select Contractor

pre-bid meeting is held, informal contact with candidates can be made, but it is important that all candidates have access to the same information.

Although cost is a major factor in selecting a contractor, it should not be the only consideration. Other criteria that may be used to evaluate RFBs and RFPs include:

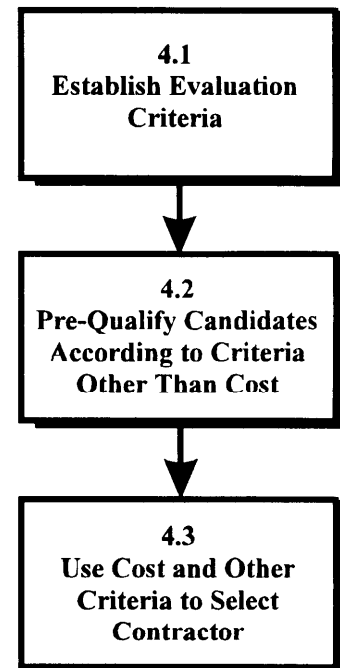
- Technical soundness of the ideas proposed by the candidate.
- Qualifications of candidate in terms of demonstrated experience with similar work, financial stability, capabilities of person assigned to the project, evaluation of contractor by his/her other clients, and capability to implement service.
- Accuracy of response to RFP.

The general criteria should be listed in the RFB or RFP so that candidates know the bases of the evaluation. Also, if criteria are established prior to bid review, bias during the selection process will be minimized. According to the number and nature of proposals and bids, it may be most fair and efficient to pre-qualify candidates (according to criteria listed above) before the proposed bid is reviewed. Pre-qualification may help reduce the number of proposals that need to be carefully scrutinized and also help eliminate excessive bias toward the lowest bid.

### **North Carolina Law states:**

*All contracts [that require competitive bids] shall be awarded to the lowest responsible bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract.<sup>5</sup>*

with the in-house options estimated in Step 1 of the process, such alternatives should be reconsidered at this time. In order for a local government to exercise this option, the RFP should specifically state that the local government has the right to reject any and all bids.



The process of selecting a contractor can be difficult; the more open and straightforward the process, the better the chance that controversy will be avoided. Before the contractor is selected, the local government must be sure to contact his/her other clients to assess their satisfaction with the quality of work. Also, if bids are not competitive

<sup>5</sup> Note that a contract that does not require a competitive bid can use a different standard to judge proposals. To ensure fairness, it is best to determine the standard before the selection process begins.

**Step 5.  
Develop Contract**

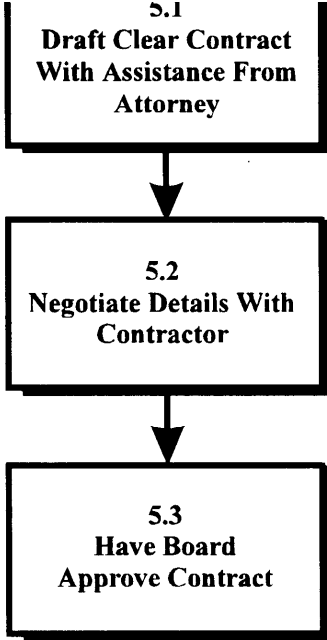
A good contract clearly defines responsibilities so that there is no ambiguity about expectations from the contractor. After a competitive bidding process, many of the components of the contract have already been identified. If the RFB or RFP was quite specific, it may simply be referenced and incorporated into the contract itself. Alternatively, appropriate language from the request document can be used to develop a contract that stands on its own. A contract will probably address the following:

- Payment
- Starting and ending dates.
- Contract extensions.
- Territory or specific sites covered.
- Specific performance requirements and reporting/evaluation mechanisms.
- Clauses addressing issues such as indemnification, workers compensation, discrimination, insurance.
- Termination Clause and Non-Performance Clause

Other issues that may need to be addressed in the contract include:

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li>• Measurements of quality/performance.</li> <li>• Marketing of recyclables.</li> <li>• Collection schedule.</li> <li>• Equipment used for project.</li> <li>• Types of containers to be used.</li> <li>• Response to citizen complaints.</li> <li>• Ownership of recyclable materials</li> </ul> | <ul style="list-style-type: none"> <li>• Reporting requirements.</li> <li>• Revenue sharing.</li> <li>• Annual cost adjustments.</li> <li>• Attachments such as advertisements, the requesting documents, maps, etc.</li> <li>• Tags or notification when recyclables are not collected from a household on a curbside route.</li> </ul> |
|---|--|

If the contractor develops the contract, the local government should carefully read the agreement and negotiate changes so that the contract suits its needs. If the contractor responds to citizen complaints, it may be advantageous to stipulate in the contract that a monthly report of complaints be forwarded to the local government office to help assess performance.



**Contractual Incentives To Increase Recycling Rates**

- **Share recycling revenues.**
- **Pay contractor (in part or entirely) by ton of recyclables collected.**
- **Tie payments to participation rates.**
- **Specify public information/education requirements.**

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## Recycling Revenues

When a contract for the collection of recyclables is negotiated, the fate of revenues collected from sales of materials should be considered carefully. All revenues may go to the local government, or all may go to the contractor, or they may be divided according to a set percentage. The more revenue the local government receives, the higher the contractor fee.

Advantages to the local government of retaining recycling revenues are that they (1) may help offset program costs and (2) provide a long-term funding source. Advantages of revenues reverting to the contractor include (1) lower contracting fees, (2) incentive for the contractor to collect more recyclables, and (3) contractor assumes the risk of market volatility of recyclable prices. Sharing revenues between the contractor and local government brings many of the benefits of both options. If a local government plans to share revenues, this provision should be included in the RFB or RFP. In fairness to contractors when markets are weak, it may also be necessary to provide for the sharing of the market risk.

## Concerns

The time period established for a contract often requires a delicate balance. If the contract is too short, the contractor may drive up costs, especially if capital items such as collection vehicles must be paid for. If the contract is too long the local government may be locked into an unfavorable arrangement. Typical service contracts are set for one to two years with optional extensions. Capital-intensive contracts may require longer terms and are discussed below.

Failure to develop a comprehensive contract may result in many unexpected disagreements between the local government and the contractor. While developing the contract, the local government must be sure to explore all potential ambiguities - from who will pay for site improvements to expected reporting requirements. Once a contract is in place, it should be reviewed periodically to ensure it is meeting expectations.

The local government must carefully consider the obligations to which it is committing when a contract for a capital-intensive project such as a landfill, incinerator, mixed-waste processing facility, or materials recovery facility is developed. Although such facilities may be both a necessary and beneficial part of an integrated solid waste management program, local governments should avoid contractual agreements that may inhibit future waste reduction efforts:

§ **Minimum Threshold (“Put or Pay”) Obligations:** Often, capital-intensive waste management facilities need to guarantee that they process certain quantities of solid waste to ensure their debt service can be paid. Such facilities sometimes want to include “put-or-pay” clauses in a contract. Such clauses obligate a local government to bring at least a minimum threshold of material to the facility. If that minimum threshold is not delivered, the local government is obliged to pay for the shortfall. Minimum threshold obligations could undermine waste reduction efforts and may punish a community if changing demographics, economics, or technologies reduce the flow of waste. If a potential contractor insists on a put or pay clause, a local government should consider obligating at most only 50 percent of its waste stream.

§ **Long-Term Contracts:** Capital-intensive facilities would like to guarantee waste flow to their facility over a long period of time and often prefer 20- or 25-year contracts. Such long-term contracts can be inadvisable for local governments as they may stifle better options that may become available in the shorter term. The solid waste management field is changing rapidly; it is impossible to predict the types of superior technologies that may emerge in the next five to ten years. A good option may be to sign a five-year contract with optional five-year extensions.

§ **Waste Flow Obligations:** In order to ensure a high flow of refuse, a capital-intensive facility such as a mixed waste processing facility may stipulate that a local government send all its waste and recyclables to the contractor’s facility. Such a clause may be detrimental to the community as it could preclude future waste reduction or cost saving options.

All these considerations should be weighed against the other costs and benefits of available options.

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## Final Points on Contract Development

If a local government replaces an in-house program with contracted service, job losses may be a concern. It may be possible to negotiate with the contractor to hire the displaced local government employees.

Depending on the local government, the lawyer may draft most or all of the contract, or the solid waste staff may develop a first draft that the lawyer reviews and improves. The local government and the contractor may negotiate features before agreement is reached. In all cases, the city or county governing board will need to approve and sign the final contract.

## Conclusions

Only through a rigorous understanding of a solid waste program and its costs and benefits is a local government able to determine if contracting for services is the best option for the community. Even if a large portion of its solid waste management program is contracted, the local government's responsibilities are not over. A contract is a partnership: it does not simply hand over all responsibility. Contract overview, citizen education, and special waste reduction efforts may continually demand attention. Through continued involvement and oversight, local governments can optimize their solid waste programs and meet North Carolina's 40 percent waste reduction goal.

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***The North Carolina Division of Pollution Prevention and Environmental Assistance provides free, non-regulatory technical assistance and training on methods to eliminate, reduce, or recycle wastes before they become pollutants or require disposal, Telephone DPPEA at (919) 715-6500 or 800-763-0136 or e-mail nowaste@owr.ehnr.state.nc us for assistance with issues in this Fact Sheet or any of your waste reduction concerns.***

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