

## **Panel 2: RFPs & Contracts - Procurement & Contract Management in Times of Uncertainty**

Dave Faris Yousif, CIF

# Impact of Recent & Impending Changes on the Development & Management of a Contract

- Timelines: contract development & term
- The balance of power is vital in ensuring equity for both parties
- Contract clauses to facilitate transition & other change
- Communication & contingency planning
- Other key contractual considerations



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# Panelists

- Alec Scott, Consultant, CIF
  - *Contract End Dates: A Signal For Transition?*
- Danielle Watson, Waste Management Supervisor, City of Cornwall
  - *Learnings from the City of Cornwall's Contract Development & Transition Project*
- Mike Birett, Managing Director, CIF
  - *Contracting Services in Changing & Uncertain Times*
- Paula Lombardi, LLB, Partner & Department Head, Siskinds LLP
  - *Full Producer Responsibility Transition Clauses: A How To Guide*

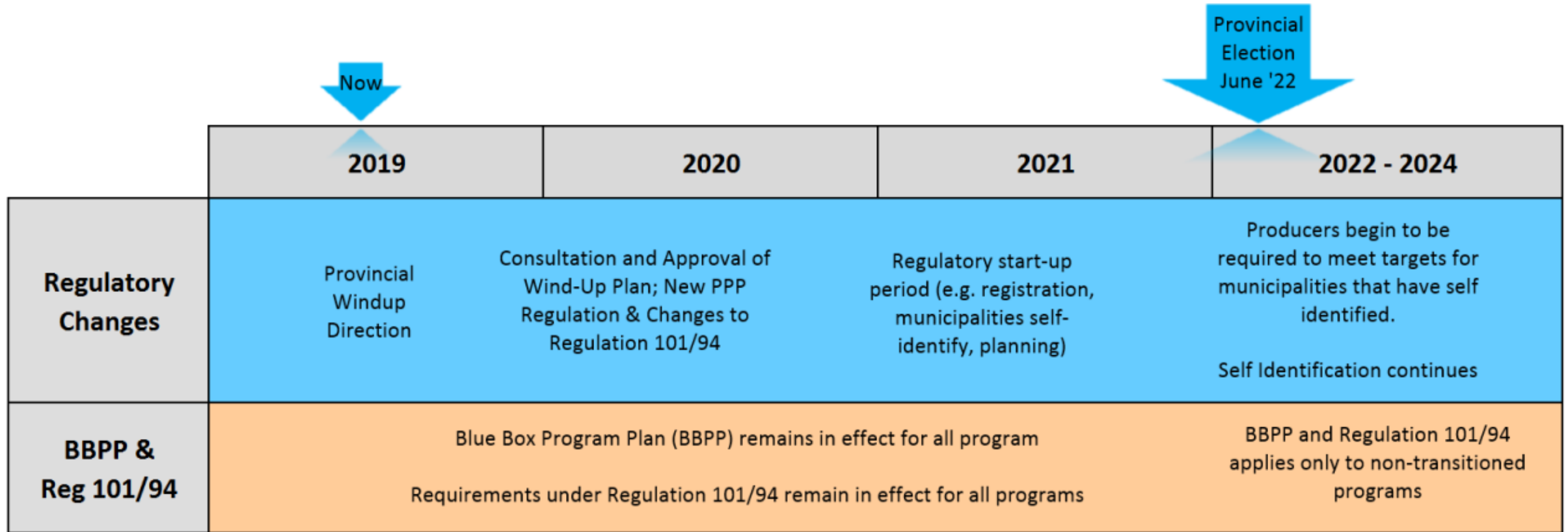
# Summary of Contract Status

Alec Scott

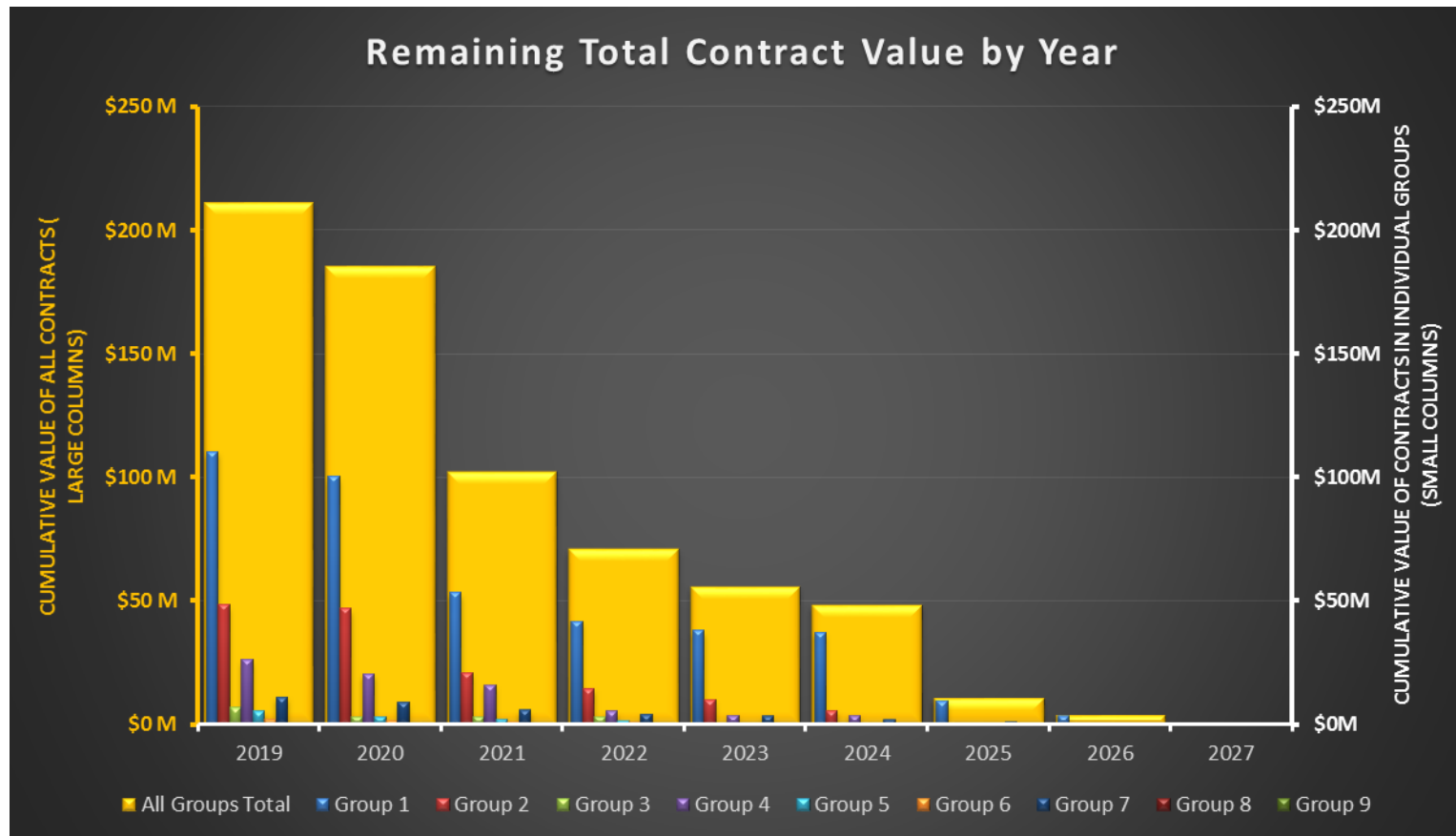
CIF In-House Contractor



# Possible Transition Timeline



# Total Contract Value Reported in Datacall



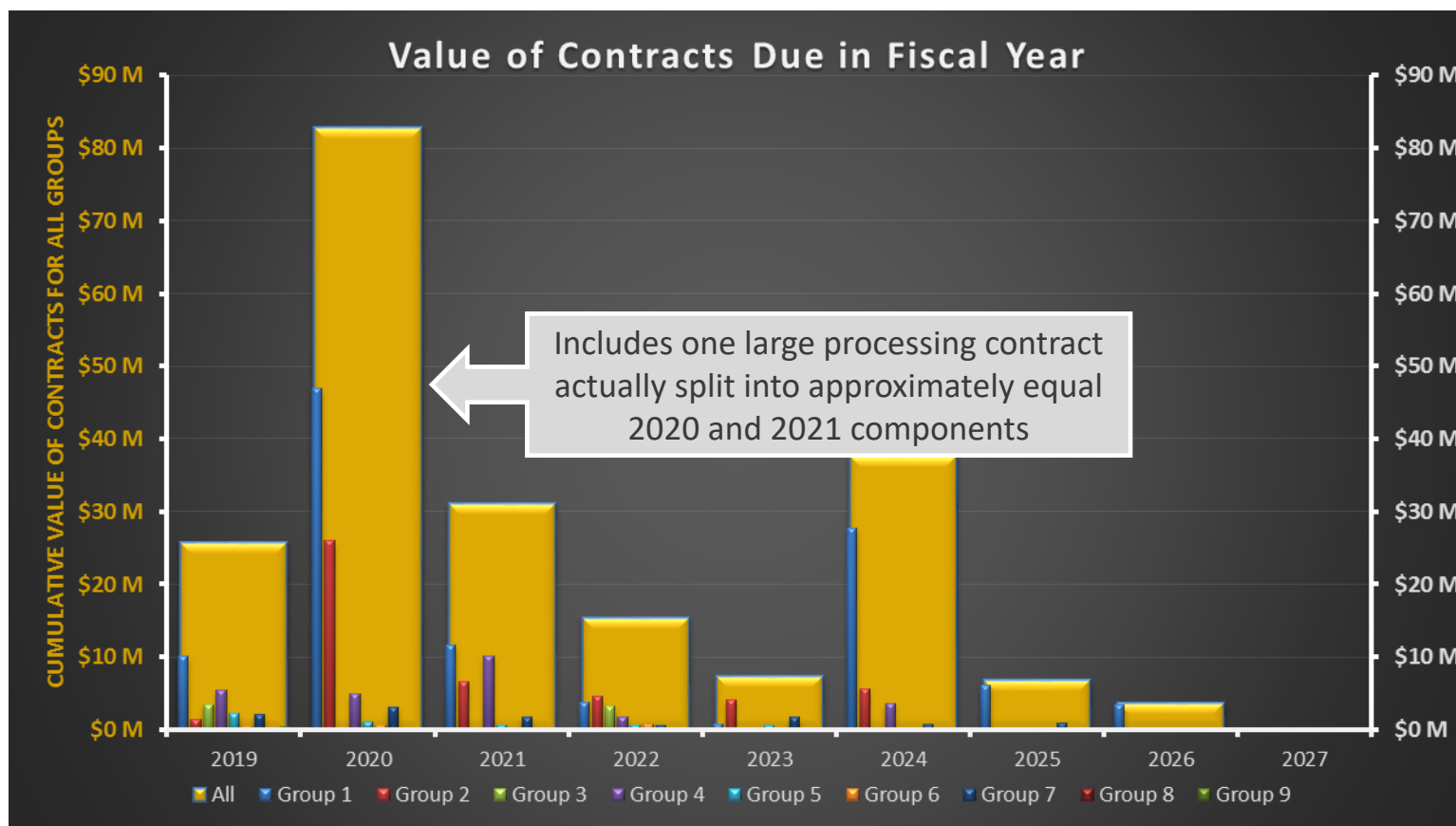
- 2018 (closed) & 2019 contracts (being closed) with *unknown renewal terms* will affect long term picture
- 2020 & 2021 difference less pronounced than shown
  - Due to single large contract reported as 2020

# Number of Contracts Expiring by Year: 2019 perspective



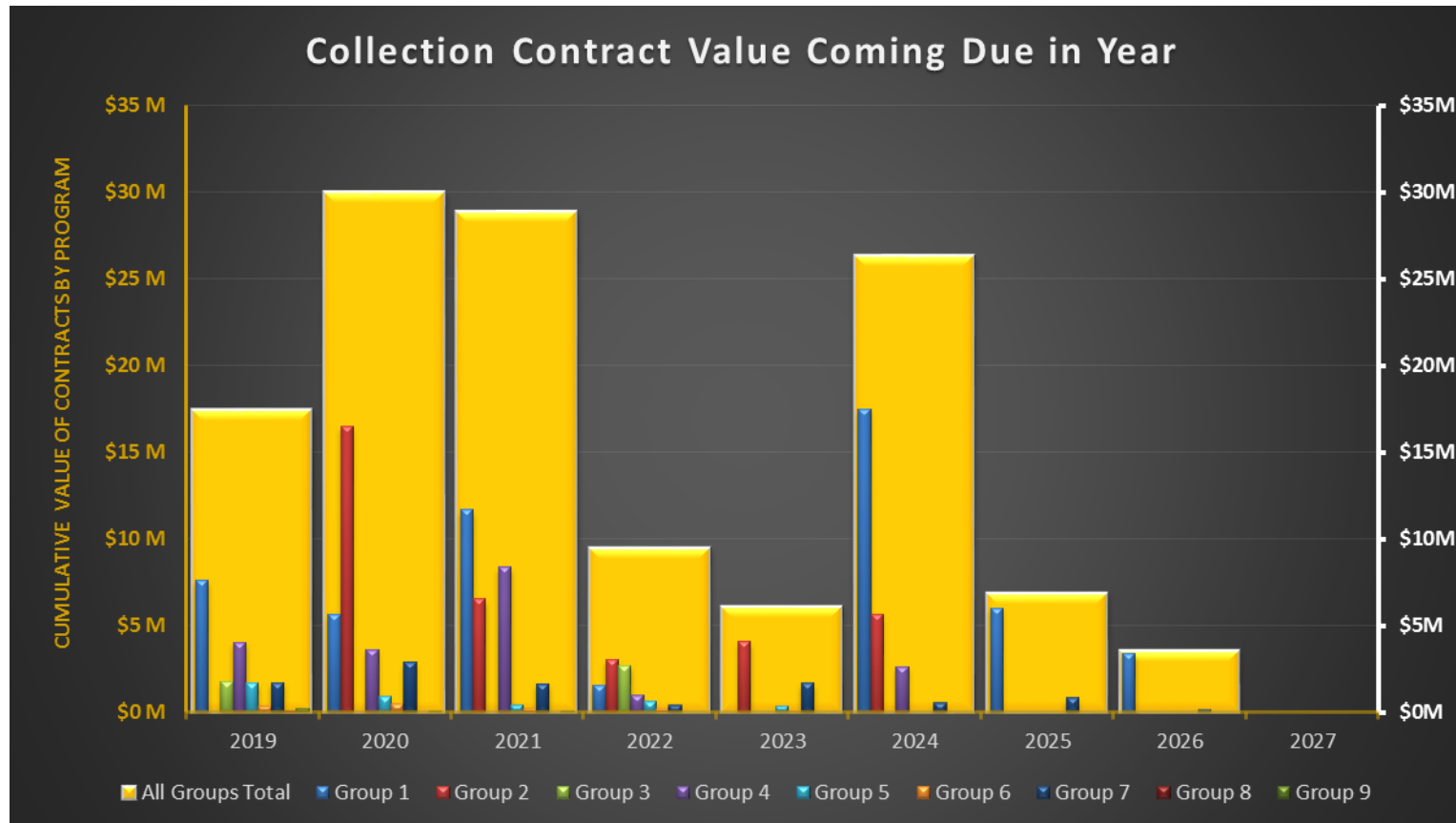
- Shows total number of contracts as at 2019
  - 41 contracts expire in 2019
  - 57 contracts expire in 2020
- Contracts reported expiring before year end 2018 not included in total
- 2019 & many 2020 contracts will have been renegotiated or extended by now
  - New terms & expiry dates

# Value of Contracts Due in Fiscal Year



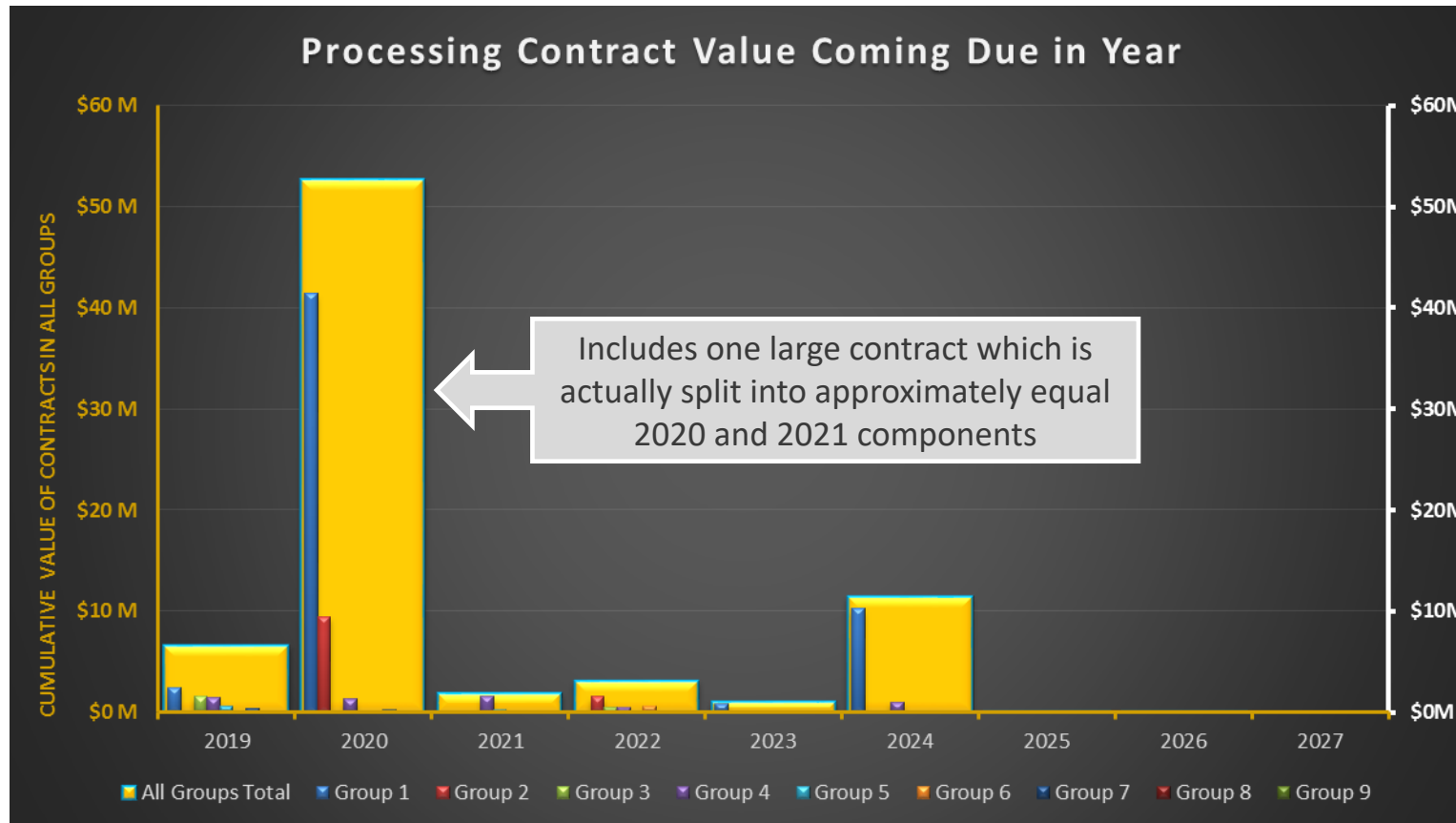
- 2020 & 2021 difference less pronounced than shown
  - Due to 2 large contracts reported as expiring in 2020
  - One of which actually expires in 2021
- Most 2019 contracts & some 2020 contracts will have been renegotiated by now with new terms & expiry dates

# Collection Contract Value by Year



- Next 3 years will have significant action on collection contracts
- In 2018 - significant number of contracts with 2018 & 2019 end were extended to 2020
  - Anticipation of transition
  - Esp. Group 2
- Underscores importance of keeping terms that allow for change of law & responsible party

# Processing Contract Value by Year

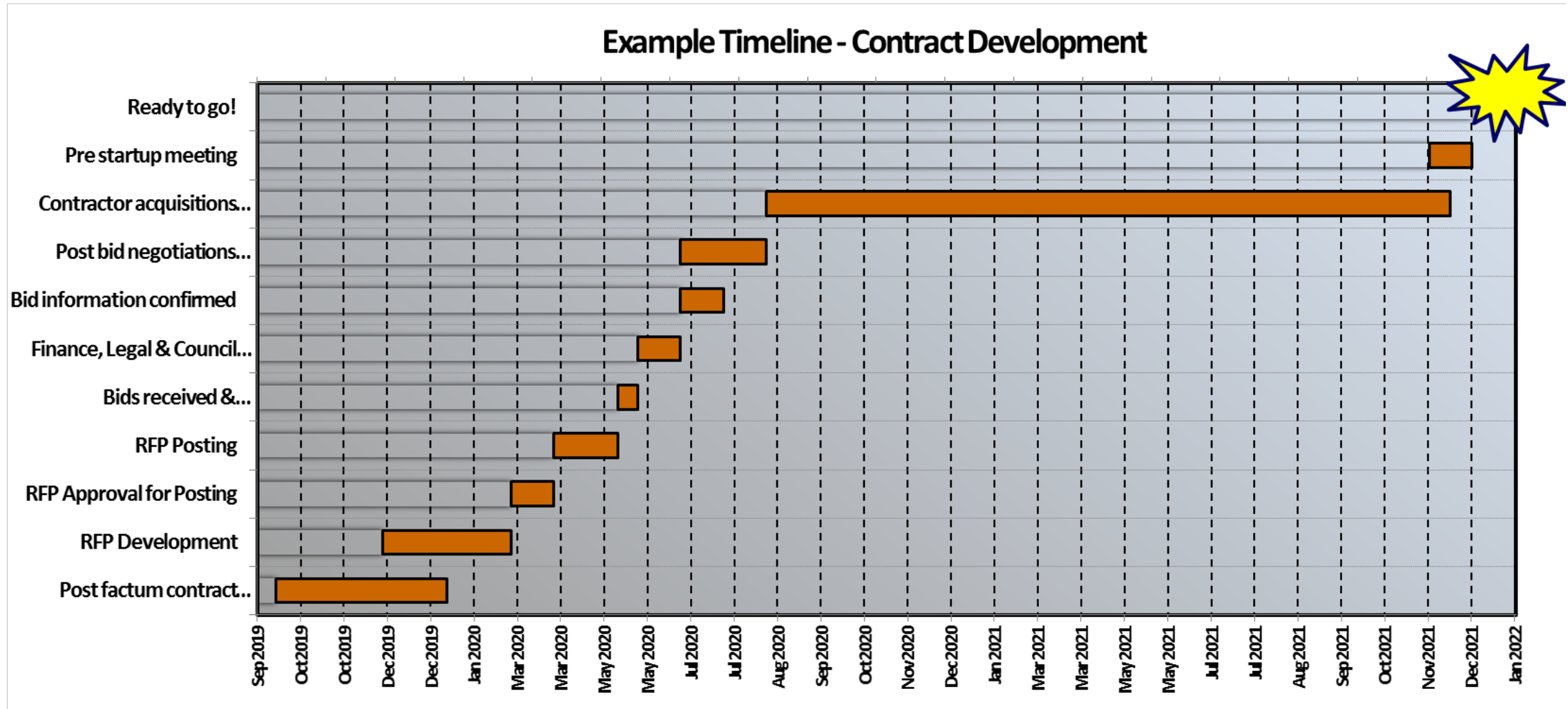


- Significant processing contract renewal in 2019, 2020 & 2021
  - See note on chart
- Renewing these in anticipated transition timeline will require
  - Shorter term than optimal contracts or
  - Expensive extensions of existing contracts

## Example - Collection Contract Renewal

- Most useful approach – think backwards from success
- Key steps:
  1. Trucks on the street
  2. Pre start-up meeting & final negotiations (hopefully minor items only!)
  3. Contractor completed required acquisitions & hiring of key staff
  4. Post bid negotiations with contractor
  5. Contractor's bid information confirmed including required Letters of Credit & Bonds
  6. Finance, Legal & Council agree to contractor selection
  7. Bids received & preferred contractor selected
  8. RFP posted
  9. RFP approved by required committees, legal, purchasing...
  10. RFP written (preferably in concert with legal, purchasing, etc.)
  11. Post factum analysis of current contract noting areas for improvement

# Collection Contract Renewal – Time Chart







# **Learnings from the City of Cornwall's Contract Development & Transition Project (CIF #1075)**

## **How We Survived the "Perfect Storm"**

Danielle Watson

Waste Management Supervisor, City of Cornwall



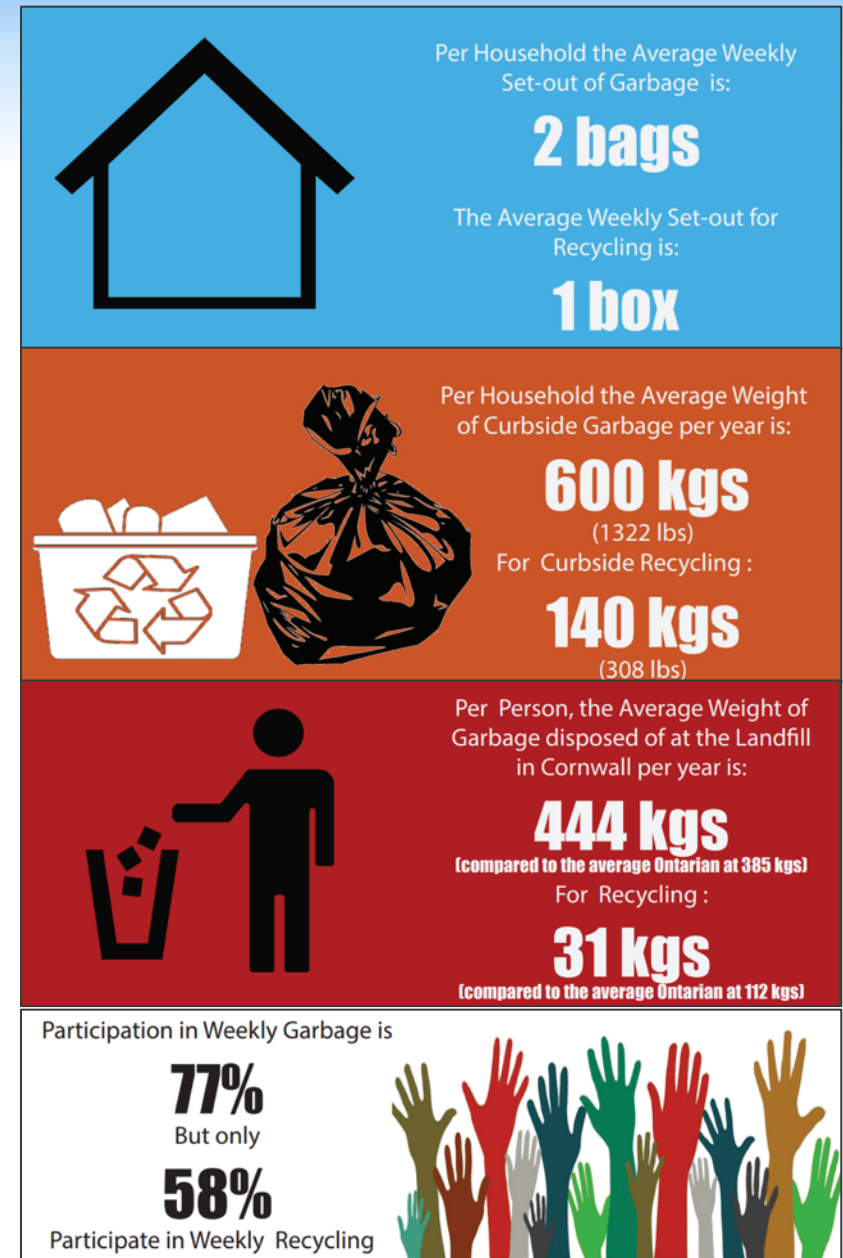
# Project Highlights

- Project goal: develop a contract during time of uncertainty that would facilitate program development & transition, if necessary
- Impacts:
  - New 7 year contract focused on increasing waste diversion
  - Better contract language
- Other impacts:
  - Cost based on per stop rather than per tonne
  - Greater emphasis on material marketing to enhance revenues
- More information: [dwatson@cornwall.ca](mailto:dwatson@cornwall.ca) | [cornwall.ca](http://cornwall.ca)



# The City of Cornwall - 30% Diversion Rate

- Population: 47,000
  - 23,000 hhlds
  - 1,000+ IC&I locations
- Curbside
  - 13,000 MT of garbage collected annually
  - 3,000 MT of SS recycling collected annually
- MRF
  - City owned & used by 5 other municipalities from SD&G Counties
  - 4,500 MT of recycling processed & marketed annually



# Presentation Overview

1. Why this project?
2. Project steps
3. Challenges/quirks/unexpected issues
4. Findings/observations/predictions
5. Data: project costs & achievements
6. Key message & take-away
7. Is this approach a better or best practice?
8. Your best advice based on the project
9. Next steps
  - a. Continuous improvement





# Why this Project?

- City's last RFP for garbage & recycling collection & recycling processing was developed & issued in 2010
  - Ran until March 2019
- Due to rising costs & old contract language the City decided to create a new 7 year contract
  - This new contract would:
    - Focus more on diversion & revenue generation
    - Invest capital into new collection fleet & processing equipment at MRF
    - Contain stronger contract management language & liquidated damages
    - Contain transitional clauses to protect the City during periods of uncertainty



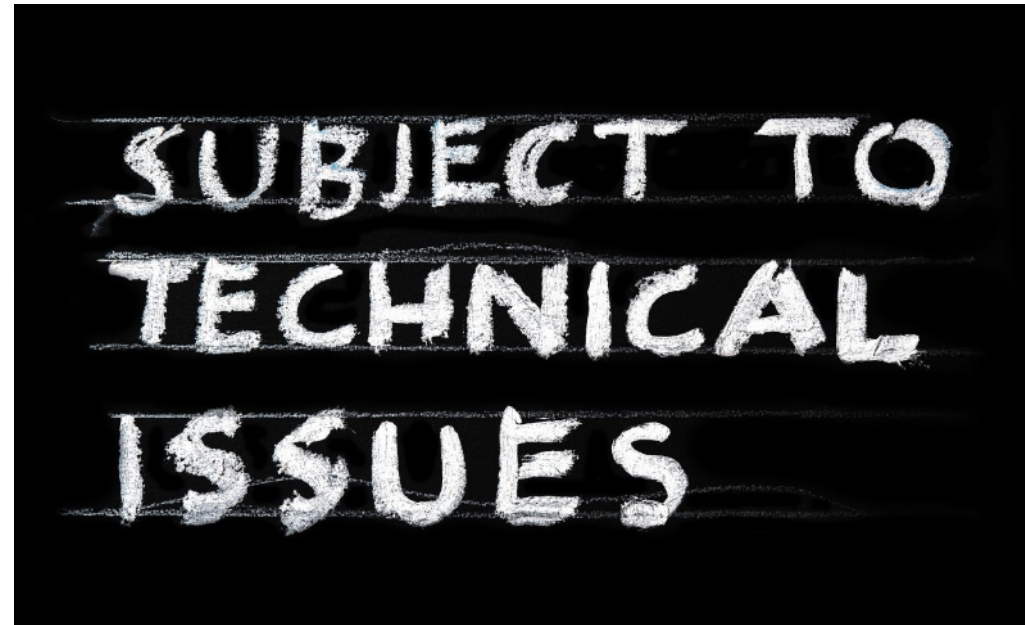
# Project Steps

1. Determine a need for a new contract (April 2018)
2. Begin developing a new RFP that included program changes (May-July 2018)
3. Work with CIF & stakeholders to improve contract language (September-October 2018)
4. Issue & evaluate RFP (November-December 2018)
5. Award RFP (January 2019)
6. Transition contract (April 1st 2019)
7. Monitor program progress under new contract (April-June 2019)



# Challenges/Unexpected Issues – What Created the “Perfect Storm”

- Tight timelines due to multiple stakeholder inputs (City’s largest contract)
- Media attention
- Council concerns
- Unionized existing contractor staff worries



# Findings/Observations/Predictions

- The RFP had 2 options
  - Option 1- As is operations
  - Option 2- Improved operations (diversion driven)
- Submissions were not similar in the bidding process
  - This suggested there was some competition in the process
- Historically the City has only received 2 bid submissions from local companies
  - This RFP process had significantly more interest from companies outside of Cornwall
  - We still only received 2 proposals
- Found there was more interest in bidding only on collection & not processing
  - The proponents were given the option to sort materials at another facility & use the City's MRF as a transfer station

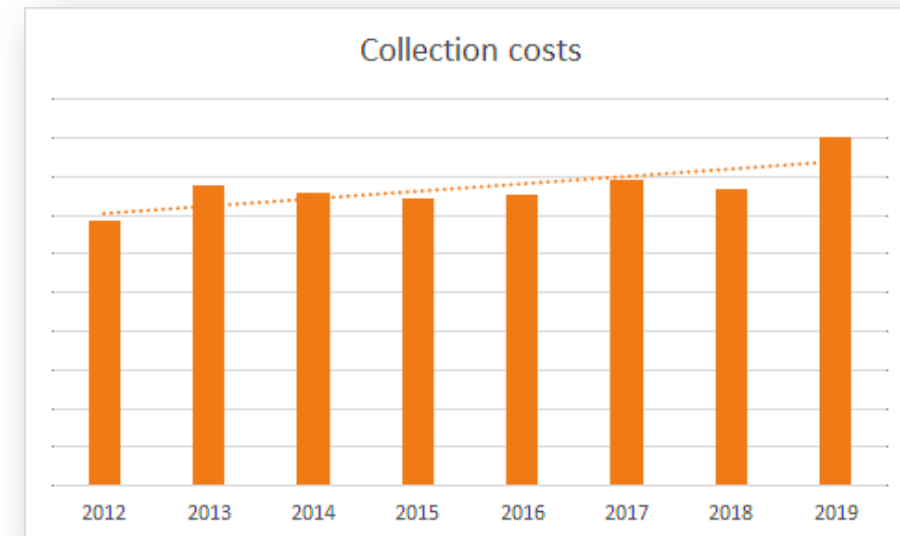
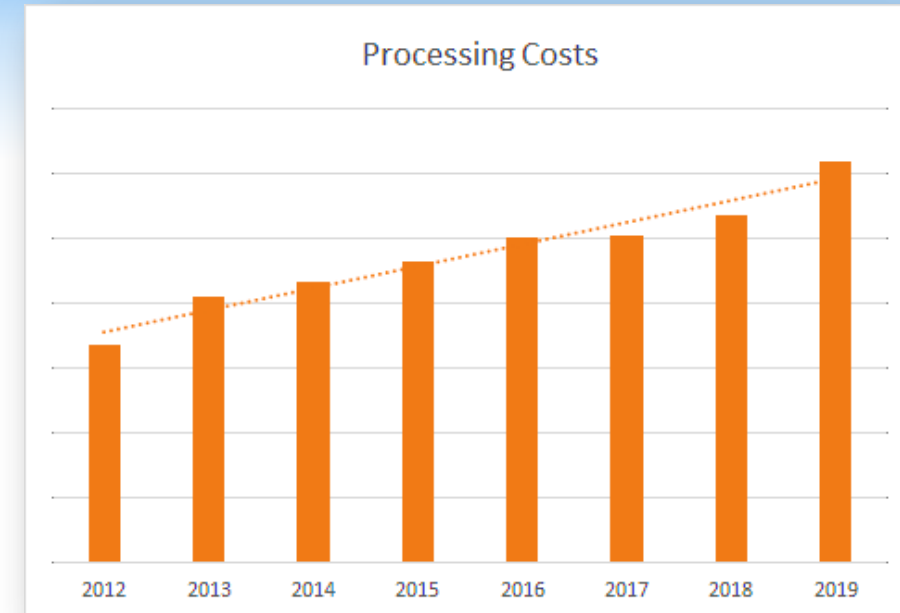




## Data – Costs

- Prior to this contract costs for:
  - Collection constantly fluctuating due to tonnage increases & decreases
  - Processing increasing substantially year over year due to old contract language
- On average based on submissions for the RFP:
  - Costs increase: 20%
  - Price per household Collection: \$80
  - Price per tonne Processing: \$275
- Early Termination costs:
  - non- negotiable

Year of Termination	Processing Cost	Collection Cost
2022- Year 3	\$1,200,000	\$1,000,000
2023- Year 4	\$1,000,000	\$800,000
2024- Year 5	\$700,000	\$600,000
2025- Year 6	\$500,000	\$400,000
2026- Year 7	\$200,000	\$200,000



# Data - Achievements

- New contract has achieved thus far:
  - 30% reduction in missed waste service requests
  - Customer service system improvements
  - Set out recordings
  - Collection efficiency (use of split back trucks)
- Since April 1st 2019 the City has achieved:
  - Surge of individuals looking for P&E materials
  - Increase in requests for educational presentations & tours
  - Release of 2 new videos (one for disposal & one for diversion)
  - More accurate accounts of calls & service requests
  - A dramatic increase in blue box bin sales



# Best Practices Applied

- New contract clauses inserted to prepare for potential transition
- Predetermined costs associated with transitioning with no-negotiation required
- Push for better practices & systematic changes from contractors using
  - Better contract language
  - Appropriate liquidated damages
  - Their involvement in public outreach & advertising



# Advice

- Allow yourself more than 6 months to create a contract & allow bidders 5-6 weeks to submit proposals
- Consider the political atmosphere & educate Councilors before bringing a new contract to the table
- Plan for ramifications & the need for public relations prior to contract change
- Consider market & policy changes & how your municipality plans to address them
  - Factor any potential changes & how your municipality plans to address them into your points evaluation – “what is most important to your municipality, e.g. investment in processing”
  - Factor the costs of the termination clause into your RFP evaluation



## Next Steps

- As we are only 1 month in the City of Cornwall shall:
  - Continue to monitor contract implementation & administration
  - Continue to monitor program & contractor performance
    - contamination, recovery & residual rates at MRF
    - customer service using combined system
    - diversion rate
    - revenues from materials
  - Continue to monitor & prepare (City/Contractor) for the potential of transition:
    - have a better understanding of our current system costs & options under transition & their potential impact on the City



# Contracting Services in Changing & Uncertain Times

Mike Birett  
Managing Director, CIF

# Contract Term

- Focus on existing needs
- Align base term with 2024 where possible
- Use optional extensions to achieve full term
- Negotiate longer terms in exchange for tangible benefits
- Inclusion of early termination pricing is strongly recommended





# Key Collection Contract Considerations

- Know your stop/unit counts
- Secure separate pricing for various activities
- Consider growth and density clauses
- Consider the material mix on split-body trucks





# Inbound Composition is The Issue to Watch

- Successful contracts establish a common understanding of:
  - Accepted materials
  - Unsolicited contamination
  - Material quality
  - Moisture...maybe



# Successful Contracts Manage Inbound Quality & Change

- Active enforcement of:
  - Curbside contamination
  - Cross contamination
- Ensure there are agreed to:
  - Auditing protocol(s)
  - Revenue compensation model(s)
  - Change management & dispute resolution clauses





# Processing Considerations Post China Sword

- Pay to inbound vs. outbound tonnage?
- Who should do the marketing?
- What's the best marketing strategy?
- Who gets the revenue?



# Inbound vs. Outbound

## Processing Payment System

Contractor retains 100% of revenue

Outbound

- Requires regular monitoring of inbound composition
- Contractor typically does the marketing
- Contamination increase - contractor will seek compensation for lost revenue & recovery

# The Better Practice

- Assess risk vs. reward
- Compensation for risk outside the contractor's control
- Key factors when determining who should do marketing:
  - Market clout
  - Administrative costs & knowledge
  - Marketing restrictions





# Contingency Planning

- Transitioning mid-contract
  - Consider your municipality's negotiating style
  - Build appropriate transitional clauses into your contracts
- Contractor failure
  - Ensure you have adequate & verified financial assurances
  - Update contingency & communication plan(s)



# RFPS AND CONTRACTS TRANSITION CLAUSES

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May 16, 2019

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# Outline

- Early Contract Termination Clauses
- Assignment of Contract Clauses
- Force Majeure Clauses
- Change of Law Clauses
- Change Management Clauses
- Arbitration and Termination Clauses

# Early Contract Termination Clauses

- Ability to cancel existing contracts prior to the expiration date
- Allows for fixing of cancellation costs up front
- Consider requiring bidders to submit, as part of their bid price, a cost to cancel the contract at fixed intervals (e.g. 2yr. 3yr. 5yr. of a 7yr. total contract term)

Note:

- Termination clause must be exercised in good faith

# Assignment of Contract Clauses

- Allows for the assignment of existing contracts to a producer organization or other third party prior to the expiration date
- Provides discretion to assign the contract without seeking permission from the contractor

# *Force Majeure Clauses*

- Relieves the parties of their obligations in the event of significant unforeseen circumstances, such as change in legislation
- Once a declaration of force majeure is made, the parties will attempt to negotiate the financial changes necessary to continue under the contract and failing an agreement, terminate the contract

# Change of Law Clauses

- Deals with forced compliance situations that fall short of force majeure trigger events
- Manages changes in legislation that create significant contract impacts
- Establishes mechanisms to negotiate changes and follow dispute resolution options



# Change Management Clauses

- Provides mechanisms to submit, substantiate and negotiate unanticipated changes
- Allows either party to formally submit a request to change the scope of work/services delivered at any time prior to the expiry date of the contract
- Allows for negotiation and dispute resolution concerning changes in the scope of work/services delivered

# Arbitration and Termination Clauses

- Provide mechanisms to resolve serious disputes outside the court system in a timely manner
- May include specific events which may result in immediate termination for cause
- Designed to avoid litigation
- Clauses are important to avoid litigation which can be costly to all parties

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# Questions?



CONTINUOUS  
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# Morning Wrap-up





Enjoy your Lunch!



We'll Be Starting Up Again Soon...



# Welcome Back!



## Afternoon Agenda

- Special Guest Speaker Mandy Galusha, Lush Cosmetics, Inc.
- Data matters: Managing Data to Improve Decision Making for Today & Tomorrow
- Afternoon Break
- Responding To Changing Market Conditions
- Summary & Concluding Remarks