

Memorandum

To: Mr. Steve Shiver, County Manager

Received by

Date

From: Christopher Mazzella, Inspector General

Date: January 7, 2003

Re: Proposed contract extensions and amendments between Miami-Dade Department of Solid Waste Management and Montenay-Dade, Ltd. and Waste Management, Inc.

On December 10, 2002, Office of the Inspector General (OIG) representatives were in attendance at a meeting called to discuss proposed contract extensions/amendments between the Miami-Dade County Department of Solid Waste Management (DSWM) and its agreements with Montenay-Dade, Ltd. (Montenay) and Waste Management, Inc. (WMI). Present were county officials from the County Manager's Office, DSWM, and company officials and lobbyists representing Montenay and WMI.

It was stressed by county management that DSWM and Miami-Dade County as a whole needed to embrace a plan to confront the County's long-term solid waste disposal needs. It was emphasized that the County's disposal strategy must continue to promote recycling efforts, as well as decrease utilization and reliance on county-owned landfills. To this end, it was encouraged that DSWM seek long term solutions with its current partners, Montenay and WMI.

Several contractual items were discussed among all the parties and it was agreed that once finalized both DSWM's contract amendment with Montenay and DSWM's contract amendment with WMI would be placed on the Board of County Commissioners (BCC) agenda simultaneously. It was stressed that this work should be completed as soon as possible to be placed on the BCC agenda for January 2003. The OIG was asked to review final drafts of both proposed agreements.

We have now reviewed both final draft versions, which were also forwarded to DSWM's financial advisors, Public Financial Management (PFM), for review and analysis. As of this date, PFM has only returned a draft review of the proposed WMI Contract Amendment. Set forth below is the OIG's analysis of each proposed amendment:

Proposed Second Amended and Restated Agreement Between Miami-Dade County and Waste Management Inc. for Provision of Municipal Solid Waste Disposal Services.

We reviewed the proposed amendment, current term sheet, PFM's draft response dated December 26, 2002 and attached schedules, as well as the previously proposed Second Amendment including PFM's draft review and response dated May 14, 2002.

Of significance, the OIG observes and notes that:

- The term of the contract is extended 10 years from 2015 to 2025.
- WMI's garbage guarantee delivered to the Resource Recovery Facility (RRF) (i.e. WMI's guarantee to the County) is reduced by 50%, from 91,000 to 45,500 tons annually.
 - This reduction will adversely affect the County's tonnage guarantee to be delivered to the RRF with respect to our agreement with Montenay. (The County is currently guaranteed to deliver 936,000 tons to the RRF. By the terms of the proposed agreement with Montenay, to be discussed below, the County's guarantee increases by 100,000 tons. The operation of these two concessions creates a 145,500 ton annual gap that DSWM must now need to cover.
 - More significantly, compared to present contract terms (91,000 tons per year to 2015), the reduction of tonnage guarantee even with the benefit of a ten-year extension will reduce net guaranteed tonnage by 227,500 tons, thereby reducing net guaranteed revenue by \$1,656,709.
- In lay terms, Waste Management gets an additional ten years on this agreement and the County will lose money in the long term. Understandably, any agreement which reduces guaranteed tonnage reduces revenue in the short-term. However, it should be the goal to negotiate extensions that offset short-term reductions with net long-term revenue generation and operational stability. Under this proposal, DSWM will experience graduated annual reductions of guaranteed revenue from approximately \$2.2 million to \$3.3 million dollars annually (from 2002 – 2015 the current expiration) and by 2025 (the new proposed expiration) DSWM will have been guaranteed \$1.6 million less revenue from its contract with WMI.

- In exchange, WMI proposes to increase overall disposal capacity at its landfills to DWSM by one million tons annually. Currently, DWSM is afforded 500,000 tons of disposal capacity by WMI at two of its landfills. The current and proposed terms are broken down below.

	Current to 2015	Proposed to 2025
Medley Landfill	250,000 tons	500,000 tons
Central Landfill	250,000 tons	500,000 tons
Okeechobee Landfill	0	500,000 tons
Total	500,000 tons	1,500,500 tons

As explained during the December 10, 2002 meeting, the goal is to shift landfill utilization from county-owned landfills (thereby preserving the remaining capacity at the county facilities) to disposal at privately-owned facilities, preferably landfills located outside of Miami-Dade County.

While the disposal rates remain relatively unchanged up to 250,000 tons, the County will be paying more for disposal at higher volume. On its face this premium charge is counter-intuitive as it is the reverse of volume discounting. The chart below breaks down the new disposal fees charged by WMI.

Tonnage	Current Disposal Fees	Proposed Disposal Rates	Difference
1 - 100,000	\$26.70	\$26.50	\$ 0.20 savings
101,000 - 120,000	\$21.80	\$21.60	\$ 0.20 savings
121,000 - 140,000	\$20.71	\$20.51	\$ 0.20 savings
141,000 - 250,000	\$26.16	\$25.96	\$ 0.20 savings
251,000 - 500,000	\$26.16 price remains unchanged from 140,000 to 500,000	\$32.00	\$5.84 increase
500,000 - 1,500,000	Capacity unavailable under current contract terms	\$32.00	

Under the new proposal, capacity at the Medley landfill is limited to 500,000 tons. Should disposal at the Medley landfill become unavailable, DWSM may dispose of waste at the alternate landfills. While the agreement extends discounts of \$1.00 and \$3.00 for disposal at the Central and Okeechobee landfills, respectively, the discount is applied to the “applicable Disposal Fee at the Landfill [Medley], had that facility been available to accept waste.” In other words, once DWSM has disposed of over 250,000 tons of waste at Medley, disposal at any other landfill would be at the \$32.00 per ton price less applicable discount.

Again, the OIG is troubled by these contract terms, which effectually makes landfilling at a privately-owned facility a more expensive alternative. While it is understood and agreed that conserving the county landfills has both merit and economic value, this value has not been quantified. Additionally, the cost of increasing disposal tonnage above current levels, thus shifting disposal away from county facilities, should be analyzed. The \$0.20 /per ton savings up to 250,000 tons (\$50,000) is relatively insignificant compared to the decreased revenues that will result from the reduced tonnage requirements by WMI.

- Of additional importance is PFM's analysis. PFM in its summary of results states:
 - "The County has no compelling reason to reduce revenue commitments from a private entity in return for an extension to a contract that does not currently expire until 2015;"
 - "WMI's proposal would further reduce revenue to the County in the short-term, and would lower the County's projected debt service coverage levels below 120% in 2003 and 2005;¹" (emphasis added)
 - The proposed amendment from WMI offers the County no economic benefit over the life of the contract."

Overall, in reference to the WMI amendment, the OIG is very concerned and questions the economic judgment of the County for negotiating such a disadvantageous agreement.

Proposed Second Amendment to Third Amended and Restated Operations and Management Agreement Between Miami-Dade County and Montenay-Dade, LTD.

We reviewed the proposed amendment, current term sheet, and an evaluation of Montenay's previous proposals for a trash alternatives amendment prepared by ES Consultants, dated August 2002, on behalf of DSWM.

At present, the financial advisors, PFM, have not returned a response to the proposed Montenay amendment. According to a memo dated December 30, 2002, PFM requires additional time to fully review the Montenay agreement, as it is a "complex and significant proposal" which contains a 20-year extension. The OIG concurs with PFM when it declares that this is "really a big deal."

¹ These summary results are virtually the same results reached by PFM in its review of the previously proposed amendment. Except that in the prior proposal, WMI's guaranteed tonnage was reduced from 91,000 to 66,000 tons and PFM concluded that the reduction would not only reduce revenue but also "lowers the County's debt service coverage levels very close to its 120% limit." The revised tonnage reduction in the present proposal (45,500 tons) is worse off for the County than in the previous proposal, and now puts DSWM's debt service coverage in jeopardy.

Of significance, the OIG observes and notes that:

- The amendment offers a 20-year extension of the contract, from 2013 to 2033.
- The amendment allows Montenay to build and operate an administration building on the facility premises. Montenay will provide the County with 4,200 square feet of space, but not furnished or equipped for any communications networks.
- The amendment increases the County's Annual On-Site Waste Guaranteed Tonnage by over 10%. Currently the tonnage guarantee is 936,000 tons. The proposal increases the guarantee by 100,000 tons to 1,036,000 tons.
 - The new guarantee is drafted in a manner that unilaterally allows Montenay to invoke the new tonnage guarantee amount. However, from previous proposals it is evident that Montenay wants to avoid processing more trash (as opposed to garbage). In light of decreased guarantees of garbage commitments from third parties (i.e. WMI 91,000 to 45,5000 tons and recent modifications to the County's agreement with BFI), the County may be hard pressed to meet the new tonnage guarantee with garbage. Instead, the additional tonnage, if required, will likely be met with on-site trash. Adding to this complexity is the fact that Montenay's corresponding Annual On-Site Waste Processing Guarantee remains unchanged at 936,000 tons. This means that the County may have to deliver more on-site waste than the company is required to process. This makes absolutely no sense.
- The amendment does not offer any solutions to the "trash" and "trash by-products" dilemma that were the focal point of Montenay's previous proposals to the County. One such by-product, Fines, has been a point of much discussion as the question arises on what to do with it. At present, there is approximately over 150,000 tons of Fines material stockpiled at the County's South Dade Landfill where it is used as daily cover material. Under the proposed agreement, Montenay may give and deliver up to 50,000 tons of Fines per year to the County. After 50,000 tons, the County will accept Fines from Montenay but at a charge of \$12.00 per ton. It is evident from these terms that no one knows what to do with this material other than to use it for daily cover material. The amount needed annually for cover material may not absorb the amount of Fines annually produced. Additionally, it is the OIG's understanding that "unders" another by-product of the RRF waste stream is used as landfill cover material. Should both Fines and unders be used as cover material, DSWM may find itself in a situation where material exceeds demand thereby resulting in a continual stockpiling situation.
- The proposed amendment also addresses ash hauling. The OIG questions the inclusion of a 6.5% management fee in addition to a "per ton" hauling fee.

Regardless of whether Montenay uses a third party contractor to haul ash from the facility to the facility's ash fill, the fee paid by the County should be inclusive and reasonable.

Overall, in reference to the Montenay amendment, the OIG questions what benefit is received by the County for this twenty-year agreement, other than 4,200 square feet of build-out office space. Hopefully, PFM will provide its financial analysis with this question also in mind.

After our review of these two proposed agreements, the OIG believes that sending these contract extensions to the BCC prior to full review by PFM would not only be inadvisable but also fiscally irresponsible. The OIG can see no reason why these agreements must be placed on the January 23, 2002 agenda for Board approval.

Additionally, the OIG requests that our office is notified of any additional scheduled meetings to discuss these amendments. Specifically, we request to be included in the upcoming conference call with PFM to discuss the scope of the Montenay contract review. It is requested that future notifications be addressed to Ms. Patra Liu, Assistant Inspector General/Legal Counsel.

Furthermore, it is suggested that the County seek an expanded review by PFM of the WMI amendment, which would financially analyze shifting a portion of current disposal at county-owned landfills to WMI's landfills at the proposed new disposal prices and analyze the value of conserving our county landfill capacity.

cc: Mr. Pedro Hernandez, Assistant County Manager
Mr. Andrew Wilfork, Director, Department of Solid Waste Management
Ms. Rachel Baum, Director, Finance Department
Mr. Robert Ginsburg, County Attorney
Mr. Eric McAndrew, Chief Legislative Analyst, Board of County Commissioners

Clerk of the Board (copy filed)