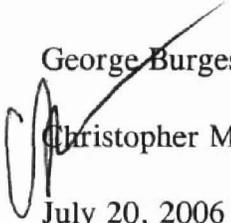




Memorandum

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To: George Burgess, County Manager

From:  Christopher Mazzella, Inspector General

Date: July 20, 2006

Subject: **Update on the OIG's Review Regarding the Proposed Resolution Authorizing Execution of a Lease Agreement Between Miami-Dade County and Sermar USA, LLC, to Establish, Maintain and Operate Bulk Cement Operation at the Port of Miami (Agenda Item 4C, CEERC meeting, March 14, 2006)**

On March 14, 2006, the Miami-Dade County Board of County Commissioners' (BCC) Community Empowerment & Economic Revitalization Committee (CEERC) voted unanimously to approve the forwarding of a proposed 25-year lease agreement between Miami-Dade County and SERMAR USA, LLC (Sermar) to establish, maintain and operate a bulk cement operation at the Port of Miami (Port) to the full BCC for its review and approval.

During the CEERC hearing on the proposed 25-year lease, the former Seaport Director made several statements regarding the "due diligence" performed by Seaport staff with respect to Sermar's proposal and as to what was represented by Sermar. The former Seaport Director further stated that staff was satisfied that the proposal, as represented by Sermar, would not create an undue burden on operations at the Port. However, it was also stated that there were some remaining issues with the other Port operators as to roadway access.

While the proposed lease was unanimously approved by the CEERC, the Office of the Inspector General (OIG) had its own questions regarding the substance of the due diligence review and the process in which this proposal and the resulting negotiations manifested. This was especially relevant as a representative from another cement firm expressed that his company had been turned away when attempting to propose a bulk cement operation at the Port of Miami. Consequently, the OIG had asked that this item be deferred until we completed a thorough review.

On March 15, 2006, the OIG, by memorandum requested the Seaport to provide information regarding the chronology of events resulting in the proposed lease agreement and information regarding the due diligence performed by Seaport staff. By

way of a binder of materials received from the Seaport on March 24, 2006, it was readily apparent to the OIG that a due diligence, in the traditional sense, was not performed. What was forwarded to the OIG as the Seaport's review of the company and its principals was meager and, apparently, not initiated until after receipt of the OIG request for information.

Thereafter, the OIG initiated its own due diligence review of the company and its proposal. We advised the Mayor and BCC by memorandum on March 30, 2006 that the OIG provided each principal of Sermar with a "Due Diligence Questionnaire" and we asked that the BCC postpone any consideration of the proposed lease until the OIG had an opportunity to complete a more thorough due diligence review. Under separate cover, a Due Diligence Questionnaire comprised of thirty-two (32) questions was sent to each of the two Sermar principals.

The County Manager issued a memorandum on April 3, 2006 to both the Seaport Director and the Assistant County Manager over the Seaport. This memorandum advised them that the County Manager still had some questions that remained unanswered and that he concurred with the OIG's request that this item not be placed on the BCC's agenda until his concerns were addressed and the OIG had completed its due diligence.

The principals of Sermar provided their responses to the Due Diligence Questionnaire back to the OIG on April 21, 2006. We have reviewed their responses and the process through which this project went forward for County approval. In this regard, the OIG has interviewed numerous individuals in association with these events. We have also visited other bulk cement operations, including a dome storage facility, which is the type of facility being proposed here at the Port of Miami.

Based on our review, we strongly believe that the depth of the due diligence undertaken by the Seaport was inadequate. There remain concerns about the environmental impacts to the surrounding area and how this cargo operation would adversely affect what is already a congested roadway. The OIG also has concerns about certain terms of the agreement and the lack of consideration of other potential parties offering proposals for utilizing the identified County property. Lastly, other OIG concerns emanate from some of the detail gathered from the responses to the OIG's questionnaire. These relate to Sermar's lack of experience in bulk cargo shipping and the process and manner in which Sermar's principals lobbied County staff and County officials on the proposed lease agreement.

These concerns are addressed in further detail in the pages that follow.

ISSUES AND CONCERNS REGARDING SERMAR'S PROPOSED BULK CEMENT OPERATION AT THE PORT OF MIAMI

Enumerated below and discussed in further detail are several of the OIG's concerns resulting from our review, to date, of the questionnaire responses, information gathered from site visits, interviews with various individuals relating to the proposed agreement, and other related research.

1. OIG Site Visits

The OIG visited bulk cement shipping operations at Port Everglades, Florida and the Port of Charleston, South Carolina. While Port Everglades does not utilize a dome storage facility as is being proposed at the Port of Miami, it does utilize several silos to store the powdered cement. The OIG visited one of the larger cement facilities and observed the unloading of the cargo from the vessel and the subsequent loading of the cement from the storage facility into the trucks. The other bulk shipping cement operation reviewed by the OIG was at the Port of Charleston. This operation utilizes a dome storage facility. At the Port of Charleston, OIG personnel also observed the unloading of cement from the cargo vessel as well as the loading of cement trucks from the dome storage facility. At each port, the OIG took video and still photos of the storage facilities, unloading and loading operations and the trucking processes. These materials are available for County staff to review.

In comparison, Seaport staff had visited a cement terminal in Cleveland, Ohio, when it was still considering a Brazilian company's (Cimento Tupi Florida, LLC) bulk cement proposal. We were advised that the Seaport chose to visit the Cleveland facility because the same Brazilian company seeking to do business at the Port of Miami operated it, and that its barge-type operations would be similar to the operations proposed at the Port of Miami. According to the Seaport, this was not a dome-type facility. The OIG was advised that no other bulk cement facilities had been visited in connection with the operation proposed by Sermar.

A. Cement Dust and Its Impacts to Surrounding Areas

At both places, OIG personnel were told that cement dust is an on-going problem. To be clear, the primary cause of the cement dust clouds occur when the ship's cargo hatches are opened and the powdered cement is unloaded. A secondary cause of cement dust clouds occurs when the cement trucks are being loaded at the facility. These situations occur regardless of the type of storage facility utilized, i.e., dome or silo, because, as noted above, the overwhelming dust problem occurs during the ship unloading process. The extraction of the cement from the ship's cargo holds is not a sealed process. It should also be

noted that ordinarily ships unload at all hours of the day, weather permitting. Obviously, in the case of powdered cement, the ship's cargo holds must be closed whenever it is raining. However, we did not find any conditions in the proposed lease agreement that would allow the Port to restrict the loading and unloading operations when windy conditions exacerbate the cement dust problems. We acknowledge that much of the environmental concerns will be addressed via the environmental permitting process. However, what may be environmental criteria according to a permitting process does not necessarily address the reality of the operations.

For example, in Port Everglades surely the cement terminal lessees who have been operating there for several years have the required environmental permits. Regardless of the permits, OIG personnel were advised by one of the larger operators that cement dust has affected and continues to impact the surrounding areas. It has caused problems to nearby gantry cranes, requiring maintenance to and repainting of the cranes. Cement dust also continues to affect cars parked in the vicinity, as well as a nearby condominium high-rise, which necessitated the cleaning of the condominium's windows.

At the Port of Charleston, the operator advised the OIG representative that visited the facility that cement dust affects a nearby marina and the boats docked there. Boats have required cleaning and repairs due to the dust.

Port Everglades and the Port of Charleston are in industrial areas unlike the Port of Miami, which has both residential and retail areas nearby, such as Bayside Marketplace, various Biscayne Boulevard condominiums, the American Airlines Arena, Fisher Island homes and condominiums, and homes on Palm Island and Hibiscus Island. Thus, the possible impact of the cement dust blowing over onto the nearby residential and retail areas is significantly greater at the Port of Miami.

B. Road Traffic Impact Due to Cement Trucks

At Port Everglades and the Port of Charleston, we observed significant vehicle traffic due to the numerous cement trucks lined up waiting to load the powdered cement. The one facility that the OIG visited at Port Everglades loads approximately 250 trucks per day, six days per week, with two truck-loading bays. According to the operator, there are normally 30 to 50 cement trucks waiting in line to load. Since there is a limited staging area, this line of trucks overflows out onto the public roadway. At the Charleston cement facility, approximately 120 trucks are loaded each day from three truck bays. We observed that only five to six trucks were waiting in each line. However, we

were also advised that the majority of this operation's transport of unloaded cement cargo is via railcar and, thus, truck traffic is significantly less than at a terminal that does not have rail transport for bulk cargo. Additionally, even with dome storage and the reduced number of trucks, the Charleston operation also utilizes a large water truck that sprays water on the roads and loading areas every few hours to wash down the cement dust.

With respect to the Port of Miami, it has limited roadways that are already heavily traveled with cargo container trucks, cruise ship traffic and other port-related traffic, including construction traffic. Moreover, this traffic travels through the Miami downtown area to get to and from the major thoroughfares. Therefore, potentially adding another 100 to 250 cement trucks per day, with a very limited staging area, will adversely impact what are already routinely congested roadways to and from the Port.

2. **The Seaport's Lack of Consideration to Other Potentially Interested Parties Begs the Question of Whether Sermar's Proposal is Truly the Highest and Best Use of This Parcel of Land at the Port of Miami.**

The Seaport Department did not go out for competitive bids for a bulk cement operation at the Port of Miami, or for any other bulk cargo operation. When asked about the procurement process at the CEERC hearing, the former Seaport Director indicated that state statute allowed seaports and airports to by-pass the competitive process and negotiate directly with potential lessees due to the complex rate structures involved and the general recognition that seaports and airports are economic engines of the region. Furthermore, it was explained that other seaports historically and typically do not competitively bid their leases. When Commissioner Sorenson pointed out that the County does not operate this way at the Miami International Airport, the County Attorney explained that the Florida State statute allows the Seaport to negotiate without a competitive process but does not require that the Seaport do so.

A representative from another cement company (Rinker) spoke at the CEERC hearing. He stated that his company had pursued putting bulk cargo through the Port of Miami for the past few years but was repeatedly told that bulk cargo was not the highest and best use for limited port property, and the company was turned away. The company was surprised to find out that bulk has now become the highest and best use at the Port. The representative was also concerned that under the proposed agreement, Sermar can tie up the property in question for two years while trying to obtain the necessary environmental permits for cement when there are potentially other cargoes that have a higher revenue stream for the Port.

The OIG understands that seaports are not bound by competitive bidding requirements, but we are concerned that the Seaport Department did not—at a minimum—solicit information from the shipping community to find out if there might have been other uses for the land in question. The Department could have advertised the location, size and features (such as the depth of the water at the ship’s berth) of the Port property in question through a Request for Information (RFI) published in major publications and trade magazines. This would have, at least, provided the Seaport, the County Manager’s Office, and the BCC with information related to other potential highest and best uses of the limited property to evaluate other types of revenue streams. Through a RFI process, the Seaport Department could have received input from the whole spectrum of the shipping industry—not just bulk cargo—to assess possible uses of the parcel of land, which in an environmentally sensitive area, makes better sense.

Furthermore, should a RFI result in an assessment that only bulk cargo operators showed interest in that parcel, the Seaport, we believe, would have fared better by utilizing a Request for Proposal (RFP) process to evaluate the experience of bulk cargo companies and the proposed types of bulk cargo to move through the Port and, thus, the possible revenue streams in conjunction with the proposed lease payment for the parcel in question. The OIG cannot understand how a determination can be made of “highest and best use” without some type of evaluative process as described above.

3. The Proposed Agreement Has Some Terms And Conditions That May Create Concerns Or Problems In The Future.

A. Possibility of Other Cargo

The definition of “bulk cement products” in Article 1 also includes “any other product as may be duly approved by the Port Director...” Article 5 also suggests that other products (other than cement) may be brought into the Port with language stating that “in the event that SERMAR’s operation involves a permitted product, other than a Bulk Cement Product...” This allows essentially any other product to be brought into the facility requiring only the approval of the Seaport Director. As this lease agreement is being tendered to the BCC for approval for the operation of bulk cement cargo, modifications to the type of cargo operation being carried out on County property should also require BCC approval.

B. Unilateral Contract Term Extensions by Lessee

While the agreement is proposed as a 10-year lease, it contains three 5-year extensions that may be unilaterally exercised by the lessee, therefore, making this, in essence, a 25-year lease.

Once Sermar obtains the environmental permits, the extended term of the agreement begins to run, which lasts ten years. The Agreement then “shall be renewed for three (3) consecutive five-year renewal terms...by SERMAR sending written notice of such election to renew to the COUNTY...” Therefore, this agreement is, in essence, a 25-five year lease for Sermar for the property in question. For the most part, it has clearly not been in the best interests of the County to engage in such long term agreements.

C. No Clear Definition of What is “Usable Area”

Article 4 of the Agreement indicates that Sermar will pay the County a certain dollar amount per square foot of “usable area.” However, there is no definition in the agreement for what constitutes “usable area” and it is not clear whether “usable area” constitutes the total acreage of 2.23 acres indicated in the agreement or something less. If the “usable area” is less, then the payments to the County would also be less.

For example, we are unsure whether the lessee could exempt areas within the 2.23 acres from its calculation of the lease payment by asserting that the area is not usable for whatever reason it states. As this is a lease agreement for a certain identified parcel of County property from which the lessee will run its operations, we fail to see the distinction—for rent purposes—between the entire parcel and what may be “usable area.”

D. No Cap to the Total Annual Tonnage of Powdered Cement May Exacerbate Environmental and Traffic Concerns

In Article 5 of the Agreement, Sermar guarantees the Port a minimum tonnage of 300,000 metric tons per year, but there is no cap or maximum amount of tonnage in the agreement. The County Manager’s memorandum also states: “it is anticipated that initially a cement vessel will discharge at the Port once a month for a period of four (4) to five (5) days...” In discussions with the Charleston bulk cement operator, the OIG was advised that the operator had initially budgeted and planned to unload and process 169,000 tons of cement in the year 2005, but ended up unloading and processing 722,000 tons in 2005 (over 4.3 times the anticipated amount).

The OIG asked Seaport managers why there was no cap or maximum amount of tonnage in the Sermar Agreement. The Deputy Seaport Director stated that no maximum tonnage limit was written into the Agreement because the more tonnage that came through, the higher the Port's revenues would be. While that basic correlation—between tonnage and revenues—is true, the OIG is concerned that given the location of the Port of Miami, there is another more adverse correlation—more tonnage means more cement dust and traffic congestion.

The OIG was advised that one bulk cargo shipload of powdered cement weighs approximately 40,000 tons. With a cement truck equipped to handle approximately 27 tons (which we were advised is the average tonnage), it would take approximately 1,480 trucks to remove the powdered cement of one shipload. Should Sermar bring in a cement ship almost every week, which would be allowed under the existing Agreement, the problems discussed above, relating to the impact of cement dust and impact on traffic will, increase measurably.

E. Substitution of Principals

Article 13 of the Agreement is entitled *Assignment and Subletting*. The CEERC meeting minutes pertaining to the discussion of the proposed lease state, in part:

Responding to Commissioner Souto's [sic] regarding the ability to sell without being subject to the Board's approval, Assistant County Attorney McCarty noted in Article 13 of the Lease Agreement between Sermar USA, LLC and Miami-Dade County any change in the assignment or subletting shall require prior written approval by the Port Director and/or his designee. He advised the Committee that the language in this Article could read 'any change in assignment or subletting shall require prior approval by Board of County Commissioners'...

The proposed resolution authorizing this lease was, thus, approved by the Committee with an amendment to Article 13, which amended the assignment and subletting provisions to require BCC approval.

Article 23.23 of the Agreement, however, states in part "in the event that SERMAR wishes to substitute the Principals...SERMAR shall notify the Port in writing and request and receive written approval for the

substitution...such approval not to be unreasonably delayed or withheld..." This section, in essence, allows Sermar to change the principal owners of the company without the BCC's approval. And although the BCC amended the provisions governing assignments and subletting, the ability to freely substitute principals of the limited liability corporation could in effect be the same as assigning the contract to another company, albeit the name of "Sermar" would remain the same.

4. Lack of Experience in Bulk Cargo Shipping

In reviewing the responses to the Due Diligence Questionnaire submitted by the principals of Sermar, the OIG is concerned about their lack experience in bulk cargo shipping and bulk cargo terminal operations. Question No. 21 asked: "Please provide a list of your company and/or principal's experience in any projects similar to the Port of Miami proposed project, and/or any experience in bulk shipping operations."

Sermar USA, LLC was created in 2005 for the sole purpose of developing the cement terminal and dome storage facility project at the Port of Miami, which is the subject of this proposed lease. Sermar has not engaged in any similar port projects, and neither principal listed in his response experience in projects of a similar nature. Neither principal has experience with bulk cargo shipping nor bulk cargo terminal operations. While notably one of the two principal has over 20 years of experience in cement, that experience is in the trucking of cement (i.e., loading cement tanker trucks at the ports) and in the downstream distribution of the cement product. Neither principal has experience actually operating a bulk cargo storage facility at a seaport and managing the shipping operations. As noted above in Section 2, had the Seaport conducted some type of information gathering and/or evaluative process, the matter of shipping experience and/or bulk cargo terminal operations could have been better evaluated.

5. Other Issues

Lastly, the two principals of Sermar indicated in their sworn responses to the Due Diligence Questionnaire that they had requested and attended meetings with Miami-Dade County Commissioners and/or their staff to discuss the Sermar proposal, both before the March 14, 2006 CEERC meeting, as well as after that meeting. A review of the County Clerk of the Board's files failed to find any documents indicating that either principal of Sermar had ever registered as a lobbyist to represent Sermar. This issue is being more fully examined by the OIG.

GOING FORWARD

The OIG believes that it would behoove the County to re-evaluate this proposed lease agreement in its entirety. We are uncomfortable with the proposition that a bulk cement facility is the highest and best use for this parcel and that it will not create an undue burden. This is especially true in light of the fact that there was no process—an RFI or otherwise—from which to consider other interest in the Port of Miami parcel. Moreover, another interested bulk cement operator had been turned away in years past having been told that bulk cargo is not the highest and best use of limited port property. Furthermore, as highlighted by our review, the County should expect cement dust problems and increased traffic congestion associated with this type of bulk cargo, and diminishing these concerns by pointing to the environmental permitting process is not the answer.

Instead, we believe, that it would be in the best interests of the County to conduct a review of other possible uses of this particular parcel at the Port of Miami. This review should obviously include County staff research and revenue comparisons, but it should also include a formal process by which to solicit industry input. The Seaport should consider a Request for Information (RFI) whereby it could gather industry comments and garner other interests in the property.

cc: Honorable Carlos Alvarez, Mayor, Miami-Dade County
Honorable Joe A. Martinez, Chairman, Board of County Commissioner
Honorable Dorrin D. Rolle, Chair, Community Empowerment and Economic
Revitalization Committee
Murray A. Greenberg, County Attorney
Carlos Bonzon, Assistant County Manager
Bill Johnson, Acting Director, Seaport Department

Clerk of the Board (copy filed)