



The Metropolitan District
water supply • environmental services • geographic information

October 9, 2009

Senator Kissel
Representative Mushinsky
Members of the Program Review and Investigations Committee

Re: Staff Briefing on Municipal Solid Waste Management Services in
Connecticut.

Testimony of the Metropolitan District before the Program Review &
Investigation Committee

Dear Ladies and Gentlemen:

As Chief Executive Officer of the Metropolitan District, I am addressing certain issues raised by the testimony of Thomas Kirk, president of CRRA, which was presented to the Program Review and Investigations Committee yesterday.

I submit that this testimony is of material interest to you and the Committee because The Metropolitan District has operated the Municipal Solid Waste processing facility at the Mid-Connecticut trash to energy facility since the inception of the project in 1984. This waste processing facility, originally designed to shred 2000 tons of municipal solid waste per day, has routinely been shredding over 4000 tons of municipal solid waste per day for many years. It is with a great deal of pride that I can report that the dedicated employees of the MDC have kept this facility operating continuously, without strikes, or interruption for over two decades.

Unfortunately, this service to the region is about to end. CRRA has refused to negotiate an extension of the MDC contract which expires in 2011. The contract, by its terms provides this option, and MDC has repeatedly offered to extend the term. These offers have been refused. CRRA has notified the MDC that it will not pay the costs associated with this termination, costs which have been estimated to be over thirty million dollars and costs that will be borne by either the eight member towns that constitute the MDC or the 72 towns which are members of the Mid-Connecticut facility. We submit that these costs can be avoided by an extension of the term of the contract for a reasonable period of time.

This past summer, at the request of the member municipalities, MDC attempted to negotiate an agreement to either extend the contract with CRRA or design a future cooperative agreement. Unbeknownst to the MDC or the member towns, at the time that these attempts to negotiate an agreement were taking place, CRRA concurrently developed an RFQ to replace the MDC.

The RFQ, dated September 14, 2009, requires responses by November 2009. The RFQ requires that a single entity operate both the waste processing plant and the Energy Generation Facility.

CRRA has asked for bids on two models:

- i. The first model asks for a single entity for operation and maintenance of the entire facility, requiring the operator to take a lead role in the planning and implementation of transition activities from the MDC, provide labor services materials and other items needed to operate and maintain the facility, being reimbursed at a cost plus fixed fee basis.
- ii. The second model requires the contractor to provide the services described above, but also makes the contractor solely responsible for the planning cost and implementation of planning capital projects. All revenues would accrue to the contractor. (see RFQ, pages 10-11 attached hereto as Exhibit A)
 1. This plan would appear to violate the C.G.S. 22a-268 which mandates that CRRA maintain overall supervision and control for the business, design operation management, transportation, marketing, planning and research development functions of the facility. (see attachment B); and
 2. This plan would appear to violate the CRRA procurement policy, Section 3.5, which contains the identical mandate. (Exhibit C)

This effort by CRRA appears to contradict statements contained in Mr. Kirk's testimony yesterday regarding the operation of these publicly-owned assets. If the legislature does not intervene, CRRA will privatize the Mid-Connecticut facility. Public control of waste will be lost. CRRA, under the RFQ it has issued, will cede all responsibility for both the cost and the charges to municipalities for waste removal. As of October 8, 2009, the MDC contract for management of the waste facility will expire on December 31, 2011, and millions of dollars of costs for this termination will become the responsibility of member municipalities.

The put or pay contracts of the towns will expire in 2012. To date, no member town has agreed to sign up to renew. In fact, the members of the Capital Region Council of Governments are in the process of investigating setting up their own municipal waste authority. These member towns are deeply dissatisfied with the current state of affairs. It is my hope that this Committee, in the course of its due diligence, will meet with and seek recommendations from those towns, recognizing that they have borne the cost of CRRA's disastrous Enron adventure, that they had to sue CRRA for overcharging, a matter CRRA contested and lost at every level including the Supreme Court, and that they will be the victims of this most current privatization scheme.

The MDC has considerable information concerning the operation of the plant, the cost of disposal of the ash residue, the inefficiencies in the current management and operation by CRRA as well as technologies which can provide a better, cleaner, and more efficient operation in the

future. Whether or not the MDC is to remain part of the solution to this issue, we will gladly provide this information and look forward to meeting with you and your staff in the future.

- 1) The MDC has filed a notice of dispute dated September 21, 2009. In this notice MDC seeks a declaratory judgment in arbitration that CRRA is liable for termination costs, including employee benefits, unemployment compensation, medical costs, workers compensation costs, and any other cost related to the operation of the facility. The basis for this claim is that the contract (Article VIII) provides that CRRA is required to indemnify defend and hold harmless the MDC from and against all liability, claims, suits demands judgments costs, interest and expenses relating to actions pursuant to the agreement, and that the agreement further provides that the Authority shall hold the District fully harmless from any risk of any loss whatsoever.
- 2) CRRA did not respond to the notice of dispute. MDC filed a formal claim for arbitration and named an arbiter on October 6, 2009. Under the contract CRRA has until October 16 to name its arbiter. The two arbiters are to select a neutral arbiter by October 21, 2009.
- 3) CRRA has issued an RFQ to operate the Mid-Conn. trash to energy facility. The RFQ, dated September 14, 2009 requires responses by November 4, 2009. The process and documents reveal the following:
 - a. CRRA secretly started this process on August 1, 2009. (page 13 of RFQ) This was in the middle of the meetings with the MDC to work out a future working relationship.
 - b. CRRA has asked for bids on two models.
 - i. The first model asks for a single entity for operation and maintenance of the entire facility, requiring the operator to take a lead role in the planning and implementation of transition activities from the MDC, provide labor services materials and other items needed to operate and maintain the facility, being reimbursed at a cost plus fixed fee basis.
 - ii. The second model requires the contractor to provide the services described above, but also makes the contractor solely responsible for the planning cost and implementation of planning capital projects. All revenues would accrue to the contractor.
 1. This plan would appear to violate the C.G.S. 22a-268 which mandates that CRRA maintain overall supervision and control for the business, design operation management, transportation, marketing, planning and research development functions of the facility.
- 4) CRRA has prequalified the MDC on the project. CRRA had refused to extend the MDC contract, as the MDC had requested, claiming that the provision in the original contract permitting an extension was changed by the reorganization of CRRA. This is not true; Connecticut law provides that no law will abridge any municipal contract if bonds are outstanding. The MDC is a

municipality, bonds are outstanding. CRRA could have simply extended the contract with the MDC.

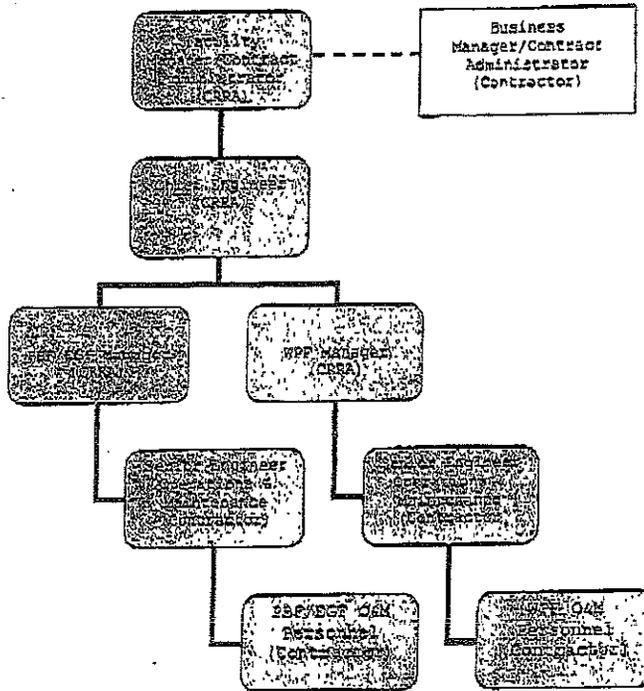
- a. The prequalification does little good. The RFQ requires that the operator manage both facilities. The MDC is not prepared to operate the Energy Plant. Unless the town's request that the MDC team up with an energy company, the MDC is only able to operate a portion of the plant.
- b. The MDC has submitted questions to find out more about the condition and operation of the plant. During the tour of the plant it became clear that;
 - i. The boilers are old, and in need of major capital improvements;
 - ii. CRRA is operating only two of the four energy producing boilers;
 - iii. CRRA can only process 15,000 tons per week at the energy facility. They are accepting 19,000 tons per week at the WPF. The excess waste is either being landfilled after shredding or sent out of state, contributing to the 10 million dollar charge to CRRA towns for transporting residue.
 1. The MDC requested that CRRA diminish the acceptance of spot waste so that it would process only the amount which would be burned. This request was denied. If it had been granted MDC calculates that 2 million a year could be saved on its total budget of 18 million. The entire CRRA budget is 100 million.

5) If nothing is done, CRRA will enter into a contract which will give the control of the facility to a private entity for the next ten years. The MDC will be out, and the cost to the member towns for the termination of the MDC will be actual, either divided between CRRA towns or MDC towns. There will be no limitation on what the private entity can charge the towns in tipping fees if the towns enter into put or pay arrangements. This arrangement appears to be illegal, and the attorney general should be asked his opinion on the abdication of control by CRRA.



Charles P. Sheehan
Chief Executive Officer

EXHIBIT A



Each Contract Year will commence on July 1 and end on June 30 (coterminous with CRRA's fiscal year). Prior to the commencement of each Contract Year, Contractor will submit to CRRA for review and adoption an annual operating and maintenance budget and a capital replacement budget. CRRA will pay Contractor for the actual cost of labor, services and materials provided, plus a profit markup. Actual expenditures will be reviewed jointly by CRRA and Contractor representatives in relation to the annual budget on a quarterly basis and annual budgets will be subject to CRRA revision in connection with such reviews. Throughout the term of the Agreement CRRA will retain the right to, upon reasonable notice at any time during the term of the Agreement, order Contractor to stop performance of any activity and hire or retain permanent or temporary replacement workers or sub-contractors for the Contractor in connection with the terminated activity.

5. OVERVIEW OF BUSINESS MODEL 2 - O&M OF THE FACILITY VIA AN EXECUTIVE AGREEMENT

5.1 Services to be Provided

Under this Business Model, Contractor will be solely responsible for performing all operational and maintenance activities needed to accept and process MSW up to the volume of MSW permitted by the Facility's Connecticut Department of Environmental Protection permits to operate. The Contractor will be solely responsible for the planning, cost and implementation of capital projects.

Under this Business Model CRRA will retain some amount of the plant capacity for its own use at a price to be negotiated. The remainder of the capacity of the Facility will be available for the use of the Operator.

All revenues generated by the Facility, including, without limit, tipping fees and revenues from the sale of electricity generated by the Facility, will accrue to the Contractor.

6. OVERVIEW OF CRRA'S SOLICITATION PROCESS

Generally, CRRA's solicitation process for the selection of an entity to operate and maintain the Facility will be comprised of five (5) milestones as described below. The issuance of this RFQ is the first of the five milestones. It is important to note that the entire solicitation process will not be considered complete until a definitive agreement (the "Agreement") between CRRA and the approved Bidder has been executed.

- (a) Request for Qualifications ("RFQ"). Entities interested in operating and maintaining the Facility shall submit to CRRA a Statement of Qualifications ("SOQ") in response to this RFQ. Entities may submit qualifications to be considered for Business Model 1 or Business Model 2 or for both business models. Following CRRA's review of the SOQs received, CRRA may, in its sole and absolute discretion, invite some or all of the entities submitting SOQs to participate in interviews and meetings with CRRA to discuss an entity's qualifications and capabilities and CRRA's service needs.
- (b) Request for Bids and Proposals ("RFBP"). Following CRRA's evaluation (including the information obtained during meetings and interviews) of the SOQs, CRRA may invite those entities that CRRA has determined, in its sole and absolute discretion, are best qualified to perform the services to continue the solicitation process by responding to CRRA's Request for Bids and Proposals. CRRA's RFBP package will provide bidders specific information regarding the business relationship and scope of services (the "Base Services") to be provided by the selected Contractor and will include the form of the Agreements for Business Model 1 and Business Model 2. Bidders will be afforded the opportunity to submit alternative service Proposals for CRRA's consideration, however, such an alternative Proposal will be considered only if Bidder has submitted pricing for the Base Services as described by CRRA in the RFBP documents for Business Model 1 or Business Model 2 or both business models.
- (c) Agreement Discussions. Based on CRRA's evaluation of the Bids and Proposals received, CRRA may invite one or more Bidders to enter into contract discussions.
- (d) CRRA Board of Directors Approval. When a definitive agreement has been reached with the preferred Bidder, CRRA management will make its selection recommendation to CRRA's Board of Directors for approval.
- (e) Notice of Award and Execution of the Agreement. Upon approval of the preferred Bidder by the Board of Directors, CRRA will issue to the approved Bidder a Notice

EXHIBIT B

Connecticut Statutes

 Connecticut Statutes
 TITLE 22a ENVIRONMENTAL PROTECTION
 CHAPTER 446a SOLID WASTE MANAGEMENT SERVICES ACT

Sec. 22a-268. (Formerly Sec. 19-524aa). Powers to contract with private sector.

The authority shall utilize private industry, by contract, to carry out the business, design, operating, management, marketing, planning and research and development functions of the authority, unless the authority determines that it is in the public interest to adopt another course of action. The authority is hereby empowered to enter into long-term contracts with private persons for the performance of any such functions of the authority which, in the opinion of the authority, can desirably and conveniently be carried out by a private person under contract provided any such contract shall contain such terms and conditions as will enable the authority to retain overall supervision and control of the business, design, operating, management, transportation, marketing, planning and research and development functions to be carried out or to be performed by such private persons pursuant to such contract. Such contracts shall be entered into either on a competitive negotiation or competitive bidding basis, and the authority in its discretion may select the type of contract it deems most prudent to utilize, pursuant to the contracting procedures adopted under section ~~22a-268a~~ and considering the scope of work, the management complexities associated therewith, the extent of current and future technological development requirements and the best interests of the state. Whenever a long-term contract is entered into on other than a competitive bidding basis, the criteria and procedures therefor shall conform to applicable provisions of subdivision (16) of subsection (a) and subsections (b) and (c) of section ~~22a-266~~, provided however, that any contract for a period of over five years in duration, or any contract for which the annual consideration is greater than fifty thousand dollars shall be approved by a two-thirds vote of the authority's full board of directors. The terms and conditions of such contracts shall be determined by the authority, as shall the fees or other similar compensation to be paid to such persons for such contracts. The contracts entered into by the authority shall not be subject to the approval of any other state department, office or agency. However, copies of all contracts of the authority shall be maintained by the authority as public records, subject to the proprietary rights of any party to the contract. Nothing of the aforesaid shall be deemed to restrict the discretion of the authority to utilize its own staff and work force for the performance of any of its assigned responsibilities and functions whenever, in the discretion of the authority, it becomes necessary, convenient or desirable to do so. Any litigation with respect to any terms, conditions or provisions of any contract of the authority, or the performance or nonperformance of same by either party, shall be tried before a judge of the Superior Court of Connecticut.

(P.A. 73-459, S. 12, 26; P.A. 90-230, S. 90, 101; P.A. 97-102, S. 3;
P.A. 02-46, S. 12.)

History: Sec. 19-524aa transferred to Sec. 22a-268 in 1983; P.A. 90-230 made technical change at end of section by substituting "judge" for "justice"; P.A. 97-102 deleted a requirement that contracts of the

authority be filed with the State Treasurer; P.A. 02-46 substituted "shall be entered into either on a competitive negotiation or competitive bidding basis" for "may be entered into either on a negotiated or an open-bid basis", added "pursuant to the contracting procedures adopted under section 22a-268a" and substituted "competitive bidding" for "open-bid", effective January 1, 2003.

Cited. 193 Conn. 506.

Cited. 19 Conn. App 489.

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EXHIBIT C

such terms are defined in the Act, shall contain prices and terms deemed by CRRA to be in the best interests of the municipality or region to be served pursuant to such Contracts.

3.5 CRRA Control

Any Contract with private sector entities or persons to carry out the business, design, operating, management, marketing, planning and research and development functions of CRRA shall contain terms and conditions that will enable CRRA to retain overall supervision and control of the business, design, operating, management, transportation, marketing, planning and research and development functions to be carried out or to be performed by such private persons pursuant to such Contract.

3.6 Basis, Limitations and Considerations

Any Contracts entered into pursuant to Section 22a-266 of the Act shall be entered into by CRRA on the same basis and subject to the same limitations and considerations applicable to municipal and regional resources recovery authorities pursuant to subsection (c) of Section 7-273bb of the *Connecticut General Statutes* and these Policies And Procedures.

3.7 Long-Term Contracts

Whenever a long-term Contract is entered into on other than a competitive bidding basis, the criteria and procedures for said long-term Contract shall conform to the provisions of subdivision (16) of subsection (a) and subsections (b) and (c) of section 22a-266 of the Act.

3.8 Purchase Order Form

3.8.1 Use of the Purchase Order Form

A Purchase Order Form shall be used for all purchases of goods and services by CRRA. Provided that the Purchase Order Form conforms to all of the statutory requirements for a Contract and has been approved for use as a Contract by CRRA Legal Services Division, the Purchase Order Form may serve as the sole Contract document for the purchase of goods or services. However, if the Purchase Order Form is used in conjunction with an Agreement and/or an RFS, the Purchase Order Form, the Agreement and/or the RFS shall contain language to ensure that there is not a conflict among the provisions of the foregoing legal documents.

3.8.2 Purchases Pursuant to an RFQ, RFP or RFB Process

For the purchase of goods and services for which the Request for Qualifications process specified in Section 4.5.1, the Request for Proposals process specified in Section 4.5.2 or the Request for Bids process specified in Section 4.5.3 has been used and an Agreement or RFS has been entered into, a Purchase Order Form for the entire amount to be expended under the Agreement or RFS during a Fiscal Year as specified in the Agreement or RFS and the approved budget, and not exceeding the amount specified in the Agreement or RFS and the budget, may be used for all purchases under the Agreement or RFS for that Fiscal Year. When the