

City of Sacramento Solid Waste and Recyclables Contracts

SUMMARY

The Sacramento County Grand Jury received a complaint regarding the recently negotiated solid waste and recycling contracts between the City of Sacramento (City) and BLT Enterprises of Sacramento, Inc. (BLT). The complaint alleged the contracts did not appear to be in the best interest of City ratepayers. Additionally, BLT was allegedly not in compliance with the City's Living Wage Ordinance. Since receipt of the complaint by the Grand Jury, BLT has ended its 14 year relationship with the City and has sold its City contracts to USA Waste of California, Inc., a subsidiary of Waste Management, Inc., hereinafter referred to as Waste Management (WM). The final Amended Services Contracts BLT negotiated with the City in 2010 will remain in effect until 2032.

The Grand Jury reviewed six contracts the City negotiated with BLT, with an emphasis on the 2010 Amended Services Contracts. According to City officials, the primary objective of the 2010 Amended Services Contracts was to return solid waste to local landfills and reduce operating expenses for processing solid waste and recyclables. City officials and others expressed concern regarding the environmental impact from the nightly round trip caravan of garbage trucks to a Nevada landfill where Sacramento waste was disposed. Testimony given reflected environmental concerns were given greater consideration in the negotiations than the financial impact to the ratepayer.

Based on evaluation of many factors, the Sacramento County Grand Jury concluded the contracts are not in the City's best interest. City of Sacramento ratepayers are paying the highest fees in the County for solid waste disposal. These contracts were negotiated with BLT rather than being put out for competitive bids. As a result the City of Sacramento is now committed to the contracts for up to 34 years without having had the benefit of competitive bidding.

Given the evidence the Grand Jury was able to obtain, no fraud or illegal activity by either the City or BLT were identified relative to the contracts in question.

The Grand Jury found that BLT appears to be in compliance with the city's Living Wage Ordinance.

METHOD OF INVESTIGATION

Interviews and discussions were conducted with current and former City staff, City Council members, waste transfer and disposal contractors and concerned city residents.

The following items were reviewed:

- Current and past contracts and contract amendments between the City and BLT for waste transport and disposal and recycling and between the City and the County for waste transport and disposal.
- Staff reports on the contracts and contract amendments between the City and BLT.
- Documents provided by waste contractors, including BLT
- Research on residential garbage and recycling rates for other public entities in the Sacramento region
- City Code Sections 3.58 (Living Wage) and 3.60 (Contracts for Public Projects)

ISSUES

1. Can the contracts negotiated between the City of Sacramento and BLT be considered to be in the best interest of the city's ratepayers?
2. Was there fraud or other illegal activity committed by City or BLT staff in the course of negotiating or implementing the contracts?
3. Have there been violations of the City of Sacramento's Living Wage Ordinance committed by BLT?

BACKGROUND

Legislation and public sentiment since the late 1970's have created a major shift in the handling of solid waste. There has been an array of legislation on the federal, state and local levels with mandates involving use and disposal of toxic materials, runoff from landfills and diversion of recyclable material from the waste stream. For instance, the Integrated Waste Management Act of 1989 (AB 939) required each city and county in California to reduce landfill waste by 50 percent. The industry dealing with this legislation and public sentiment is constantly changing as new technologies are developed and implemented. Engineered landfills and facilities that separate out material to be reused have made us much better stewards of the land. They have also become big business.

Until the mid-1990s, the City of Sacramento picked up residential garbage from a single can in City owned trucks driven by City paid workers. Waste was delivered to the 28th Street Landfill, a City owned dump site northeast of downtown. As the City navigated the regulated and politically charged path toward environmental responsibility, many important possibilities needed to be considered:

- Should the City build and operate its own facility to sort out recycled waste?
- Should the City build, operate, and assume liability for a new landfill?

If these operations were to be contracted out many questions needed an answer:

- What was a reasonable payment formula?
- What annual adjustments should be made to the payment formula?
- What was an appropriate length of time for the contract?
- Should the City have a say in the location of the landfill?

There was a myriad of other questions. Hundreds of millions of city ratepayer dollars were at stake.

Most of the cities in Sacramento County now contract out all residential garbage services to a private vendor. These services include pick up, sorting, sale of recyclable material and transfer and disposal of residual waste at an approved landfill. The County of Sacramento provides most of these services utilizing county staff. Waste from most of the county's cities is taken to Keifer Landfill (located at Keifer Blvd. and Grant Line Rd.), which is owned and operated by the County.

Solid Waste

In the city of Sacramento, City staff continues to pick up waste from residences and transport it to transfer stations owned and operated by other entities. The receiving, sorting, processing and transfer of the solid waste is contracted out. The initial contract for these services was entered into with BLT in 1998. Included in that initial contract was the building of a sorting and transfer facility. The initial service contract was amended in 2005, 2008, and 2010, and then sold to Waste Management in 2011. The amendments were mainly based on the City's desire to use a landfill in the Sacramento area rather than in Nevada. Additionally, to reduce costs and improve air quality, the City had an interest in rerouting north area solid waste to the County's North Area Recovery Station (NARS) (located on Roseville Rd. in North Highlands) instead of to BLT's more distant south area transfer station.

Currently, residential solid waste picked up by City workers is taken to one of these two transfer facilities.

As to south area solid waste, approximately 130,000 tons per year are delivered to Waste Management's (previously BLT's) sorting and transfer station at Fruitridge Rd. and 84th St., the Sacramento Recycling and Transfer Station (SRTS). In regard to north area waste, up to 40,000 tons per year of solid waste is delivered to the County's NARS.

From the transfer stations solid waste is subsequently transported to the Keifer Landfill for final disposal.

In February 2012, Waste Management ended 13 years of nightly 300 mile roundtrips to transfer the garbage from SRTS to a landfill in Nevada. Waste Management trucks now make a 28 mile trip transferring the garbage from SRTS to the County of Sacramento's Keifer Landfill. Through the contract negotiated with BLT in 2010, the City pays Waste Management approximately \$55/ton to receive, sort, transport, and dispose of waste.

For north area waste the City currently pays the County approximately \$42/ton to receive and sort at NARS then transfer waste to the County's Keifer Landfill.

Recyclables

An initial recycling contract was entered into by the City and BLT in 2007 and an amendment in 2010. Recyclable material picked up by City workers from residents' blue bins is delivered to Waste Management's (previously BLT's) SRTS where it is sorted and processed. Waste Management pays the City of Sacramento approximately \$40/ton for the recyclable material and in return Waste Management retains money from sales of recyclable material.

DISCUSSION

Issue No 1: Can the contracts negotiated between the City of Sacramento and BLT be considered to be in the best interests of the city ratepayers?

Solid waste contracts are complex even to an insider. It is beyond the resources of the Grand Jury to perform a complete financial analysis on how the City of Sacramento has handled its residential waste. However, our investigation confirms there are clauses in the contracts negotiated between the City and BLT that do not appear to be in the best financial interest of the City's ratepayers.

Descriptions of contracts negotiated by the City with BLT with clauses that concerned the Grand Jury follow:

1998 Original Service Agreement for Transfer of Municipal Solid Waste

An initial service contract entered into with BLT in 1998 included the construction of a sorting and transfer facility at Fruitridge Road and 84th St. BLT was to own and operate the facility. The contract allowed for 15 years of service after operations commenced, with an option to extend the service agreement for an additional 5 years. The reason for the 15 year minimum contract was to amortize the cost of the sorting and transfer facility.

The contractor was to transfer and dispose of residual waste from the Fruitridge Road station to a landfill chosen at BLT's discretion. BLT chose to deliver Sacramento's unrecyclable solid waste to a Nevada landfill, owned by Waste Management. This required a caravan of trucks to travel I-80 more than 300 miles nightly.

1998 Contract Concern 1: Location of Landfill

The City did not have the contractual right to direct BLT to select a landfill site. Based on cost, BLT selected a site in Nevada requiring the long distance transportation of waste. Location of a landfill in the Sacramento region rather than in Nevada eventually became an overriding concern for the City. In exchange for disposing of the solid waste within

the Sacramento region, the City was bound to contractual obligations that were not in the best interest of the ratepayers.

1998 Contract Concern 2: Buyout Clause

In an appendix to the 1998 contract, the estimated construction cost of the transfer station is given at \$13.6 million as follows:

\$ 7,000,000	Land and Construction of Buildings
\$ 2,800,000	Construction of Materials Recycling Facility
\$ 2,877,500	Various Equipment
\$ 750,000	Engineering and Technical Services
\$ <u>140,000</u>	Computer System, Office Equipment, Financing Costs
\$13,567,500	TOTAL

For the City to buy out the contract, the City was to pay BLT the remaining cost of loans for the construction of the Transfer Station. On top of paying off the construction loan, the City was to pay BLT an additional \$4 million during years 10 through 15 of the contract and an additional \$3 million during years 15 through 20. The contract did not delineate terms of the construction loan. If the City wished to buy out the contract, the amount due on the construction loans could range from \$0 (short term loan already paid off) to \$13.6 million (interest only loan). In 2010 when the city was interested in the cost of buying out the contract, the City negotiators were given a balance due on those loans of \$10 million on top of the \$4 million flat fee. If the City had accepted the offer they would have paid almost twice for the cost of the transfer station, both 12 years' worth of amortization and the buyout amount, and owned nothing.

2005 Amendment No. 1 to Original Service Agreement for Transfer of Municipal Solid Waste

The 2005 Amendment No. 1 to the 1998 Original Service Agreement extended the contract between the City and BLT by 5 years with an agreement for BLT to begin plans for construction of a new sorting and transfer station in the north area of the county. The City's goal was to have its trucks pick up residential waste in the growing north area and deliver to a closer transfer station, thus saving time and trucking expenses, as well as lowering CO₂ emissions. The amendment temporarily allowed for solid waste picked up in the north area to be delivered to the County's North Area Recovery Station, rather than to BLT's Sacramento Recycling and Transfer Station.

The sorting and transfer station proposed by the City was never built and is no longer proposed in any functioning contract. Contracts negotiated since then have included language allowing limiting delivery to the County's North Area Recovery Station.

2007 Agreement for the Purchase of Recyclables

In 2007, the City entered into a new separate agreement with BLT for the transfer and payment for recyclable materials delivered by the City to BLT's STRS. The contract duration was one year with an option to extend for four additional one year periods. The option to extend to five years was exercised. The agreement was amended in 2010 extending the duration of the contract an additional 22 years.

2008 Amendment No. 2 to Original Service Agreement for Municipal Solid Waste

Gas prices increased dramatically in mid-decade and BLT requested relief from their high fuel costs. The original Service Agreement allowed for increased payments based on the Consumer Price Index, but did not have a component for fuel costs alone. At the same time, the City began responding to public concern for the environmental impact from the nightly caravan of 20 or so trucks hauling City garbage to the Nevada landfill. The 2008 Amendment No. 2 to the original Service Agreement increased payment to BLT by adding a fuel component to the pricing formulas. Part of the amendment was that the city and BLT would enter into a good faith effort to stop the nightly caravan of trucks to Nevada by securing use of a landfill closer to Sacramento.

2008 Contract Concern 1: Fuel Surcharge Amendment

In 2008 BLT was pressing the City for relief from the high cost of fuel for their trucks making the 300 mile round trip from Sacramento to Nevada. Diesel fuel prices had risen from around \$1.00 a gallon in 1998 to over \$4.00 a gallon in 2008. At the same time the City wanted to reduce the carbon footprint created by the 300 mile nightly caravan of trucks to and from Nevada. BLT had the contractual right to determine the location of the landfill to which they would deliver Sacramento's waste.

On June 10, 2008, City staff was directed by the City Council to "take the necessary steps to secure the long term disposal to an in-region facility within 12 to 24 months." At the same meeting, the City Council approved an amendment to allow an immediate increase in payment to BLT that accounted for increases in fuel costs. The City capitulated without receiving any concessions from BLT relative to getting the waste brought back to a local landfill.

Members of the Grand Jury were told by one member of the City Council who voted on the 2008 amendment that the council truly believed it would be "simple" to negotiate the garbage back to the Sacramento region.

2010 Amended Service Agreements for Transfer of Municipal Solid Waste

In June 2008, the City Council directed staff to prepare an Amended Agreement working out the issues meeting about one to three times a week for the two year period. In April 2010, due to the complexity of the issues, an ad hoc committee comprised of four members of the City Council was appointed by the Mayor. The ad hoc committee was to recommend decisions on

some of the more than 160 points of reported contention in the contract negotiations. The ad hoc committee met formally with City staff in April, August, and October of 2010.

The BLT negotiating team included two former City of Sacramento City Managers. According to testimony, this resulted in some City staff feeling intimidated during contract discussions. In the 29 months prior to the November 2010 decision for the amended service agreement, the City failed to solicit public input. There was little or no ratepayer awareness or involvement in the review of progress or options.

On November 16, 2010, after an 18 minute presentation and 23 minutes of follow-up statements, the Amended Services Agreements for solid waste and recyclables were approved by City Council.

2010 Contract Concern 1: Ratepayers Cost

As a result of the 2010 Amended Service Agreement, City of Sacramento residents now pay significantly more to have residential solid waste collection services than other residents in the County of Sacramento. Listed below are current typical costs for monthly residential garbage service provided by Sacramento County and cities within Sacramento County. Costs shown are for 90 to 96 gallon containers - one each for garbage, green waste and recycled material. Most include additional minor services such as street sweeping. All localities pick up garbage containers once a week. The City of Sacramento picks up recycling and green waste once a week. All others pick up recycling or green waste every other week on an alternating cycle. The City of Sacramento is considering switching to every other week pick up for recycling and green waste in exchange for guaranteeing no rate increases for three years. Costs shown are per each entity's web site as of April 1, 2012, unless specified.

Galt	\$ 24.31/month (per actual bill)
Folsom	\$ 25.50/month
Citrus Heights	\$ 27.05/month
Elk Grove	\$ 28.86/month
Rancho Cordova	\$ 30.17/month
Sacramento County	\$ 30.76/month
Sacramento City	\$ 38.31/month

City staff provided broad explanations that rates were higher due to:

- The expense of maintaining old landfills, such as the one at 28th Street northeast of downtown.
- Higher worker wages for unionized City staff picking up waste and transferring it to one of the Sorting and Transfer stations.
- Higher worker wages for contractor staff required to meet the City's Living Wage Ordinance at the SRTS.

The Grand Jury was unable to determine from City staff how much of the rate differences could be attributed to these three factors.

2010 Contract Concern 2: Payments to BLT vs. County

The City currently pays the County approximately \$42 per ton to receive solid waste at its North Area Recovery Station and transfer and dispose of the waste at the Keifer Landfill. For the same service the City currently pays Waste Management (through the contract negotiated with BLT in 2010) \$55 per ton to receive and transport waste at SRTS that is also delivered to the Keifer Landfill. These significantly different costs for the same service were approved by City Council the same night on November 16, 2010. The staff report accompanying the proposed service contracts stated both costs on the same page with no discussion as to the disparity of the cost.

2010 Contract Concern 3: Buyout Clause

The agreed upon cost for the City to buy out the 2010 Amended Services Contract for Solid Waste after 10 years is set at \$22.5 million. This is the earliest buy out date allowed. In contrast, the contract between the County and the City for the same type of services may be terminated upon 36 months' notice at no cost.

Should the City not exercise their buyout option, the City is locked into the contract until 2032. It was reported to the Grand Jury by City staff that BLT put forward the \$22.5 million fee as a non-negotiable item. City staff considered the \$22.5 million buyout clause justified as the cost of redirecting the solid waste to the Sacramento region.

2010 Contract Concern 4: Competitive Bidding on Solid Waste Contract

Section 3.60.110 of the City Code states in part:

“Where the cost of a public project required by the city equals or exceeds the sum of one hundred thousand dollars (\$100,000.00), the city manager shall request the city clerk to call for formal bids....”

Upon a two-thirds vote of the City Council competitive bidding can be suspended if it is determined to be in the best interest of the City.

The 2010 Amended Service Agreement for solid waste will cost over \$200 million over its lifetime, **two thousand times** the City's \$100,000 standard requiring competitive bidding. City Council did vote to grant an exception to the Competitive Bidding Code for the solid waste contracts the same night it voted to approve them. The reasons cited in the report submitted to council from staff did not support the extension of the contract beyond the original 2019 expiration date.

There will be no competitive bidding for 34 years on the garbage contract. Testimony to the Grand Jury indicated that the extension of the expiration of BLT's contract from 2019 to 2032 was justified as the cost of redirecting the solid waste to the Sacramento region. However, other City staff testimony suggested this was much too long a duration for this type of contract.

2010 Contract Concern 5: Lack of Financial Analysis

Testimony was given by city staff that their direction from City Council was to eliminate the nightly caravan of trucks delivering garbage to Nevada and that financial issues were not a compelling concern. Testimony of the city staff involved in the negotiations indicated there was not much awareness or concern that the City of Sacramento garbage rates were to be the highest in the region.

Staff overseeing the financial analysis of the contract testified there was no comparative research done on what other cities in the region were paying for their garbage services. It should be noted that a city staff member was the sole analyst dedicated to working on a complex financial contract which eventually obligated the City through 2032. The Grand Jury heard testimony that the City Treasurer's office was involved in the final financial review. However, the resulting contract decisions do not seem to lead to logical financial conclusions.

"I do not make recommendations," was the response to numerous questions posed by the Grand Jury to the financial analyst regarding analysis done or recommendations made to other City staff and City Council, leaving the Grand Jury to conclude that little or no use was made of the analysis or with the financial data.

In answer to even remedial questions regarding the financial analysis, the Grand Jury was told that such information was deemed a "legal work product" and would not be provided.

2010 Amended Recyclables Agreement

An Amended Recyclables Agreement was also voted on by City Council on November 16, 2010. It extended the date the recyclables contract would expire from 2012 to 2032.

2010 Recyclables Contract Concern1: Competitive Bidding on Recyclables Contract

The Amended Recyclables Agreement will be worth approximately \$100 million over its lifetime, **one thousand times** the city's \$100,000 standard requiring competitive bidding. No vote was taken by the City Council to waive competitive bidding for the recycling contract and no recommendation to do so was given in the staff report accompanying the bid item.

With rapid changes occurring in the technology for recycling of solid waste, short term contracts could be considered in the City's best interest.

Testimony indicated that the extension of the expiration of BLT's contract from 2012 to 2032 was justified as the cost of redirecting the solid waste to the Sacramento region.

2011, Assignment of BLT Contracts (Sale from BLT to Waste Management)

The Amended Service Contracts approved in November 2010 provided that the City must approve any sale or transfer of these contracts. In May 2011, six months after the 2010 Amended Service Agreements were signed, BLT informed the City it had negotiated a sale of the City contracts for both Recyclables and Solid Waste to Waste Management. That transfer of the contracts was approved by City Council on November 29, 2011.

2011 Contract Concern 1: Sale Price of City Contracts to USA Waste, Inc.

Under the terms of the November 29, 2011 Assignment Agreement BLT was permitted to sell its two services agreements with 21 years remaining to USA Waste of California, a subsidiary of Waste Management. Testimony received indicated a sale price in the range of \$55 to \$70 million. The Grand Jury, after repeated attempts, was unable to obtain the actual sale price from BLT. The City had a contractual duty to approve this sale, resulting in lucrative profits to BLT and little value to City ratepayers. This demonstrates questionable negotiation efforts by the City.

Issue No 2:

Was there fraud or any other illegal activity committed by City or BLT staff in the course of negotiating or implementing the contracts?

Given the evidence the Grand Jury was able to obtain, no fraud or illegal activity by either the City or BLT was identified relative to the contracts in question.

Issue No 3:

Have there been violations of the City of Sacramento's Living Wage Ordinance committed by BLT?

The Grand Jury investigated the complaint that up to 80% of BLT's workers at the Sacramento facility were not being compensated in accordance with the City's Living Wage Ordinance (LWO). The Grand Jury found no evidence of violations of the LWO by BLT.

The charge would appear to stem from an incorrect assumption that work performed as part of the city's recycling contract is covered by the LWO. There is no requirement in the recycling contracts between the City and its solid waste contractor to meet the minimum wage requirements given by the City's LWO, nor is there a legal need to do so. Sacramento City's Living Wage Ordinance applies to contracts, "...under which a covered employer provides nonprofessional services in return for compensation of one hundred thousand dollars (\$100,000.00) or more. "The employer in the case of the recycling contract receives no compensation from the city. Rather, the city receives compensation from the employer. Currently the city receives approximately \$40/ton from Waste Management (formerly from BLT) for the recycling material delivered to them.

The majority of the more than 170 workers employed at the South Recycling and Transfer Station employed by Waste Management (formerly by BLT) are involved with sorting the

recycled material, and are therefore not subject to the wages given in the City's Living Wage Ordinance.

Findings:

- F.1** The City Council failed to seek competitive bids for the transfer and disposal of residential solid waste for a period of 34 years (1998-2032). This failure ignored the intent of City Code Section 3.60.110, which will likely contribute to the City paying higher than fair market value for its services.
- F.2** The City Council failed to seek competitive bids for the sorting and selling of residential recyclables for a period of 25 years (2007-2032). The intent of City Code Section 3.60.110 was ignored. Justification for the exemption from competitive bidding required by City Code Section 3.60.170 was lacking. The City will likely receive less than fair market value for its residential recyclables.
- F.3** The City Council voted on multi-million dollar solid waste and recyclables contracts without sufficient financial analysis. These contracts would seem to require additional scrutiny given the exemption from the competitive bidding process.
- F.4** City staff failed to perform adequate due diligence in providing financial analysis on the solid waste disposal and recycling contracts. There was too much reliance on a single source of financial analysis. There was no independent review or oversight. These three factors appear to have contributed to inadequate understanding of financial risks by City Council.
- F.5** When BLT came to the City in 2008 to amend the Service Agreement to incorporate increased fuel costs, the City missed an opportunity to address the redirection of waste to a local landfill.
- F.6** Costs to the City delineated in the buyout clauses of BLT's 1998 and 2010 contracts were higher than fair market value. In conjunction with the length of the contracts, they hampered the City's ability to make reasonable changes to the contracts.
- F.7** There was inadequate provision for public review and comment throughout the twenty-nine month period that the Amended Service Agreements for Municipal Solid Waste and Recyclables were negotiated.
- F.8** Lobbying by immediate past city managers was problematic for some City staff.
- F.9** It appears that BLT was in compliance with the City's Living Wage Ordinance.
- F.10** Given the evidence the Grand Jury was able to obtain, no fraud or illegal activity by either the City or BLT was identified relative to the contracts in question.

Recommendations:

- R.1** The City should provide a comprehensive report to the public by December 31, 2012 documenting the financial, operational and environmental justifications for the 2010 Amended Services Contracts, including both the solid waste and the recycling contracts.

Furthermore, an annual report on the Amended Service Agreements should be provided to the City ratepayers outlining costs based on the contracts.

- R.2** The 2012-2013 Grand Jury should consider a follow up review of the City of Sacramento's contracted solid waste and recycling services.
- R.3** The City must comply with the requirements and the intent of the Competitive Bidding Code. Additionally, the City needs to develop specific compelling criteria for exceptions to competitive bidding code section 3.60.170 D to define what is, "...in the best interests of the City".
- R.4** The City should provide more extensive public notification on any matter where competitive bidding is exempted per City Code 3.60.170D.
- R.5** Staff and City Council need to provide transparency in review of the financial options in large contracts and utilize independent financial analysis, particularly regarding buy out clauses.
- R.6** The City Council should consider a prohibition precluding former City employees from lobbying, consulting or advising on City contracts for a period of 1-5 years after separation from city employment.

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury.

Response Requirements

Penal Code sections 933 and 933.05 required that specific responses to indicated findings and recommendations contained in this report be submitted to the Presiding Judge of the Sacramento County Superior Court by September 28, 2012 from:

Sacramento City Manager: Findings F1 – F10, Recommendations R1, R3-R6
John F. Shirey
915 I Street, 5th Floor
Sacramento, CA 95614

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda and open meeting requirements of the Brown Act.

Mail or hand-deliver a hard copy of the response to:

Hon. Laurie Earl, Presiding Judge
Sacramento County Superior Court
720 9th Street, Department 47
Sacramento, CA 96814

In addition, email the response to Rebecca Castaneda, Grand Jury Coordinator, at castanb@saccourt.com