

A Report on the City of Ukiah Garbage Contract

May 9, 2012

SUMMARY

In the months since the Ukiah City Council approved a new contract with the waste hauler for the City, there appeared letters, columns, and editorials in the Ukiah Daily Journal decrying several aspects of the agreement. In the opinion of many, the contract did not make sense for the City or for its ratepayers. The contract only made sense for the hauler.

The Grand Jury (GJ) received several complaints. These complaints alleged that the newly negotiated waste contract by the Ukiah City Council was not in the best interests of the City. The complaints further alleged that the City did not exercise due diligence in negotiating the contract to the detriment of the City, its taxpayers, and ratepayers.

Among various complaints were the following allegations:

- The gate fee calculation underestimates savings from redirection of waste from one landfill to another
- The collection contract overlooks a 2.56% increase that was intended to be reversed in 2013
- The grant of exclusive rights to recyclables violates the City's own ordinances
- The contract violates City ordinance regarding unlimited refuse collection
- The contract omits the obligation to make unscheduled pickups
- The contract was uncompetitive and set up unfair business practices that could, over time, force a local composting company out of business
- The contractor has wholly owned subsidiaries, which are engaging in related business transactions, resulting in higher pass through costs to the ratepayers
- The contract is based on unaudited financial statements from the contractor

Methods

The Grand Jury reviewed contracts, pertinent documents, and applicable code sections and regulations. The Grand Jury also interviewed City employees, contractors, citizens, City Council members both current and former. In addition, the Grand Jury also paid a site visit to the sites covered in this report.

Background

It has been expressed that, "Forward-looking American cities are finding innovative ways to reduce garbage pouring into local landfills. They are also making smart moves to preserve their flexibility to take maximum advantage of rapidly evolving technologies in recycling and alternative uses of waste streams."

In December 2011, the City of Ukiah, locked the City into a continuation of an expensive 15-year traditional garbage contract, procured by a contractor in a deal that raised a number of questions. It also appears that the contract is allowing the contractor to engage in business practices that may be unfair.

In Ukiah, the recommendation made by the City Manager, was to approve the contract. The City asked for very few concessions and got even fewer. The contractor walked away with a beneficial deal.

Of concern to the complainants, the contractor was trained by the City's former garbage contractor who was fined by the County of Mendocino and terminated by the City years ago under a cloud of possible contract irregularities.

Who is C&S Waste Solutions (C&SWS)? They are group of related companies – at least thirteen companies in total. Some are based in Nevada. These companies engage in "related business transactions", meaning they do business among themselves while passing on costs to the City's ratepayers.

During our investigation, the GJ was informed this type of business transaction is the industry norm. It is any wonder that the garbage business has lead to a flood of complaints that have resulted in notable Grand Jury investigations in cities like San Mateo and Sacramento.

The Grand Jury found evidence of noncompliance. The City based its approval of the contract with C&SWS on financial statements from C&SWS that were not audited. The GJ also found evidence that C&SWS may be using the contract to eliminate competition. If true this is a potential breach of the City's garbage contract, giving the City probable cause to terminate the contract.

FINDINGS

1. On December 7, 2011, the Ukiah City Council approved by a 3 to 1 vote, a new 15-year contract for garbage collection and hauling.
2. The new contract included a 7.2% increase in collection rates and a 6% increase in transfer station processing.
3. These rate increases in the new contract followed a rate increase in August 2010, of 6% for collection, 27% to the transfer station by the ton, and 48% by the cubic yard.
4. In August 2010, C&SWS cited increased costs for justifying the rate increases.
5. The advisor to the City Council during the discussion and negotiation stage of the December 2011, contract, was a CPA. There were two invited members of the public and official members of the Council present for the meeting.
6. The contracted CPA reviewed, but did not audit the rate requests and stated the increases were justified.

7. The CPA disclosed a conflict of interest, before advising the City of Ukiah on its new contract. The CPA was also under contract with another waste hauler. The other waste hauler is an affiliate of the Ukiah hauler, a wholly owned subsidiary of C&SWS.
8. The disclosure of this conflict of interest was made known and discussed at a City Council meeting in February 2012.
9. At that February meeting, the Council acknowledged the conflict and stated that the matter had been previously discussed between the City and the CPA. At the February meeting, the CPA explained that the CPA would be advising both the City and the other hauler. The CPA stated that the two contracts would be kept separate. That statement seemed to satisfy the City Council. The City decided to continue their consulting contract arrangement with the CPA.
10. The City's Ad Hoc Committee Staff held non-public negotiations with C&SWS for over a year and a half. Two individual members of the public were present at the request of the City. However, this was not an announced meeting and the Staff did not treat this as a Brown Act Meeting.
11. In a following meeting, the City Council decided that the negotiations with C&SWS were to be exclusive of any other negotiations with any other hauler. The City decided that no other provider of collecting, hauling, or recycling services would be allowed to participate.
12. The new 15-year contract signed in December 2011, replaced a contract that was not yet due to expire until 2016.
13. The renegotiation of the contract was a public process. The contract was an agenized item in four separate City Council meetings before it was adopted in December 2011.
14. Before 2011, the City's garbage contract had historically been subject to a three-year review process.
15. C&SWS submitted facts and information to the City supporting its request for a new contract. These included no new financial statements.
16. The financial statements submitted by C&SWS were unaudited.
17. The industry norm and best business practices suggest that only audited financials be accepted by a municipality for the purpose of negotiating contracts.
18. The City did not issue a Request for Proposals (RFP) for the new garbage contract.
19. In awarding the contract to C&SWS, the City conceded it gave C&SWS a "monopoly", arguing that there were "...more efficiencies and cost-effectiveness with one provider."
20. The C&SWS majority owner has a family relationship with the prior contractor.
21. Related parties under common ownership should be identified and their mutual dealings regulated by the contract.
22. Although the rate adjustments depend on cost and revenue, C&SWS does not provide financial reports to the City, and the City has no right to audit per the contract, unless C&SWS requests an "extraordinary increase".
23. Under the new contract, the City lacks unrestricted flow control over the destination of wood waste, green waste and food waste.
24. The City gave up, without compensation, its contractual protection from the 2007 contract from landfill disposal cost increases.

25. The construction cost component of the transfer station gate fee is kept by C&SWS and the City. When the financing is amortized and paid off in 2016, instead of being rescinded, this fee will remain.
26. The transfer station gate fee calculation underestimates savings from the redirection of garbage from Potrero Hills landfill to Eastlake landfill.
27. Additional reductions in the transfer station fee are appropriate due to the fact the transfer station realizes substantial income from the sale of scrap metal, buy-back containers, and other recyclables. This income apparently is not separately disclosed per the contract.
28. The collection contract overlooks the 2.56% rate increase that was supposed to be reversed in 2013.
29. The recycling commodity credit applied against the collection contract operating costs appears to be underestimated according to testimony. The contractual price of \$5 per ton for single stream (mixed recyclables) appears to be less than the amount C&SWS is paying others.
30. Granting an exclusive right to collect recyclables violates the City Code. The City Code also provides that contracts can be granted for only 15 years. However, the current contract provides that an additional 5-year option may be added to the contract term by the contractor only. This effectively grants a 20-year contract.
31. In the terms of the contract is a provision that allows the City to waive arbitration. This may limit the City's remedies if the contract goes into default.
32. The strategic plan section of the contract is vague and ambiguous, and does not commit C&SWS to any aspect of the strategic plan including the open-air composting of organics at an outdoor composting facility.
33. Resolution 95-6 was unanimously passed and adopted by the Ukiah City Council on 7/20/94. The resolution urges all regulatory agencies and lending institutions to proceed with all possible speed to get a compost facility up and running.
34. The composting facility became fully permitted and operational in February of 1995.
35. Since the transfer station was created, the same corporate entity, has provided both the collection and transfer station operation for the City, although different corporate names were used.
36. In negotiating these contracts, the City did no audit.
37. These entities are two of at least thirteen related companies underneath an umbrella organization that includes C&SWS.
38. In negotiating and signing the contracts, the City understood the fact that the two entities are related companies and that the pass through costs involved made the contracts essentially meaningless.
39. The public was allowed less than 5 days to review and comment on the contracts developed by the City and the hauler over that one and a half year period. The contract was published as part of an agenda.
40. The hauler's compost facility is out of compliance, having: 1) more material than allowed on site; 2) exceeding the maximum daily intake; and, 3) because it expanded the facility from 2.76 acres to 4.5 acres without permits. The compost

facility has no pad or pond and is sited on a gravel bar adjacent to a year round creek, thus polluting the water.

41. The City's food waste is not being composted at all. It is being dumped in a landfill at full expense. Much of the green waste is being trucked to Humboldt County and burned. While the State of California allows both composting and burning at a cogeneration plant to count toward the diversion mandate, it considers composting to be preferable. The State considers burning, in order to capture heat, as conversion. Burning is not recycling.
42. The City makes differing statements about organic waste for compost. The City implies that all the material is going to a compost facility. While it may be true that the compost facility receives most of the city's curbside green waste, that material makes up but a fraction of the City's total green and wood waste stream. The City also insists that the hauler has to deliver to the compost facility an additional 200 tons/month at their own expense, implying that there is an expense involved, when in fact the contract obligates the compost facility to take those 200 tons and any additional material free. What remains unclear is by what authority a contract between the City and the hauler can dictate the tip fee or absence of one at the compost facility.
43. AB 341 does not mandate 75% recycling; it only sets that figure as a goal. AB 341 mandates recycling by certain businesses and public entities, but the level of recycling mandated appears unclear. The new 75% goal and the 25% increase in diversion that is proposed, is based on mandatory "commercial recycling", because the commercial sector generates 75% of the waste going to landfills.
44. Food waste materials are not considered "acceptable" for the hauler's proposed facility. The hauler possesses neither the expertise required, nor has it proposed the necessary permitting, to recycle the range of materials that the current composting facility has been successfully dealing with for years.
45. The City stated that there is more than one local company capable of recycling all of Ukiah's organic waste. The City also stated that they would welcome competition.
46. Commercial food waste recycling requires more effort than residential food waste recycling. Some could be co-collected together with the green waste, but the sloppy nature of the material necessitates dedicated bins and special collection routes - something that the hauler has avoided for the past 17 years.

RECOMENDATIONS

The Grand Jury recommends that:

- 1) The City Council initiate an inquiry at the California League of Cities to determine whether audited financials are required or recommended before a municipality signs a garbage contract and determine the actual costs. (Findings 22, 36, 38)
- 2) The City Council initiate an investigation into the related business transactions among the companies related to C&SWS as these transactions relate to costs passed on to the City. (Findings 7, 21, 35, 37-38)

- 3) The City Council conduct an investigation into any possible violations of the contract by C&SWS. (Findings 22, 26-27, 29-30, 42)
- 4) If it fits in the budget, the City Council engage an economics advisory firm to investigate the potential impact of C&SWS monopoly in the trash collection and hauling business in Ukiah. (Findings 11, 18-19)
- 5) The City Council determine if other companies would have responded to a Request for Proposals (RFP) had the City issued an RFP for its trash collection and hauling contracts. (Findings 11, 18-19)
- 6) The City Council determine whether the City's contract with C&SWS can be voided, or any other any legal action taken, after the City's investigations noted above are completed and fully evaluated. (Findings 2-4, 15-17, 20-21, 23-32, 35-42, 44)

DISCUSSION

The story of the city's garbage contract with C&SWS is a saga of:

- Apparently careless city procurement practices
- A relationship between the new contractor and the old contractor
- Restricted public access government decision-making
- Weak City Council oversight
- Less than adequate City Staff work
- Apparently out-classed City Negotiators
- Allegedly hidden business transactions

All of these actions or inactions have translated into higher costs for the residents of the City and the City ratepayers.

Finally concerning the composting issue - In 1995, the current compost facility opened for business, fully permitted to receive all of Ukiah's food waste. The Grand Jury wonders how much longer it is going to take the City to assess its options.

Its current option - and best it is ever likely to find - sits underused in front of its face.

Required Response

City of Ukiah, City Council (All Findings, All Recommendations)

City Manager (All Findings, All Recommendations)