

OFFICE OF THE INSPECTOR GENERAL

MIAMI-DADE COUNTY

FINAL AUDIT REPORT ON

Miami-Dade County Department of Solid Waste Management's Professional Services Agreement Retaining Brown and Caldwell as the Solid Waste System Bond Engineer

APPENDIX C

OIG Rejoinder

September 29, 2005

OIG REJOINDER APPENDIX C

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Retaining Brown and Caldwell as the Solid Waste System Bond Engineer*

FINDING 1 Conflict of interest between B&C's roles as both bond engineer and consulting engineer.

There is a basic disagreement between the OIG and DSWM on whether the Bond Engineer should also function as the Department's major provider of management/operational support services. Much of the OIG's argument rests on the fact that the preponderance of B&C's work under the PSA is consulting engineering, not bond engineering.

DSWM contracted with B&C to provide bond engineering services as required by the original Bond Indenture, as its primary function, with a provision that it may also provide other consulting services. As it has turned out, B&C is providing these "other" consulting services, as its primary function. This is clearly evidenced by the fact that B&C has received almost three (3) times the compensation from DSWM for its other consulting services than it has for the bond engineering services originally contemplated as the primary scope of services. (Report **TABLES 2 and 3**). This represents a role reversal and raises the specter of a conflict of interest between its responsibility and duty to the bondholders as an oversight function and its responsibility and duty to DSWM as its primary management consultant.

DSWM cites the bond documents as the source for bond engineering duties and responsibilities. DSWM, however, does not appear to recognize that there is a difference between oversight and operations. A Bond Engineer cannot perform an independent analysis of and prepare an objective report on issues that it is intimately involved with as a part of the management team responsible for dealing with those same issues. All of the functions mentioned by DSWM as coming from the bond documents are to be fulfilled by an oversight function.

The Bond Engineer should make recommendations to DSWM management on rate revisions and system repairs, maintenance and improvements, and the like but there is a process preceding these recommendations that should be followed. For example, a new technology appears that would appear to enhance the economy and/or efficiency of DSWM operations. Management would instruct its operations staff to study the new technology and recommend whether or not to implement it. Management then agrees or disagrees with the staff recommendation. The Bond Engineer then has the responsibility to evaluate management's decision as to its impact on DSWM's ability to meet its obligations under the bond indenture.

DSWM and B&C are short-circuiting this three-step process. They are justifying what is essentially a one-step process whereby the Bond Engineer does all. DSWM does not accept the crucial distinction between the objectives and role of a Bond Engineer's oversight function versus that of a consulting engineer's operations function. As structured, there is little need for DSWM management other than to issue work orders to B&C and approve its billings.

DSWM sums up its position by stating that the Bond Engineer "is clearly responsible for maintaining the integrity of the System on behalf of the bondholders ..." We do not believe this is an accurate characterization. Maintaining system integrity for the bondholders and for

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Miami-Dade County is DSWM management's primary responsibility. The Bond Engineer is responsible for providing assurance that DSWM management is fulfilling that responsibility in a prudent, business-like manner. B&C, as Bond Engineer, should not itself be fulfilling DSWM's responsibility as de-facto management. As it is, B&C, as consulting engineer, is not far removed from be a full-time manager of DSWM operations.

FINDING 2 DSWM use of the PSA limits competitive procurements for other firms.

DSWM states that it is working with the County Attorney's Office to determine how it will comply with the consultant procurement guidelines contained in Florida Statutes. B&C, in its response, does not address the issue raised by the OIG—namely, DSWM's non-compliance with Florida Statutes Section 287.001. Instead, B&C responds to this finding with its analysis of Task II work orders amounts—something that is not at all discussed by the OIG in this finding.

DSWM also notes that the County Manager's Memorandum accompanying Amendment 7 discusses the creation of a new IT Services category and thus three of the work orders listed in OIG Table 4 were "not pursued in a clandestine manner" as stated by DSWM. The OIG believes that DSWM misses the point here. It is not that these work orders were entered in a clandestine manner. These work order for IT services have no place in this professional services agreement whatsoever. In fact, we feel that the creation of a completely new category of services beyond what could be intuitively considered "miscellaneous engineering services" should have been treated as a bid waiver.

The OIG also now suggests that DSWM consult with Miami-Dade County's Office of Capital Improvements to develop its consultant procurement program.

FINDING 3 Pass through work orders.

DSWM states that minority contracting goals are the reason for the "pass through" work orders but does not address the fact that many of these work orders should have been stand-alone contracts, pursuant to Florida Statutes.

DSWM generalization of these work orders ignores the fact that many of them should have been stand-alone contracts, pursuant to Florida Statutes. The OIG was not questioning minority participation of sub-consultants where the work falls within what the OIG believes to be this PSA's appropriate scope of services, and where B&C as the Bond Engineer also provides services as integral to the work order, beyond merely processing the sub-consultant's invoices and collecting its administrative fee. However, the OIG believes that many such work orders were outside this scope; thus, the OIG took issue with DSWM's practice, in these instances.

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B&C does not address this issue—that such work orders were improper regardless of their other characteristics, other than to say that this is more a DSWM issue than a B&C issue. But B&C does opine that its ability to pass-through work is vital to it meeting its minority participation goals. However, as we noted above, the types of work being passed-through are outside the scope of this type of professional services agreement. Moreover, we must emphasize that B&C's receipt of a ten percent administrative fee for these pass-throughs is, in our judgment, excessive.

B&C does state in its response that it was going along with a DSWM management requests because “each one offered specialized knowledge or other capability and represented a cost-effective means of completing work.” B&C's response highlights the problematic condition detailed in FINDING NO. 1, that being B&C's susceptibility to management's requests for questionable advisory services wherein B&C is directed to use DSWM-picked subconsultants. Moreover, the OIG suggests that these “specialized services” be procured transparently via bid waiver or sole source, and justified accordingly.

DSWM, in its response, stated that it would cease the practice of pass throughs.

FINDING 4 Duplicative overhead recovery under T&M work orders.

DSWM states that it will consult with the County Attorney's Office and the Office of Capital Improvements regarding the PSA multiplier with respect to B&C's accounting and billing practices.

B&C justifies its APC because: (1) it notified DSWM of its intention to use this cost factor in a letter dated February 6, 2002; (2) the federal government allows its use; and (3) it is not duplicative invoicing because it covers PSA allowable reimbursable costs.

As to the first issue, the fact that B&C notified DSWM and that DSWM did not object to the APC does not mean that it is an allowable contract pricing method and that the County later could not come back against B&C for improper billings. We did not find in either DSWM or B&C files evidence that the Department formally acknowledged and accepted this B&C proposal. Moreover, we were not provided with any such evidence in either entity's responses to the DRAFT Audit Report. In addition, we note that B&C's letter to DSWM (B&C Attachment 4A) does not completely describe the entirety of the costs covered by the APC, as discussed below.

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On the second issue, that B&C uses the APC under federal contracts is not a factor here.¹ The relevant question is whether the APC is allowable under this PSA. We do not believe it is allowable under this PSA, as explained below.

B&C's definition of the APC, as taken directly from B&C's accounting department description, in part, states:

Associated Project Cost is a special overhead rate that allocates cost on a direct labor hour basis, paralleling the company's indirect overhead rate that allocates general overhead cost on a direct labor dollar basis. The company established APC to recover such costs as network infrastructure and IS support, long distance calls, cell phone costs and postage on the basis that they are more closely tied to labor effort than labor dollars.

The APC is inclusive of costs for computing, facsimile, graphics, postage/freight, reproduction and telephone. B&C's description continues;

Computing includes all costs related to acquiring, operating, and maintaining CAD systems, PC computers, printers, and BC's wide-area network. Major items of costs include BC support labor, fringe allocation, depreciation, repairs/maintenance/ computer consultants, non-capitalized hardware and software, and line charges.

Facsimile includes all costs related to acquiring, operating, and maintaining BC's facsimile equipment. Major items of cost include lease costs, repairs/maintenance, and depreciation.

B&C describes Graphics and Reproduction costs similarly. These definitions clearly show that a majority of the costs recovered by the APC typically would be considered home office overhead. Thus, to this extent, B&C's application of both the PSA's 2.85 multiplier and its APC of \$5.00 per direct labor hour are duplicative. Notwithstanding, the APC also recovers some local office costs that may be reimbursable to B&C pursuant to a contractual agreement. Such is the case under the subject PSA.

For example, postage/freight and telephone costs are also described and, in limited circumstances, we agree they may cover certain costs reimbursable under the PSA. PSA reimbursable expenses include long distance communications outside of Miami-Dade County, permit fees, computer/plotting services, document reproduction, rental of specialized equipment, and the like. In addition, such costs include consultant travel and subsistence

¹ Typically, cost reimbursable federal government professional service contracts contain at least four (4) defined billing categories: reimbursable direct labor, reimbursable other direct costs, overhead (direct and indirect), and profit. Each category is clearly and specifically described in terms of allowability and allocability, under the terms and conditions of the contract and the federal procurement guidelines referenced therein. We do not dispute B&C's statement that its APC would be a recognized and accepted accounting and billing methodology for use under federal contracts.

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outside of Miami-Dade County and subcontract costs. Thus, we acknowledge that there may be some limited overlap between APC costs and PSA allowable costs.

For the most part, however, costs attributed under this agreement to what B&C considers its APC are already governed by the following PSA terms:

The fee for services . . . shall constitute full compensation to the ENGINEER for costs incurred in the performance of the work such as overhead, fringe benefits, operating margin and all other costs not covered by reimbursable expenses.

Reimbursable expenses shall not include charges for overhead expenses of any kind, such as local telephone and utility charges, office and drafting supplies, depreciation of equipment, professional dues, books, subscriptions, mailing, stenographic, clerical, or other employees' time or travel and subsistence not directly related to the work.

In summary, until and unless DSWM and B&C restate the pricing conventions provided for by the PSA, B&C's use of the APC will cause it to receive duplicative reimbursement for most of the enumerated costs. Accordingly, DSWM should disallow all B&C T&M billings using the APC as a basis for its reimbursable costs recovery and require it to comply with the PSA terms.

FINDING 5 Unreasonable B&C lump-sum pricing.

DSWM states that it does not have access to B&C accounting records showing its actual costs incurred under lump-sum work orders. The Department justifies using lump-sum work orders as a good practice.

The OIG argues that, notwithstanding all of the years of experience possessed by DSWM personnel and that lump-sum work orders can be a good practice, DSWM is not consistently obtaining reasonable prices for the services rendered. DSWM does not have access to B&C cost accounting records but the OIG did obtain these records. The OIG's analysis shows that B&C is consistently recovering, under lump-sum work orders, for more than its direct costs plus its allowable fee (overhead and profit). The OIG notes that B&C uses the PSA 2.85 multiplier for internal cost accounting purposes for all work orders whether T&M or lump-sum. B&C's overhead and profit are recovered via this multiplier. Without accounting for the inclusion of what the OIG believes to be the duplicate recovery of certain overhead costs, B&C typically makes an additional 14.5 percent "profit" on these work orders. After eliminating the duplicate cost recovery, this additional profit increases to almost 21 percent.

The Department justifies using lump-sum work orders as a good practice but does not directly address the issue that its practices may not be resulting in fair and reasonable lump-sum work

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order amounts. DSWM does not ask to review the records obtained by the OIG or say that it will review its practices, in light of the data presented by the OIG. DSWM is not promising to challenge B&C's proposed pricing more aggressively, during future negotiations, by requiring B&C to provide more complete and accurate historical cost data about previous work order costs.

B&C states that lump-sum work orders are allowed under the PSA and that lump-sum work orders are an industry standard. The OIG agrees with both these statements. B&C, however, continues by stating that using the 2.85 multiplier plus the \$5 per direct labor hour APC factor only results in a "breakeven" position for its office. If such were truly the case, it would imply that B&C makes no profit on any of its T&M work orders. We find this hard to believe.

In effect, B&C claims that its only "profit" are those amounts questioned by the OIG. In other words, B&C has to inflate its pricing to compensate for the "fact" that the 2.85 multiplier and the \$5 APC are inadequate compensation. Notwithstanding B&C's financial position, the PSA clearly states that the 2.85 multiplier includes B&C's recovery of an operating margin, i.e., profit. To the extent that is not true, then B&C should negotiate a different multiplier with DSWM. In the end, this may not have much effect on the amounts eventually paid under the various work orders but it should provide for a more accurate accounting and work order pricing. It also would eliminate auditor concerns about B&C making unreasonable profits.

NOTE: DSWM does not organize the remainder of its response following the OIG finding numbers. DSWM explains its position, on the various issues raised by the OIG findings collectively by work order, not by OIG finding number. B&C, however, follows the OIG report presentation and addresses each finding in order. The OIG rejoinder will correspond to the report presentation.

FORMERLY FINDING 6 AND 7 (SEE FINDING NO. 6 IN THE FINAL AUDIT)

Questioned Costs resulting from improper payments to B&C based on uncertain billings and deliverables.

The OIG has consolidated Finding Nos. 6 and 7 into one finding in the final report to better present its concerns about the questionable amounts noted during our review and to recognize certain DSWM and B&C responses to our DRAFT report.

This rejoinder to what was formerly Findings No. 6 and 7 directly responds to the issues raised by the respondents and is presented in the order that the work orders were originally referenced. The OIG originally cited twelve (12) instances combined in these two findings, which we address individually below.

WO 33/70 Both DSWM and B&C disagree that there is a double billing, under this WO. Upon review, the OIG agrees that there may not have been a double billing. However, while this may not have been a double billing, it would have appeared to be an overbilling. This is because the OIG was not provided with complete deliverables for WO 70. Both DSWM and

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B&C refer to a second deliverable provided under WO 70 (GSA Fleet Management Report, dated December 1998); however, this report was not provided to the OIG. The first report called the Waste Conversion Factor Study was originally invoiced under WO 33 as 100% complete for \$3,645. Absent proof of the second deliverable, we find this to be an overbilling for the balance of Work Order 70, or about \$21,000. We have revised TABLE 6 to reflect this change.

WO 87 The OIG issue is that there was “no documentation of the use of services and for the need to expend [WO 87] allowance amount.” Both DSWM and B&C refer to the billing and payment documentation as proof of service. We believe, however, that these show that B&C staff spent some hours that they charged to any one of number of tasks. These documents do not show that there was a need for the work or that that DSWM received any benefit.

The problem arises from the nonspecific task scopes. Typically, the task scopes began with the words, “Additional services . . .” B&C was being directed to spend some staff time working on various DSWM issues until work order funding was expended. There were no defined deliverables required of or time limits (other than on total dollars) imposed on B&C for any of the named tasks. Even in its billings, B&C did not specifically attribute staff hours to any one project. B&C’s one major billing for Allowance Account funds (\$33,144 out of \$40,000) shows that over an approximate five (5) month period of performance (July 29, 2000 – January 8, 2001), B&C staff spent 174.75 hours on any one of six (6) tasks. Of the \$33,144, there also was \$13,000 for a “Lump Sum adjustment to the Task 3 budget.” The expenditure of the \$40,000 allowance account was accomplished through progress billing numbers 2, 5 and 7. The OIG is troubled that the allowance account was depleted prior to the expenditure of the other funds available under this work order.

WO 96/99 As with WO 87, B&C, under WO 96 was being directed to spend some staff time working on a DSWM issue until work order funding was expended. There was no defined deliverable required of or time limits (other than on total dollars) imposed on B&C. Apparently, B&C spent the \$20,000 allocated for it to provide “Additional Meetings and Support” under WO 96. It appears that this was not enough funding for this task, so that under WO 99, DSWM gave B&C another \$17,000 to provide “additional” meetings and support. B&C invoiced DSWM for both these amounts as lump sums. The invoices do reflect different periods of performance. For WO 96, the period of performance was “Inception [November 7, 2002] through February 27, 2001” and for WO 99, the period of performance was “Inception [March 26, 2001] through March 28, 2001.” Thus, it would seem that DSWM paid B&C \$17,000 to provide three week worth of what, in effect were “additional, additional meetings and support.”

WO 97 Upon review of the DSWM and B&C responses to the DRAFT report, the work order has been deleted from TABLE 6.

WO 139 Both DSWM and B&C agree with OIG finding.

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WO 144 Upon review of the DSWM and B&C responses to the DRAFT report, the work order has been deleted from TABLE 6.

WO 154 Upon review of the DSWM and B&C responses to the DRAFT report, the work order amount for Task A has been deleted from TABLE 6.

WO 154 Upon review of the DSWM and B&C responses to the DRAFT report, the work order amount for Task F has been deleted from TABLE 6.

WO 152/154 DSWM argues that there were separate work scopes under WO 152 and WO 154/Task A. DSWM explains the differences between the two work scopes. This is helpful because there was no written authorization (i.e., subtask WO) issued for Task A that defined the specific work scope and deliverable. As acknowledged in its response, B&C initiated Task A based on a verbal authorization.

WO 152 scope requires the preparation of two (2) scenarios: (1) [DSWM] "Base Case Operational Adjustments" and (2) "OMB Operational Adjustments." B&C's proposal states "The DSWM scenario is being designed and quantified under other work order scopes." The WO 152 deliverable (B&C response Attachment 7B1) is a collection of transmittal letters and charts related to B&C/PEG prepared 5-year financial projections of DSWM revenues and expenses. The last document provided by B&C, in this Attachment, is a transmittal letter from its subconsultant (PEG), dated March 12, 2003, ending with the sentence, "As previously communicated, we are now working on the OMB Scenario and plan to present you with model runs and appropriate backup data on Monday, March 17, 2003. (This document was included in B&C's Attachment 7B1, although B&C did not reference it in its narrative on this issue.)

B&C's one lump-sum invoice under WO 152 for \$22,300 describes the work performed as "Development and iterations of Base Case and OMB scenarios." It appears that this invoice overstates what B&C actually provided, which appears to be only part of the full scope required under this work order.

The WO 154 deliverable, as attributed by B&C in its response and Attachment 7B2 is titled "Transmittal of Financial Projections – Base Case and OMB Scenario" (Emphasis added, as this title is consistent with the requirements under the WO 152 scope.) This document, dated March 17, 2003, opens with the sentence, "We are attaching a revised copy of the Base Case financial projections and financial projections corresponding to the solid waste collection system items set forth by the County's Office of Management and Budget." This sentence appears to complete that which was left undone under the aforementioned WO 152 deliverable right to the date that the next promised deliverable was to be submitted. Moreover, we note that the referenced document is only the transmittal letter for the entire report. We have the entire report and its contents match exactly the WO 152 requirements.

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B&C's first WO 154 invoice for Task A (Progress Billing #1), totaling \$23,367.20, describes the work performed as "Development of 'DSWM Scenarios' budget and models and multiple iterations, including meetings with DSWM staff." This invoice description does not match the work product submitted (B&C Attachment 7B2) and apparently paid for under WO 154/Task A. The invoice work description, however, appears to match closely that part of the work product that already was delivered and paid for under WO 152.

In summary, it appears that the referenced deliverables collectively fulfill the WO 152 scope and for which B&C was to be paid \$22,300; instead, however, B&C was paid \$45,667.20. Thus, we attribute the \$22,300 paid under WO 152 to the deliverables and the WO 154/Task A Progress Billing #1 amount of \$23,367.20 as a questioned cost.

In addition, B&C's second invoice for Task A (Progress Billing #2), totaling \$23,368, describes the work performed as "Finalization of 5-year (FY2003 through FY2008) projections of revenues/expense/debt service coverage model as well as associated assumptions for the following cases and Household Fee combinations ..." This description does not match the deliverable (B&C Attachment 7B2). We acknowledge that there likely was a separate deliverable matching this invoice description; however, we were not provided with one during our audit and B&C did not include one with its response. Thus, the invoiced amount of \$23,368 is a questioned cost.

The OIG also points out that there appears to be some confusion between DSWM and B&C about what actually was required under WO 152 versus that under WO 154 /Task A. In its response, DSWM states that WO 152 was for the preparation of OMB scenarios and WO 154/Task A was for the preparation of DSWM scenarios. Conversely, in its response, B&C states that WO 152 was for the preparation of DSWM scenarios and WO 154/Task A was for the preparation of OMB scenarios. This position, however, contradicts B&C's WO 152 proposal stating that "The DSWM scenario is being designed and quantified under other work order scopes" but corresponds to DSWM's position.

Lastly, B&C states, in its response narrative about WO 154 that "verbal authorizations are provided for under the PSA Section 1C (Attachment B)." B&C's incomplete statement needs completion. The full PSA reference is:

The Director of the Solid Waste Management Department shall issue written authorization to proceed to the ENGINEER for each section of the work to be performed hereunder. In case of emergency, the Director of the Solid Waste Management Department or his authorized representative reserves the right to issue oral authorization to the ENGINEER with the understanding that written confirmation shall follow immediately thereafter. (Emphasis added.)

There are no records or the like in the file or in B&C's or DSWM's responses that indicate that Task A was an emergency case and that the oral task authorization was followed immediately by a written confirmation.

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WO 154 Task F—Upon review of the DSWM and B&C responses to the DRAFT report, the work order has been deleted from this finding.

WO 125 Upon review of the DSWM and B&C responses to the DRAFT report, the work order has been deleted from this finding.

WO 126 Upon review of the DSWM and B&C responses to the DRAFT report, the work order has been deleted from this finding.

FORMERLY FINDING 8 (SEE FINDING NO. 7 IN THE FINAL AUDIT)

Unreliable project management and discontinuity in documentation leading to questionable payments.

Both DSWM and B&C miss the report issue that B&C charged direct labor hours to a work order after a deliverable had been submitted but few, if any, direct labor hours to a work order before a deliverable was submitted. B&C included a table (Response, page 22) that shows for all 4 examples that the deliverable was submitted prior to their proposal/inception dates, work order dates, and invoicing period dates. Who, what, where, when and how did B&C prepare these deliverables without expending any effort, i.e., direct labor hours prior to the deliverable dates? B&C cost accounting records show that B&C did not charge these work orders with any direct labor hours or only with minimal direct labor hours prior to the deliverable dates.

The chart on the next page illustrates the condition.

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	WO 158	WO 167	WO 168
B&C Actual Work Start Date ⁽¹⁾	February 14, 2003	August 8, 2003	November 7, 003
B&C Actual Work Stop Date ⁽¹⁾	June 25, 2004	October 24, 2003	March 12, 2004
B&C Proposal/Inception Date	June 6, 2003	October 9, 2003	October 27, 2003
DSWM WO Date	June 19, 2003	October 15, 2003	November 5, 2003
B&C Deliverable(s) Date	June 4, 2003	June 20, 2003; August 18, 2003	October 14, 2003
No. of Days Deliverable Date Before (After) Proposal/Inception Date	2	111 (June) 53 (August)	13
Invoiced Periods of Performance	Inception (June 6, 2003) through May 21, 2004	Inception (October 9, 2003) through October 31, 2003	Inception (October 27, 2003) through November 28, 2003
B&C Total Work Hours	142.0	205.0	133.75
B&C Work Hours Before Proposal/Inception Date	7.0	191.0	0.0
B&C Work Hours Before WO Date	39.0	203.0	1.5
B&C Work Hours Before Deliverable Date	7.0	0.0 (June) 34.0 (August)	0.0
B&C Work Hours After Deliverable Date	135.0	171.0	133.75
B&C Work Hours Before Invoiced Period(s) of Performance	7.0	159.0	0.0
B&C Work Hours After Invoiced Period(s) of Performance	2.0	0.0	.25

⁽¹⁾ Week-ending

WO 158 If the deliverable was dated June 4, 2003, and work began (at inception) June 6, 2003, under what work order did B&C prepare the deliverable. We accept that, at times, B&C services may extend beyond the deliverable date, but we cannot accept that the deliverable was prepared without any work before it was submitted. In this case, B&C cost accounting records show that it charged this work order with only 7.0 direct labor hours before June 4, 2003. Afterwards, they charged this work order with 135.0 direct labor hours between June 13, 2003 and June 25, 2004.

The deliverable given to the OIG for this work order comprises an eight-page narrative report attached to which are attached 10 pages of tables and schedules. This is pretty good production for only 7.0 hours of work. (Notwithstanding, there is no indication that B&C's

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efficiency in preparing this report carried over to any other of its work.) This is certainly a good example of B&C follow-up on a deliverable. In this case and if we are to believe DSWM's response and B&C's accounting records, DSWM paid B&C over \$35,000—out of the total work order amount of \$35,800—for it to attend meetings and perform other ancillary services after producing the deliverable.

WO 142 This work order has been deleted from this FINDING.

WO 167 This is not a finding that there were duplicate deliverables, as stated by B&C in its response. Moreover, both DSWM and B&C do not address the timing issue raised by the OIG. The work performed period (October 15, 2003 through October 31, 2003) per the B&C invoice is approximately 2-3 months after the dates shown on the spreadsheet deliverables provided to the OIG (June and August 2003).

WO 168 This work order is for Disposal Balancing Phase 2 and was a continuation of Phase 1, WO 167. WO 168 is dated November 5, 2003, yet the final deliverable matching the requested scope of work under WO 168 is a final report dated October 14, 2003. B&C provided a copy of this October 14, 2003 report's executive summary as evidence of the deliverable product under WO 168, but does not address the timing issues raised by the OIG. B&C invoices refer to work performed between November 5, 2003 and December 21, 2003. This period is three weeks or more after the deliverable date.

However, B&C also has provided, in its response to this finding, a two-page "Comparison of Financial Results from Alternative Scenarios Relating to Increased Funding for Munisport" as also work completed under WO 168. This Munisport analysis does not match the WO 168 scope description but, moreover, according to B&C's project accounting detail, B&C staff worked approximately 100 hours to prepare this 2-page analysis.

FORMERLY FINDING 9 (SEE FINDING NO. 8 IN THE FINAL AUDIT)

B&C invoices lack adequate support.

Both DSWM and B&C disagree with the OIG finding that B&C invoices could be better supported showing more information about the nature of the B&C activities covered by the invoice. We suggested that B&C should provide more complete information, such as daily/weekly work activity logs, subconsultant invoices and vendor invoices for reimbursable other direct costs. Weekly activity logs would provide specific data about the dates and times of meetings attended, other attendees, agenda/discussion/action items, responsible party for item follow-up and confirmations of DSWM verbal requests for or directions to B&C to perform enumerated services. This does not necessarily always have to be an hour-by-hour listing or total time expended per activity detail, although for T&M services this would be desirable, if not required information.

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In addition, we believe that such documentation would add a level of confidence that prices paid for B&C services are justified by a comparable work effort. Our FINDING NO. 5 described situations whereby lump-sum work orders resulted in unnecessarily large profits for B&C.

B&C, in particular, disagrees with this finding adding, "the time burden of daily work logs to staff will result in high additional charges, which will greatly reduce the value added of the consulting team." We acknowledge that such recordkeeping can be a burden but it is not an onerous burden. In addition, we believe that such records enhance the consultant's professional standing by demonstrating its confidence in its staff by requiring them to document their activities and work hours in such a manner that helps to prove the value of the services that they provided.

B&C's statement that "The release of propriety information from daily work logs relating to services for other clients is another serious concern" is uncalled for and, as a reason not to submit work logs, totally without merit. Nowhere in the OIG's report is there the smallest hint that this was what was being called for.

FORMERLY FINDING 10 (SEE FINDING NO. 9 IN THE FINAL AUDIT)

Verbal NTPs and no documentation of agreed-upon prices.

Without going into the details for all the listed work orders, we selected the first work order (**WO# 97**) as a typical example of the OIG's concern. The OIG requested from both DSWM (which includes Wieland Uchdorf, Ph.D.) and B&C copies of written authorizations for all of the sub-tasks performed under this work order. We received copies of seven (7) such written authorizations.

The authorizations consisted of B&C written proposals containing work scopes, prices and/or pricing terms and which evidenced DSWM's written approvals. Six of these items described subtask scopes, prices and pricing terms. These six (6) items had authorized (and invoiced) amounts totaling \$36,400. The seventh item was a DSWM-approved B&C proposal describing the subtask scope and pricing terms (T&M) but left open-ended an authorized amount. B&C later invoiced DSWM for over \$24,196 under this work order.

In addition to these seven (7) items, there were nine (9) other specific scopes referenced on B&C invoices submitted under this work order. However, neither DSWM nor B&C provided the OIG with written authorizations for these nine other (9) subtask scopes. For these items, B&C invoiced DSWM over \$59,402. At least two of these other subtasks appear related to previously authorized subtasks but the referenced authorization dates, per the B&C invoices, were not the same as the dates for which there were written authorizations.

The twenty-nine (29) items listed by both DSWM and B&C in their respective responses are nothing but a complete listing of invoiced items and amounts for WO# 97. Neither this listing nor the underlying invoices constitute written authorizations to perform services. In addition,

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B&C's referenced Attachment items provide little additional documentation evidencing written approvals for work performed under the subject work orders. Notwithstanding the vast quantity of documents submitted by B&C to refute the OIG's findings, copies of written authorizations for these items that were not provided to the OIG during its audit were also not provided with its audit response.

Without all the details shown for WO# 97, we have brief comments for the four (4) other work orders listed in FINDING NO. 10, based on our cursory review of the documents provided by B&C:

WO# 126 B&C Attachment 7E1 contains documentation substantiating written authorization for one of four subtasks identified under this work order covering \$9,000 out the \$20,000 work order amount. B&C did not provide written authorizations for the remaining \$11,000 work order amount.

WO# 131 B&C Attachment 7E2 contains documentation substantiating written authorization for one of four subtasks identified under this work order covering \$3,000 out of the \$50,000 work order amount. B&C did not provide written authorizations for the remaining \$47,000 work order amount.

WO# 148 B&C Attachment 10A4 contains two (2) "release" letters covering \$40,000 out of the \$50,000 work order amount. B&C did not provide comparable documentation for the remaining \$10,000 work order amount. Of interest, notwithstanding the three (3) described potential subtasks under this work order, B&C billed for the entire \$50,000 work order amount for an identified project but one that was not originally specially authorized by the work order.

WO# 154 B&C Attachment 7A contains some of the various types of documents mentioned for the other work orders. However, even B&C, in its response to FINDING NO. 7, acknowledges that "Work under Tasks A and F were initiated on a verbal basis." In total, verbal authorizations were given for \$98,824 (34.5%) out of the \$266,362 expended under this work order.

FORMERLY FINDING 11 (SEE FINDING NO. 10 IN THE FINAL AUDIT)

Questioned costs totaling \$116,471 under T&M work orders with inconsistent pricing terms when compared to B&C invoicing practices.

*The OIG reviewed both DSWM and B&C responses to our original **FINDING NO. 11** in the draft report and believes that it erred in combining all the listed work orders under one heading without completely describing the circumstances specific to each work order and why they were classified together. We believed that both DSWM and B&C during their analysis of these work orders would have identified the concerns specific to the work orders and addressed them in kind. This did not happen. Most often, the respondents choose not the*

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work order specific concern but, instead, picked a concern and applied it to work order even when it clearly was not applicable to that work order. This allowed both respondents to rebut the inclusion of some of the individual work orders (DSWM response) without addressing why the OIG included them in this finding or to rebut their collective inclusion (B&C response) with a few broad, dismissive statements. Thus, the OIG has restated this Finding in the final audit report to better present its concerns about the inconsistent pricing terms. The new presentation includes specific work order information that was not included in the original report. Notwithstanding the finding restatement, the questioned costs amount remains the same at \$116,471. Please refer to the restated finding (now Finding 10) in the final report.

Notwithstanding the restated finding, DSWM in its response to the draft finding explained that, in two (2) instances (WO#s 133 and 143), it erred in preparing the work orders with T&M pricing, when they should have been prepared as lump-sums. For two (2) of the remaining work orders (WO#s 95 and 148), DSWM does not address the inconsistent pricing terms. For WO# 154, DSWM states that "The W.O., invoices, and work scope are consistent with T&M billing procedures established for this W. O. #154." Whatever these procedures were, they were not part of the records provided to the OIG by DSWM or B&C and there was no reference in either the work order or the proposal to these special T&M procedures.

Additionally, B&C in its response to the draft of this particular finding, acknowledges "the invoiced amounts inadvertently exceeded our understanding of the contractual time & materials formulas in effect at the time, on a net basis, by \$12,818.44." B&C did not provide adequate information from which the OIG could check its calculations resulting in this amount. As such, we do not accept this figure as a final settlement of this issue.

FORMERLY FINDING 12 (SEE FINDING NO. 11 IN THE FINAL AUDIT)

Standard County Contract Boilerplate language, including the OIG clause

While both DSWM and B&C are in overall concurrence with the OIG on this matter, the OIG is troubled by B&C's characterization that the restatement includes a detailed breakout from five tasks to now nineteen individually identified tasks, tied to various authorizing documents. It is important to highlight that two of the "authorizing documents" are not bond ordinances or bond indentures. We recognize that the 1996 Bond Solid Waste System Bonds replaced the 1985 Bonds, which were the original bond indenture that this PSA was tied to. However, now there are two additional authorizations relied upon as justifying the expansion of consulting activities required under this agreement. They are the Resources Recovery Facility O&M Agreement and "Board Item 8S2A; R-244-04 of February 2004: Comprehensive Landfill Closure Plan for municipal and DSWM landfill closures funded through County grants, and associated Grant Agreements."

The OIG recognizes that the Montenay O&M Agreement references the Bond Engineer as "Brown and Caldwell or its successor, selected by the County to perform the services of Bond Engineer required by this Agreement." Referring back to OIG Finding No. 1, we emphasize

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that we do not believe it to be appropriate for the Bond Engineer to perform the inspectional services required by the bond ordinance and provide operations support simultaneously.

Resolution R-244-04 is actually titled Resolution Authorizing The County Manager To Amend The First Amended Grant Agreement With The City Of North Miami For Funding Costs Related To Closure And Remediation Of The Munisport Landfill Site. The OIG acknowledges that the actual grant contract between the County and the City of North Miami contains a provision noticing the City of North Miami that the DSWM's Bond Engineer would be the County's primary representative determining compliance issues and reviewing cost certifications. However, we feel that the wholesale inclusion of all landfill grant monitoring services as newly added "tasks" to the PSA goes beyond a mere amendment to adjust terms and re-program funding. Proposing to add over \$1.5 million in service fees relating to landfill grant monitoring², we believe, goes outside the boundaries allowable under this PSA and, therefore, requires an express statement waiving competitive selection.

Regarding the proposed expansion of task areas from five (5) to nineteen (19), the OIG notes that while many of these tasks are now broken out with some specificity, we question the authorizing source. The task descriptions sound authoritative but we question that some of these are rarely used categories and their funding forms a pool of funds that ultimately will be expended on management advisory services and operations support. These types of tasks are the ones that the OIG believes are over-used under the previous amendments. In contemplation of any additional extension or amendment to this PSA, B&C should be made to prepare a study showing expenditures under Amendments 6, 7 and 8 aligned in comparable manner (by task) for the new funding levels requested.

New task areas numbered 13 - 17 involve the various municipal landfill closures and the respective monitoring of the municipal grants that the OIG already has discussed above. Task 18 involves construction oversight over one of the County's own landfill cells, which the OIG believes could be the subject of a separate competitive selection and award process.

² This figure was shown by the Department in its original proposed Eighth Amendment for monitoring fees over a four-year period relating to landfill closures.