

BUDGET AND FINANCE COMMITTEE

Council of the County of Maui

MINUTES

August 18, 2008

Council Chamber, 8th floor

CONVENE: 1:38 p.m.

PRESENT: Councilmember Joseph Pontanilla, Chair
Councilmember Gladys C. Baisa, Member
Councilmember Jo Anne Johnson, Member
Councilmember Danny A. Mateo, Member
Councilmember Bill Kauakea Medeiros, Member
Councilmember Michael J. Molina, Member

EXCUSED: Councilmember G. Riki Hokama, Vice-Chair
Councilmember Michelle Anderson, Member
Councilmember Michael P. Victorino, Member

STAFF: Lance Taguchi, Legislative Analyst
Michael Geers, Legislative Analyst
Yvette Bouthillier, Committee Secretary

ADMIN.: Helene Kau, Assistant Budget Director, Budget Office, Office of the Mayor
Kalbert L. Young, Director, Department of Finance
Cheryl K. Okuma, Director, Department of Environmental Management (BF-66)
Tracy Takamine, Solid Waste Division Chief, Department of Environmental
Management (BF-66)
Benjamin M. Acob, Prosecuting Attorney, Department of the Prosecuting
Attorney (BF-75 and BF-114)
Wayne Steele, Administrative Officer, Department of the Prosecuting Attorney
(BF-75 and BF-114)
Lena Lorenzo, Victim Witness Director, Department of the Prosecuting Attorney
(BF-75 and BF-114)
Traci Fujita Villarosa, First Deputy Corporation Counsel, Department of the
Corporation Counsel

PRESS: Akaku: Maui Community Television, Inc.

CHAIR PONTANILLA: . . .(*gavel*). . . The Budget and Finance Committee meeting of
August 18, 2008 is now in session. The Chair would like to introduce the

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Members that are here this afternoon. We do have Members Mateo, Baisa, Johnson, Medeiros and Molina. Excused at this time, are Members Anderson, Hokama, and Member Victorino. Up front with us this afternoon, we do have members of the Administration. We do have the First Deputy Traci Fujita Villarosa, along with Benjamin Acob from the . . . he's a Prosecutor, and also up front is our Finance Director, Mr. Young. Supporting the Committee at this time, we do have Lance Taguchi as well as Michael Geers, and our Committee Secretary, Yvette Bouthillier.

Yvette, do we have anyone signed up for public testimony at this time?

MS. BOUTHILLIER: No.

CHAIR PONTANILLA: The Chair is going to leave public testimony open for a while. Members, we do have three items on the agenda this afternoon. And at this time, the Chair would like to bring forward the first agenda item – BF-75, and this is the Victim Witness Assistance Program.

ITEM NO. 75: VICTIM WITNESS ASSISTANCE PROGRAM
(C.C. No. 07-306)

CHAIR PONTANILLA: As required by Section 11 of the Budget Ordinance, the Committee is in receipt of notification of a Grant Award letter for the Victim Witness Assistance Program. I would like to note that the Prosecutor's Office have been very diligent in complying with the requirements of Section 11, which requires that written notice be provided to the County Council upon receipt of a notification of a Grant Award from the grantor or receipt of notification from the grantor that a Grant Award will be forthcoming. I want to congratulate the Prosecutor's Office for being so diligent regarding this matter here. At this time, the Chair would like to call on Mr. Young, if you do have any comments at this.

MR. YOUNG: Thank you, Mr. Chair, and good afternoon, Members. This communication is related to a grant award that the Department of the Prosecuting Attorney received from the State Attorney General's Office. It is also included in the annual Fiscal Year '09 Budget as anticipated for their operations in this particular program. The Prosecuting Attorney, Mr. Acob, is also here to answer any questions regarding this grant or the program itself. Thank you, Mr. Chair.

CHAIR PONTANILLA: Thank you. Mr. Acob, you got any opening comments at this time?

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MR. ACOB: Thank you, Mr. Chair. No, I don't have any opening comments or statements at this time. But I'll try my best to answer any questions that you folks have.

CHAIR PONTANILLA: Thank you. Members, any questions for either the Finance Director or the Prosecutor at this time? Member Johnson?

COUNCILMEMBER JOHNSON: Yes, I just wanted to ask Kalbert because we had some monies that were anticipated to be received within our budget, so is then in addition to those monies or is this just a confirmation of the monies that we actually anticipated to be received?

MR. YOUNG: Yes, Ms. Johnson. Each year when the budget is constructed, I believe for Fiscal Year '09, the Department did anticipate that there was a potential for this grant award. And so at that time when the budget was constructed it was constructed with that anticipation. So this amount is already included.

COUNCILMEMBER JOHNSON: Thank you very much.

CHAIR PONTANILLA: Thank you. Members, any more questions for the Department at this time? I do have one. The grant amount is \$122,000 and the Fiscal Year 2009 Budget is \$211,000 for the program which provides for four EPs. Are all of the positions currently filled?

MR. ACOB: Yes, Chair Pontanilla.

CHAIR PONTANILLA: Thank you. Members, any more questions for the Department? If not, the Chair would like to make his recommendation.

COUNCILMEMBERS BAISA and MOLINA: Recommendation.

CHAIR PONTANILLA: The Chair recommends that this item be . . . file this County Communication.

COUNCILMEMBER MOLINA: So move.

COUNCILMEMBER MEDEIROS: Second

CHAIR PONTANILLA: Moved by Member Molina, second by Member Medeiros. Members, any more discussion? Seeing none, all those in favor of the motion, please say aye.

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COUNCIL MEMBERS: Aye.

CHAIR PONTANILLA: Thank you very much. Motion is carried with six ayes, three excused – Members Anderson, Hokama and Member Victorino.

VOTE: **AYES:** **Councilmember Baisa, Johnson, Mateo, Medeiros, Molina, and Chair Pontanilla.**
 NOES: **None.**
 ABSTAIN: **None.**
 ABSENT: **None.**
 EXC.: **Councilmember Anderson, Victorino, and Vice-Chair Hokama.**

MOTION CARRIED.

ACTION: FILING of communication by C.R.

ITEM NO. 114: DEFENDANT/WITNESS TRIAL PROGRAM
(C.C. No. 08-166)

CHAIR PONTANILLA: The next item on the agenda is BF-114, Defendant/Witness Trial Program. The Committee is in receipt of a copy of a Grant letter for this program. The grant reimburses the County for defendant and witness expenses for this current fiscal year. At this time, the Chair would like to call on Mr. Young, if you have any comments to make?

MR. YOUNG: Thank you. I don't have any additional comments to that which the Chair has read from the communication. Mr. Acob is available for any further insight. Thank you, Mr. Chair.

CHAIR PONTANILLA: Thank you. Mr. Acob, comments?

MR. ACOB: I'll be happy to answer any questions that the Committee has, Mr. Chair Pontanilla.

CHAIR PONTANILLA: The Chairman has one question. This is in regards to the amount of the grant award, if you do have that information.

MR. ACOB: Mr. Chair, actually this program is not a true grant program. What it is a reimbursable kind of a program where we spend the money. I believe the County upfront the money and then the State will reimburse certain expenses. And when we receive the reimbursement, then it will go back to the General Fund.

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CHAIR PONTANILLA: Thank you. Members, questions? Member Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. I just have one question. Both the Victim Witness and the Defendant/Witness programs and the awards that the grant award that they get, is this an annual award that your Department gets?

MR. ACOB: Yes.

COUNCILMEMBER MEDEIROS: So you have to apply for these awards annually, these grants?

MR. ACOB: I don't believe so. It's a program that's mandated by Statute so we do have that program, and the State provides us with the money whatever they can afford and we go from there.

COUNCILMEMBER MEDEIROS: I see. And for the Finance Director, so along the lines of what Member Johnson asked, so we can anticipate this money in advance and it's made part of the budget?

MR. YOUNG: Mr. Medeiros, each year when you do the budgets there are expenses related to this service for a lack of a better word – service, that the Prosecutor's Office must entail for every trial. All those costs are already budgeted in the Prosecuting Attorney's budget. We've been fortunate, knock on wood, for whatever reason whether it's by Statute or by State grant that annually there's been some portion of those expenses have been reimbursed to the County for these trials. I think given the history of it, we anticipate that we will get some portion, majority or minority portion of these expenses reimbursed and that is included in the budget under the current strategy of constructing the budget, and until that changes, you know we are optimistic that that will continue.

COUNCILMEMBER MEDEIROS: So that anticipation of funds is basically having to do with the past history as far as the amounts, so we really don't know the specific amounts that will be coming forth?

MR. YOUNG: My understanding is that only part of all the different types of expenses that can be incurred under this program only part of those or only certain types of expenses are actually qualified for reimbursement. So, if there are variations from year-to-year on the . . . you know, how much that amount is for those qualified expenses that would actually affect how much we actually get reimbursed.

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COUNCILMEMBER MEDEIROS: Okay, thank you, Department. Mahalo, Mr. Chair.

CHAIR PONTANILLA: Thank you. Member Mateo followed by Member Johnson.

COUNCILMEMBER MATEO: Chairman, thank you very much. Mr. Young, can you just, I guess for the sake of my understanding the letter, this is the letter that we have dated July 2nd, it recognizes the fact that we are in receipt of a grant award and we don't even know, we don't know what that award is and this award is from the State of Hawaii, and it is based on a reimbursement to the County for expenses, for the expenses incurred. So, all the letter tells us at this point is that the County is guaranteed a percentage of the reimbursements that had been incurred because I don't know what we're actually looking at other than a letter from both the Prosecutor's Office and the State of Hawaii that tells us that there is monies available and you going get some of it based on whatever that reimbursement formula is. So, my question to you would be, is this the normal process we normally go through to approve or accept something that we don't even know what it may be?

MR. ACOB: Um . . . from what I know, yes, this is the normal process. Historically, that's how we've been doing it and let me just clarify something, it's not a percentage per se. Maybe it's a percentage of what we actually spend but there are qualified expenses that the State will reimburse us 100 percent. And most recently, there are expenses that they won't reimburse and there's only one example I can cite and this is the only one I know that they won't reimburse at this point is when the cost of lodging is over the allowable amount, they only go up to what they are allowed and the County would have to pick up the rest of it.

COUNCILMEMBER MATEO: Okay. Well, thank you. The process itself is not really assuring because we're looking at something that we virtually haven't a clue what the State is committing to. And I think it's kind of presumptuous for us to even deal with a dollar value or an expectation when it's totally indicative of the State accepting what is applicable and what is not applicable in terms of expenses. So I'm just a little disturbed by this because I just really don't understand why we're even looking at this at this point, Chairman.

MR. YOUNG: Uh, Mr. Mateo? Mr. Chair?

CHAIR PONTANILLA: Yeah.

MR. YOUNG: I'm not sure why you folks are looking at it. I can't answer that question but if I can give a little bit more clarity. The reason why there's no dollar value is because, as Mr. Acob mentioned, it's not really a grant in a true sense where

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there's a specific sealing on the amount of funds that we have access to. And that is largely because one, we don't know how much the Legislature appropriates for this particular program across the entire State all County jurisdictions. We also don't know how much those other jurisdictions are going to use what portion of that bigger pot. There's no real guarantee per se but to the extent that the State is offering us access to reimburse to the limits of the fund that was appropriated. That's pretty much all we have guarantee. So I don't know if you can hang your hat on that but we have access and to the extent that we can get those funds for the time being while they last we have that access. The way that it will work is that the Prosecuting Attorney's office has these expenses budgeted within their office to pay for all these expenses. While the County gets reimbursed, that reimbursement actually goes into the General Fund. It doesn't return to the Prosecuting Attorney's office so whatever they budget, that's the limit of their budget that they use for this program. The County, as an organization, gets its monies reimbursed from the State but it actually goes into the General Fund not to the direct benefit of the Prosecuting Attorney's office.

COUNCILMEMBER MATEO: Thank you. Mr. Young, would you have a ballpark of what the County was reimbursed last fiscal year?

MR. YOUNG: Mr. Mateo, that I would not happen to know right now. I would have to look that up for you.

COUNCILMEMBER MATEO: Thank you.

MR. ACOB: Mr. Mateo? Mr. Chair?

CHAIR PONTANILLA: Mr. Acob, go ahead.

MR. ACOB: Thank you very much. I can say that for Fiscal Year '08, we actually spent about \$150,000 and that is why . . . that's the amount that we go by when we go for the next year budgeting that's why we have \$150,000 for FY 2009.

COUNCILMEMBER MATEO: Thank you, Mr. Acob. Thank you, Mr. Chair.

CHAIR PONTANILLA: Member Johnson?

COUNCILMEMBER JOHNSON: My questions are along the lines that Councilmember Mateo asked and I guess just to follow up on what Mr. Acob had stated, out of the 150,000 that was actually budgeted, you don't at this point in time based on what Mr. Young said, you're not sure of what amount out of 150,000 was actually reimbursed?

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MR. ACOB: I would say that it's very close to the full amount.

COUNCILMEMBER JOHNSON: Okay. Because I think the problem of us trying to look at something is number one, as Mr. Young stated, we're one of the Counties that participates in this program so we don't know what kind of expenses are going to be incurred from other jurisdictions that may be in front of us and I'm assuming it's first come first serve. And I think also the other problem is that you don't know necessarily all of the defendants that you may have to actually incur expenses for because you're developing these cases as they go along. So I think the part and, correct me if I'm wrong, but the part that we do care about is the fact that the Budget Director at the State level has indicated that the monies will be released up to the appropriation that is made by the Legislature and that's something that recently we haven't had that assurance because even for many nonprofits even though the monies were appropriated, there was no indication that they would ever be released. This is why I find this letter helpful because it gives an indication in advance that that money has already been pledged to be released up to whatever that maximum is. So I think they've answered my questions to Member Mateo but I just want to make sure that I'm correct in that assumption.

MR. YOUNG: Thank you. That is correct.

COUNCILMEMBER JOHNSON: Okay.

CHAIR PONTANILLA: Okay.

COUNCILMEMBER JOHNSON: Thank you very much.

CHAIR PONTANILLA: Members, any more questions for the Director or the Prosecutor at this time? If not, the Chair would like to make his recommendation.

COUNCILMEMBER MEDEIROS: Recommendation.

CHAIR PONTANILLA: The recommendation is to file this County Communication.

COUNCILMEMBER JOHNSON: So move.

COUNCILMEMBER MEDEIROS: Second.

CHAIR PONTANILLA: Moved by Member Johnson, second by Member Medeiros. Members, any more discussion regarding this item? If not, all those in favor of the motion, please say aye?

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VOTE: **AYES:** **Councilmember Baisa, Johnson, Mateo,
Medeiros, Molina, and Chair Pontanilla.**

NOES: **None.**

ABSTAIN: **None.**

ABSENT: **None.**

EXC.: **Councilmember Anderson, Victorino, and
Vice-Chair Hokama.**

MOTION CARRIED.

ACTION: FILING of communication by C.R.

CHAIR PONTANILLA: Motion is carried. Six ayes, three excused – Members Anderson, Hokama, and Mr. Victorino.

**ITEM NO. 66: CONTRACT NO. C2198-6 FOR PROFESSIONAL
SERVICES (EKO SYSTEMS, INC., DBA MAUI EKO SYSTEMS;
OPERATION OF CO COMPOSTING FACILITY AT CENTRAL
MAUI LANDFILL)**

CHAIR PONTANILLA: Okay, Members, moving along. The final item for today is BF-66. This is Contract No. C2198-6 for Professional Services - EKO Systems, Inc., dba Maui EKO Systems operation of co-composting facility at the Central Maui Landfill. This is \$1.9 million increase. And this is the sixth amendment to the contract. The original contract is dated back August 3, 2003. So, at this time, the Chair would like to call on Mr. Young for comments.

MR. YOUNG: Thank you, Mr. Chair. The item before you is one of the contracts that was transmitted as a matter of course from the Department of Finance to the Council. The contract is related to Professional Services written to EKO Systems doing business for us at the Central Maui Landfill. The contract was originally signed back in 2004, uh, I'm sorry, 2003, and since has been amended and/or extended as pursuant to the existing and original contract. The Director of the Department of Environmental Management, Ms. Cheryl Okuma, and the Division Chief for the Solid Waste Division, Mr. Tracy Takamine, are here for any questions related to this contract or service.

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CHAIR PONTANILLA: Thank you, Mr. Young. Members, if you recall some time back in our Council meeting, this contract was approved because of Members of the Committee had a question regarding this particular contract so that's why it is before us today. Ms. Okuma, do you have any comments to make?

MS. OKUMA: Um . . . if I may, perhaps I can start with an update in terms of where we are as far as this contract. This was a five-year contract which came to an end on June 30, 2008. And given where we are with the project and the contractor, we then went into negotiations because as part of the RFP that was issued previously there was an option to extend another five years, that's five years from end of June 30, 2008. We have heard that the Council members have had some questions about this contract and so given those issues and concerns, we approached the negotiations in terms of the upcoming years a little bit differently. And if I may, I'd like to just sort of update you on that. Instead of extending automatically for another five years, we realize that we do need the chance to evaluate this contract and this project because it has been one that has gone on for about 12 years and certainly met the needs of the community at that time and as the 12 years went by. But in order to give ourselves the time to do that evaluation and also recognizing that we were not in a position to just go out with an RFP currently because these types of projects would need a certain lead time in order to, even if there was a new vendor, to get a new vendor on line. So given the time factor and where we were what we've done is we've negotiated instead half of that five years. So, at 2.5 is the term of the current contract that we have entered into. There is an option to extend for the remaining part of the 2 ½ years. Now as part of this agreement with the contractor, we have about a year to a year and a half to evaluate whether or not we will decide to go out with an RFP because of course that decision also takes into account that it's time, effort, and money to even go out with an RFP. But that will give us enough time to do an evaluation and to determine whether to go out, whether it makes sense to go out with an RFP, whether that's the best thing for the County. Now, if by chance it turns out it is not in the best interest and that we're really doing okay, then we have the option with the contractor to extend for the remaining of the two and a half years. Now what has happened is because the contractor told us that they needed to purchase new equipment normally they amortize their equipment over the contract period, which would have been five years. But in this case, they had to amortize over two and a half years. What they've agreed to do, although they weren't exactly thrilled with this but they did agree to it is that if by chance their evaluation shows that it is in the County's best

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interest to extend for that remaining two and a half years, then the cost would be lower to reflect as if they always had the five year contract. So that fee would actually be, that cost would be flattened out basically. And I think that was about the best that we could do considering the questions and the concerns that had been raised given where we are and allowing ourselves enough time realistically to be able to do that kind of an evaluation.

CHAIR PONTANILLA: Thank you. Members, what was passed out to you is basically the audit report that was done for contract years 1996 to 2003. So I'll give you a moment to read it unless you guys have any questions at this time. Member Molina followed by Member Johnson.

COUNCILMEMBER MOLINA: Thank you, Chair. Madam Director, can you just give us an update with regards to the recommendations made in the audit -- what has transpired since then, have we met most of the concerns?

MS. OKUMA: Okay. I have to say that this audit only came to my attention about a few months ago and I don't know that anybody here because we were not there at the time this audit was done or even knew about the audit. It actually came to my attention through the contractor. Before then I did not realize that this had happened. But having obtained it and having looked at it what it appeared to be is that the auditor at that time found that there was compliance with the environmental requirements so that's good news and it's in accordance with EPA requirements. And I just want to say that reports are done to Department of Health, and if there were any environmental problems or noncompliance, we would have heard about that.

Now, the other part of the audit report had more to do with the financial aspects and from what I gather from reading this, the auditor was not able to obtain the requested financial information from the contractor so, as a result, apparently had to make a lot of assumptions in there. So I'm not sure how much weight is to be given to, uh, the opinion given that the assumptions needed to be made and they weren't real numbers available. But I think basically where we see our evaluation moving forward is to probably pick up where that auditor left off, and that would help us to look at performance aspects in terms of this contract.

COUNCILMEMBER MOLINA: Thank you very much and that's an important thing for all of us as long as we're moving ahead we're addressing the

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concerns that were expressed and we're making progress. Thank you, Chair.

CHAIR PONTANILLA: Thank you. Member Johnson?

COUNCILMEMBER JOHNSON: Uh, yes. So the projections that we're looking on at Page 13 where it's "Estimated EKO Production Income Statement", those are not based on actuals? Those are based on what the projection was as to what the -- you've got revenue expenses and net profit?

MS. OKUMA: You know, I'm not going to speak for the auditor who is far more expert than myself but if you just take the word of this report, it certainly sounds like it was their best estimate based on whatever they had because they were not able to get the actual information, those financial information from the contractor.

COUNCILMEMBER JOHNSON: And when you read, you know, a little bit farther down it says that these are estimates of the current costs and estimates of current production levels. And I'm interested to see that 'cause I know we did look at this before because we were concerned. There had been questions raised in the community why there are so few bidders and also I gathered that the community had been raising some issues. I believe at the time it was about contaminants within the co-composting product and why we were actually using this on the County parks and playgrounds. I think that was primarily the focus of this audit and the safety of the product. Maybe not focusing as much on the monetary part but I would be . . . I guess I would be remiss if I didn't ask our Finance Director that when we issue contracts particularly for performing things that ordinarily government would take on as their responsibility we have required actual audits to be turned in with the actual income revenues. They have to provide, in fact, our non-profits many times I'm sure Humane Society and other entities that do have contracts with the government have to provide some type of audit. So is that being done currently, and if it is, is that information available to us?

MR. YOUNG: Well, Ms. Johnson, most of the contracts . . . well, I shouldn't say most, it is standard that we typically do include in our contracts submittals of audited financial reports. And that is available to the departments. The Department of Finance doesn't follow up and request for these audited financial reports for all of our contracts. It's typically left to the administering departments if they are interested in they can ask for those audited financials if the contract allows for it. I would point out though

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that audited financials doesn't necessarily reveal to the depth and detail that everything about a company or an organization providing a level of service. They're purely based on just the financial performance of a company.

COUNCILMEMBER JOHNSON: And that's the difficulty I think that we have. But even from the projections that we're looking at on, you know, let's say where it was done on an estimated basis as to the financial impact to this company. I know no company is going to do this for free and just out of the goodness of their heart. But I think that built into our contracts we should have a margin at least saying, okay, if you're doing this as a public service we're going to give you sufficient money to operate and then "x" percentage of revenue projected. Is that possible for us to actually do that within the contract, or is it because there's so few bidders out there that we're kind of stuck with what we have?

MS. OKUMA: I think in terms of the bidder's question, from what I understand this contract or this project had been put out to bid at least once, perhaps twice over these last 12 years, and that in fact was one of the situations. But as I noticed from the auditor's report they've also mentioned it's about a one-to-three year lead time from issuing an RFP to take over of a new contractor if that should be the case. So perhaps, you know, that's one thing that, that needs to be considered in terms of why, why we are in this kind of situation. But, um. . .I, I. . .and I think we'd like the chance to see if that situation has changed first of all, but there may be another way to look at dealing with our fats, oil, and grease, and our bio-solids and green waste.

And I just wanna mention that. . .actually at the request of Chair Hokama we were in touch with Warren Watanabe at the Farm Bureau and we are in some exploratory discussions in terms of what if any other opportunities there might be there with the farmers and the agricultural industry to the extent they may have an interest in these kinds of products. So I just wanna say that, you know, we're looking at a lot of different . . . *(end of tape 1A - 2:10 p.m.)* looking at are there more. . .would there be more bidders out there now, you know, time's change, things change. So perhaps we might have more of an interest out there, and another opportunity in terms of how we structure an RFP.

COUNCILMEMBER JOHNSON: And does EKO also have contracts on Molokai and Lanai or is this only Maui?

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MS. OKUMA: To my knowledge, it's only, it's only Maui, on Maui.

COUNCILMEMBER JOHNSON: On island.

MS. OKUMA: I'm sorry, they're on the Big Island but they're not on Molokai or Lanai. So in the County of Maui it's only on Maui island.

COUNCILMEMBER JOHNSON: Okay, so what do we do with like the bio-solids, the sludge, the fog, you know, on Molokai and Lanai? Do we have another contractor or do they just go into the landfill?

MS. OKUMA: No. Sludge is not being hauled on Molokai or Lanai. Molokai and Lanai are basically, you know, a pond system. In terms of fats, oil, and grease I think Molokai may have had a contractor that deals with that. But I don't know if that person is still in business or maybe perhaps, okay, until they're still in business.

COUNCILMEMBER JOHNSON: And I think Mr. Chair, one of the problems that we have in looking at this contract just from a procurement perspective because of these huge expenses that have to be incurred to ramp up to take over a contract that is probably only going to be for five years. You have to look at your capital investment as a person who is going to bid on this kind of a service. So if there's any amount of uncertainty, you're more than likely not going to invest in the equipment that would be necessary to execute the contract. So, for me, Mr. Chair, I would be really interested in looking at the cost analysis if we're still having problems with this contract and looking maybe at RFPing certain components of it but not the entire contract and having the County really look at whether we can more effectively deal with this because, you know, we're not in business to make money. Either we just meet our expenses and meet payroll so if there's any kind of marginal profit maybe it's better over time for us to actually taking over or taking back this responsibility. There's nobody out there that really is willing to do it. And if we can't get this information, you know, 'cause to me I don't begrudge anyone making a profit. But this is with taxpayer money and if we're suppose to be delivering a service we wouldn't build in a profit margin into the contract. So, I guess there's nothing we can do about this contract but I just express those concerns and those suggestions. Thank you.

CHAIR PONTANILLA: Very good point, Member Johnson. Members, any more questions regarding the EKO contract that was . . . (*inaudible*) . . . Member Medeiros?

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COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Yeah, I just wanted to ask, is it standard procedures that when we have a contract that included in the requirements of the contract is an audit? And if it is, how often is that done?

CHAIR PONTANILLA: Mr. Young or Ms. Okuma?

MR. YOUNG: Typically, the contract itself would actually spell out how often the County would expect audited financials. The ones that I see are typically written in for grant awardees, and those are, have an annual requirement. The expectation is that grant, that's when the County is actually giving money as a grant. But the grant awardees are expected to have audited financials done each year.

COUNCILMEMBER MEDEIROS: Okay. And being that this is a contract with the County directly, what's the requirement for an audit in this contract?

MR. YOUNG: I don't have the original contract in front of me so I don't know if that was that specific requirement in this contract.

COUNCILMEMBER MEDEIROS: Then who determines when this audit was made? Who required this audit?

MS. OKUMA: I don't know that we know, I don't know the answer to that. I had understood that it was Council driven at that time. The current contract there is a performance review that we will be doing which fits with what I've just been mentioning but that's not specifically an audit.

COUNCILMEMBER MEDEIROS: Okay. So this contract being that it's at a facility that's within the Department of Environmental Management, do you get all the reports that come to the Department of Finance regarding this contract? Or is it only on request from your Department to get it?

MS. OKUMA: I'm sorry. Could you please clarify what kind of reports we're referring to?

COUNCILMEMBER MEDEIROS: Well, you mentioned in your opening statement that you didn't know that this audit report was available or even done and you were told about this from the contractor itself. So I'm asking if it was an audit that was sent or provided to the County, why wouldn't you have received a copy?

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MS. OKUMA: Okay, the Finance Director Young has a transmittal that showed that this audit was sent to the Council members back then. And I don't have any other records in terms of transmittal. All I can say is when this came up in the discussion with the contractor they provided just the audit. I don't have any transmittals to back it up. It looks like Director Young has a little more than I have.

COUNCILMEMBER MEDEIROS: I see.

CHAIR PONTANILLA: Mr. Young, you have more information?

MR. YOUNG: Only that to me it looks like this audit, this predates me with the County too so I don't have any institutional knowledge of how this audit came about. But it looks like this audit was actually performed at the request of the County Council because this audit report was delivered and transmitted to the Council itself.

COUNCILMEMBER MEDEIROS: Okay. So and being that it predated you, and it predated Director Okuma too, then I guess, so would have this audit gone to the Department of Public Works before the separate departments were formed?

CHAIR PONTANILLA: Mr. Medeiros, maybe Mr. Taguchi can help us on this one here. Go ahead.

MR. TAGUCHI: Chair Pontanilla, the audit was performed in June 2003 at the request of the, at that time, the Maui County Council. The Council was concerned as Member . . . (*short pause*) . . . as Member Johnson said, the primary concern was a health issue regarding the use of solids from our treatment plants and composting them into fertilizer. But as part of the audit, there was a financial component to take a look at hopefully the cost of doing the composting process. During the course of the audit, the person contracted came across resistance in disclosure of financial accounting records. Because this is not our grant and it is a contract, there was some question as to how much records the vendor had to disclose to us. At that point in time, the vendor indicated that some of the processes that they do is confidential. They had a special way, I guess, of processing the compost. So at that point in time, the auditor notified the Office of Council Services and we were thinking about looking to Corporation Counsel to see how much disclosure of financial records were required. But in that course, the auditor said that it was not necessary. He would

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rely on industry standards. The problem with industry standards is that there are probably standards created in the mainland. So, we're not too sure about the correlation of the estimated EKO production income statement that's referred to on Page 13. It's based upon estimates. And in any case, when the audit report was finalized, there was a meeting in one of the Council's committees to discuss the findings with the Department. So in that case, the Department was aware of the audit report and should have had copies. But that's my recollection of this audit at that point in time.

COUNCILMEMBER MEDEIROS: Thank you for that information and you said that the Department would have then provided a copy of the audit. Which Department are you speaking of?

MR. TAGUCHI: At that time, I believe it was still the Department of Public Works and I believe it was also called Environmental Management but it was either the Department of Public Works and, subsequently, became the Department of Public Works and Environmental Management.

COUNCILMEMBER MEDEIROS: Thank you, Mr. Taguchi. Mahalo, Mr. Chairman.

CHAIR PONTANILLA: Thank you. Members, any more questions for the Department at this time? If not, then the Chair would like to make his recommendation.

COUNCILMEMBER MEDEIROS: Recommendation.

CHAIR PONTANILLA: The Chair's recommendation is to file this County communication.

COUNCILMEMBER JOHNSON: So move.

COUNCILMEMBER MOLINA: Second.

CHAIR PONTANILLA: Moved by Member Johnson, second by Member Molina. Any more discussion, Members? All in favor of the motion, please say aye?

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VOTE: **AYES:** **Councilmember Baisa, Johnson, Mateo, Medeiros, Molina, and Chair Pontanilla.**
 NOES: **None.**
 ABSTAIN: **None.**
 ABSENT: **None.**
 EXC.: **Councilmember Anderson, Victorino, and Vice-Chair Hokama.**

MOTION CARRIED.

ACTION: FILING of contract by C.R.

CHAIR PONTANILLA: Motion is carried with six ayes, three excused – Member Anderson, Hokama, and Member Victorino. Members, if there's no objections, the Chair would like to close public testimony at this time.

COUNCIL MEMBERS VOICED NO OBJECTIONS.

CHAIR PONTANILLA: Thank you. Okay, Members, Item 66 was our last item on the agenda this afternoon. I appreciate your attendance this afternoon. If there's any announcements at this time that any one of you would like to make? Seeing none, the Chair would like to thank the Administration and our Staff for supporting this meeting this afternoon. The Budget and Finance Committee meeting of August 18, 2008 is now adjourned. . . .
(gavel) . . .

ADJOURN: 2:21 p.m.

APPROVED:


JOSEPH PONTANILLA, Chair
Budget and Finance Committee

bf:min:080818;jcs

Transcribed by: Jo-Ann C. Sato