

DEPARTMENT OF ENVIRONMENTAL SERVICES

Public Works, Infrastructure & Sustainability Committee Presentation

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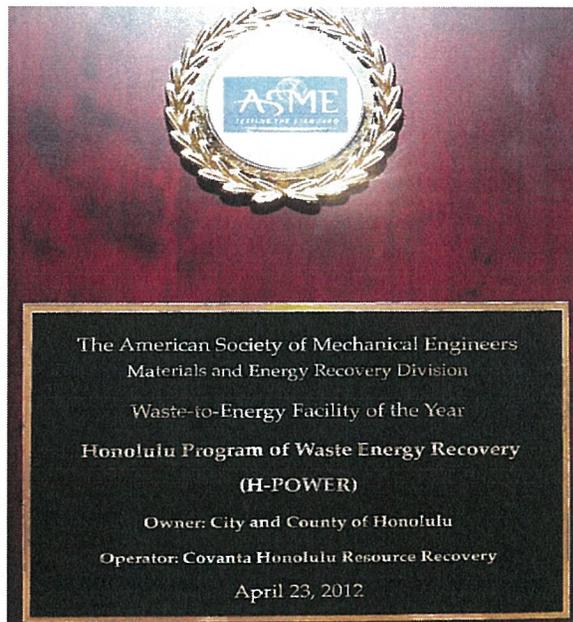
H-Power – RDF & Mass Burn



H-POWER Contract Overview

- Original Contract Competitively Bid (pre-procurement code)
- Third Boiler Expansion
 - Contract extension
 - Impact on PPA with HECO
 - Operational impact

H-POWER Awards



H-POWER Awards



Nature of Facility Operations

- Long term undertaking
- Contract amendments and change orders inevitable
- Consistent with industry practice
- Benefits to the City

RESPONSES TO AUDIT

H-POWER Contract Compliant with Procurement Code

- **Original contract entered into prior to enactment of Procurement Code**
- **Nonetheless, original contract was bid out**
- **Right of first refusal in original contract**
- **State Procurement Office determination**
- **Need for long-term contract**
 - **Financial impact – fees, PPA, revenues**
 - **Operations impact – continuity of services, management of facility and its equipment over time**
 - **Best interests of the City and the public**

H-POWER Financial Fact Sheet

➤ Capital Facility

➤ **Built/Financed** 1986 –1990 **\$149,975,000**

➤ **Sold** in January 1991 **\$312,485,532**

Capital Gain = over **\$150 million**

Actual

Cash payment = **\$ 80,000,000**

Mortgage payment = **\$425,600,000**
over 18 years

➤ **Lease Revenue** over 18 years = **\$ 57,600,000**

➤ **Buy Back** in Oct 2008 **\$ 43,884,946**

➤ **Built 3rd Boiler** 2009 – 2012 **\$324,600,000**

H-POWER Financial Fact Sheet

➤ Net Operating Revenue

➤ **1991-2008** **\$128,558,560**

➤ **2009-2015** **\$ 72,468,052**

➤ **Total Net Operating Revenue**
over 25 years **\$201,026,612**

Financial Analysis

Audit did not consider revenues and other successes and therefore did not paint a complete picture of H-POWER finances

Nature of Contract and Invoicing

- **NOT a time and materials contract – more complicated contract format required for complex operations**
- **Audit failed to request and review fully executed invoices.**

WTE Facility Operations

- **H-POWER contract extension not atypical or unreasonable for WTE operation**
 - Term of contract extension clearly established in Amendment 12
 - Actual terms of Waste-to-Energy contracts throughout the US
 - Rarely short term – extend for period between 20-40 years
 - Complicated infrastructure enterprises
 - Capital intensive facilities
 - Typical public-private partnership
 - Multiple contracts intertwined (construction, operating, PPA)

Contract Interpretation

- **City did incorporate General Terms and Condition**
- **H-POWER contract does not limit the City's access to records**
- **H-POWER contract does not limit the City's right to audit the contract**
- **H-POWER contract does not curtail records retention**

Further Clarification

- **Cost substantiation**
- **Reimbursement**
- **General Obligation Bonds**

Contract Management

- **Billing Rates**
- **Consultant Work**
- **Travel Costs**
- **Approved intern rates**
- **No duplicate payments**
- **Use of Refurbishment Funds to complete Air Pollution Control System Improvements Project**
- **Costs/Invoices adequately supported**

Summary

- **Contract Amendments did not require competitive bidding and are in the best interests of the City**
- **Use of Hybrid Contract Appropriate**
- **The City worked with and relied upon Covanta for efficient management and operation**
- **City reasonably relied upon consultants with WTE expertise**

Audit Recommendations

- Maximize use of fixed price contracts
- Not allow contractor or consultant to write one-sided contracts
- Document justifications for approving contracts
- Require “General Terms and Conditions” in all contracts
- Collaborate with BFS to develop formal guidance on contract negotiations
- Develop formal guidance on good contract administration practices
- Assign adequate resources and knowledgeable staff
- Expedite filling the H-POWER contract administration position
- Ensure only accurate payments made to contractors and consultants

Audit Recommendations (cont.)

- Develop formal policies and procedures for administering H-POWER contract
- Re-compete contractor and consultant professional services contracts as required by procurement code and city policies
- Provide written justifications for any contract modifications
- Maximize use of competitive bids before renewing options to extend long term contracts
- Follow State Procurement Office guidelines on long term contracts
- Follow State Procurement Office guidelines for construction and professional services contracts

Successful Management of H-POWER

- **Recognized as one of the more innovative and high performing WTE projects in the nation**
- **Diverted the majority of municipal solid waste from the landfill**
- **Successfully converted waste to energy**
- **Has stabilized waste management costs, reduced risk and generated over \$201M in revenue over its 25 years life span**