



Miami-Dade County Board of County Commissioners

Office of the Commission Auditor

**Supplemental
Legislative Analysis**

Board of County Commissioners

February 18, 2010
9:30 AM
Commission Chamber

Charles Anderson, CPA
Commission Auditor
111 NW First Street, Suite 1030
Miami, Florida 33128
305-375-4354

**Miami-Dade County Board of County Commissioners
Office of the Commission Auditor**

**Board of County Commissioners
Meeting Agenda**

Supplemental Analysis and Report

February 18, 2010

Items

12(A)1

If you require further analysis of these or any other agenda items, please contact Guillermo Cuadra, Esq., Chief Legislative Analyst, at (305) 375-5469.

Acknowledgements—Analyses and Reports prepared by:
Michael Amador-Gil, Legislative Analyst
Mia Marin, Legislative Analyst

**MIAMI-DADE COUNTY
BOARD OF COUNTY COMMISSIONERS
OFFICE OF THE COMMISSION AUDITOR**



Legislative Notes

Agenda Item: 12(A)1
File Number: 100307
Committee(s) of Reference: Board of County Commissioners
Date of Analysis: February 15, 2010
Type of Item: Settlement Agreement

Summary

The proposed settlement releases all claims between and among the parties, with the Wackenhut Corporation (Wackenhut) agreeing to pay \$7,500,000 to be distributed among the County \$3,000,000, Michelle Trimble \$1,250,000 and plaintiff's attorneys from the Qui Tam Case \$3,250,000.

BCC Agenda Item 12(A)1 Highlights

- The Agreement does not constitute an admission of liability or acknowledgment of the validity of any allegation, finding, or conclusion by Wackenhut or the County, but rather as a contractual settlement.
- The County will file a withdrawal of Debarment with the Department of Small Business Development terminating all debarment proceedings and withdrawing the Notice of Proposed Debarment.
- Within ten (10) business days of approval of the Agreement, the County through Audit and Management Services Department (AMS) will issue a Supplemental Audit Report to clarify certain statements in the Final Audit Report that remove any findings of intentionality on the part of Wackenhut.
- The County deems Wackenhut an eligible and responsible vendor, contractor, bidders or responder for purposes of maintaining existing contracts or obtaining a new contract with the County... The County will not consider the Agreement, the Audit, the Final Audit Report, or the claims and controversies in evaluating or awarding any future County contracts or any other matters that come before the Board of County Commissioners (BCC).
- The County reserves the right to make a responsibility determination based on an arrest, indictment or conviction of a principal or employee of Wackenhut in regards to any alleged actions relating to the contracts at issue in this Agreement, the Audit, the Federal Case, the Liquidated Damages Case or the Qui Tam Case, unless such principal or employee or Wackenhut is prohibited from participating in or controlling the performance of a proposed contract with the County.
- The County will return and furnish to Wackenhut all original documents, records and materials in the County's possession, custody or control that were obtained from and belong to

Wackenhut in connection with the Audit or other investigative process. The County will be entitled to retain copies of the same.

- Neither Miami-Dade County nor Wackenhut will issue a press release to the media regarding this Agreement or any of the matters described within the Agreement without written approval of the other party. For these purposes, a “press release” will not include any statement made by elected officials in the conduct of his or her official duties.

Legislative History

Date	Legislative Actions
December 1989	Wackenhut replaced North Dade Security as the agency providing security services for Metrorail and Metromover in or around.
November 2, 1999	The BCC, through Resolution 1133-99, waived bid proceedings and approved Contract TA99-SOS to Wackenhut with a total compensation ceiling of \$42,500,000 to provide security services. The contract also included \$500,000 for special security details and unforeseen requirements. Miami Dade Transit had contracted 7,000 hours per week for armed security services. Wackenhut forecasted 7,807 weekly security hours per week.
February 3, 2004	The BCC approved Amendment No. 1 to Contract TA99-SOS with Wackenhut. The amendment increased the original ceiling compensation by \$14,800,000 to a new contract ceiling of \$57,800,000 . The BCC authorized the use of transit surtax proceeds to pay that portion of the \$14,800,000. The increase in the compensation ceiling was attributed to required security services since September 11, 2001, the consolidation of security services provided by General Services Administration staff at MDT facilities, and security services resulting from the implementation of the People’s Transportation Plan (PTP). Wackenhut provided 12,366 hours per week of security services.
April 27, 2004	The BCC, through Resolution 494-04, authorized the County Manager to negotiate contract TR04-SOS between the County and Wackenhut.
July 13, 2004	The BCC, through Resolution 861-04, authorized the County Manager to execute Contract TR04-SOS which included a total compensation ceiling not to exceed \$89,500,000 with Wackenhut. The contract had a term of five (5) years. Funding came from MDT operating funds, revenue funds, as well as surtax funding from the PTP. ¹
September 27, 2005	The County Manager directed AMS to conduct an audit of MDT and Juvenile Assessment Center contracts with Wackenhut. AMS limited their audit to the MDT Contract for the period October 1, 2002 through September 30, 2005. The audit estimated that Wackenhut overbilled the County \$6,260,000. The audit was initiated after the County Manager was advised of alleged billing improprieties. ²
February 13, 2007	During the Budget and Finance Committee meeting, the County Manager presented Item 3K to the committee members. The item recommended Contract No. 487B-1A to Security

¹ The Contract negotiations resulted in MDT and Wackenhut agreeing to raise the entry-level salary of a Wackenhut officer to \$13.00 per hour with a total first year billing rate of approximately \$23.27 per hour, which rate includes all equipment and administration. The entry level pay rate went up along with the annual CPI adjustments and resulted in an entry pay rate of approximately \$15.00 per hour in the final fifth year of the proposed contract. The anticipated total hourly cost for the five-year term was \$88,550,037. Additions included a contingency of .5% at \$442,750 for emergency events and \$500,000 for investigative services brought the total to \$89,492,787.

² The testing of the 505 transactions disclosed a 15.13% error rate or \$14,722 that was extrapolated to the \$39,200,000 invoiced during the audit period, which yielded \$5,930,000 in questioned billings.

Date	Legislative Actions
	Alliance of Florida, LLC.; Contract No. 487B-1B to Barton Protective Services LLC d/b/a Allied Baron Security Services; and Contract No. 487B-1C to Wackenhut to provide security services for the General Services Administration Department. The Contract would have been for three (3) years with two (2) year options-to-renew at the County's sole discretion for approximately \$14,600,000 per year. Wackenhut would have received \$4,901,497.24 per year. The item was deferred by the Budget and Finance Committee with a vote of 5-0.
February 21, 2007	The County Manager met with the County Attorney's Office, the Inspector General, and staff from the Department of Business Development, General Services Administration and Procurement Management. Staff recommended that the BCC award Sectors 1E, 2A, 2B, 3A, and 3B under RFP 487A, Sectors 1A and 1B under RFP 487B, and withhold the award to Wackenhut. ³
March 13, 2007	The Budget and Finance Committee forwarded the above mentioned item to the BCC as BCC Item 801E, but withheld Contract No. 487B-1C (Wackenhut) pending an on-going audit performed by AMS.
June 5, 2007	The BCC deferred BCC Item 801E.
March 4, 2008	The BCC, through Resolution 227-08, approved Section 4 (Non-Competitive Contract Modifications) to Wackenhut totaling \$2,800,000 for security services at the Juvenile Services Department. The modifications included an additional six (6) months and \$840,000, increasing the contract amount to \$3,640,000 or approximately \$140,000 per month. This was as an emergency purchase.
May 7, 2008	The County Manager communicated to the Mayor that a Plan of Action or Contingency Plan for current contracts with Wackenhut should be developed should Wackenhut not satisfactorily refute the audit findings and provide remedies. Staff had proposed the following alternatives: (1) enter into replacement contracts with other security service companies; (2) hire qualified security officers to services the transit system; and (3) use County correctional officers to staff the Juvenile Assessment Center (JAC).
April 30, 2008	Kathy Jackson, Director of Audit and Management Services Department, presents the County Manager the Audit Report dated April 24, 2008, which yielded \$5.93 million in questioned billings.
June 2, 2009	The BCC, through Resolution 633-09, approved an agreement with AlliedBarton Security Services, LLC totaling \$8,935,000 for over a seven (7) year period pertaining to the Care and Custody Services for Juveniles. Wackenhut provided juvenile care and custody services at the Juvenile Assessment Center.
July 2, 2009	The BCC, authorized an award of a competitive contract to Professional Protection & Investigations Agency, Inc. / Security Alliance (A joint venture) and 50 State Security Service, Inc., in an amount not to exceed \$36,300,000 for security guard services for Miami-Dade Transit Metromover, Metrorail and Facilities, and authorized the County Mayor or County Mayor's designee, to exercise options-to-renew in an amount not to exceed \$72,600,000.

Prepared By: Mia B. Marin and Michael Amador-Gil

Attachment (The Office of the Commission Auditor provides an examination of the issues between Miami-Dade County and Wackenhut Corporation.

³ See Budget and Finance Committee Item 7(A) dated March 13, 2007.

The Wackenhut Corporation

Prepared by the Office of the Commission Auditor

Michael Amador-Gil, Legislative Analyst

Mia Marin, Legislative Analyst

February 17, 2010

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Introduction

The Office of the Commission Auditor examined transmittal letters from staff to the Board of County Commissioners (BCC); an Audit Report and Final Audit Report conducted by Audit and Management Services Department (AMS) relating to MDT Security Services Contract; policy recommendations from staff to the BCC; policy recommendations from the County Manager to the Mayor; Wackenhut's legislative history; and Wackenhut's preliminary response and final response pertaining to AMS's Audit Report.

Since 1989, Wackenhut Corporation (Wackenhut)¹ provided security services for the Miami-Dade County Transit System to protect persons and property from theft, damage and unlawful activities. On September 27, 2005, the County Manager directed AMS to conduct an audit of Miami-Dade Transit (MDT) and Juvenile Assessment Center contracts with Wackenhut. The AMS limited their audit to the MDT Contract for the period October 1, 2002 through September 30, 2005.

Wackenhut had provided broad security services for Miami-Dade County under two agreements: the 1999 (TA99-SOS) and 2004 (TR04-SOS), which allowed for a compensation of \$57,800,000 and \$89,500,000, respectively. In addition to the above mentioned contracts, Miami-Dade County entered into several other contracts with Wackenhut to provide security services to the following: (1) Juvenile Assessment Center; (2) Department of Procurement Management and Department of Public Works private taxing district guard services; (3) Miami-Dade Police Department; and (4) Port of Miami.²

On April 10, 2009, the County Manager issued a memorandum advising the BCC of the completion of AMS's Audit of Wackenhut in regard to Contract No. (TR04-SOS) Security Services for MDT (Service Contract). The purpose of that memorandum was to advise the BCC of the Service Contract Audit findings conducted by AMS, replacement security contracts and status of the County's relationship with Wackenhut.

The Final Audit Report estimated that Wackenhut overbilled the County between \$3,300,000 to \$5,800,000.³

AMS Audit Report Findings – Miami-Dade Transit Security Officer Services Contract

On April 24, 2008, AMS issued an Audit Report to the County Manager of the MDT Security Officer Services Contract.

- AMS audit findings were a result of a review of Wackenhut Security Guard Services billings provided to MDT for the period October 1, 2002 through September 30, 2005 (three year period).

¹ According to Wackenhut's website, Wackenhut has over 35,000 employees. The company provides its services to local, regional and national customers through 200 offices coast-to-coast in the United States. As a subsidiary of Group 4 Securicor plc (www.g4s.com), Wackenhut is also able to reach global their customers in 100+ countries, through its ISO 9001:2000 Certified International Accounts Division. Wackenhut's primary service divisions include: Security Services; Nuclear Security and Energy Consulting Services; Government Services; Automated and Integrated Security Management Systems; and Consulting and Investigations.

² Case No. 05-15871 CA28 Qui Tam Action; Complaint and Jury Trial Demand, Dec. 28, 2005.

³Expert Analyst for Wackenhut, Michael P. Elkin, CPA/ABV, CFE dated August 26, 2008, determined that the estimated error rate in the original sample of 338 transactions is 1.53% which is very close to AMS's 2% expected error rate from the initial pilot sample and far from the estimated error rate (15.13%) that was used by AMS in this case based on a biased sample. See memorandum from AMS to the County Manager dated April 9, 2009 titled *Final Audit Report-Miami-Dade Security Officer Services Contract*.

- This review was based on the testing of 4,352 billing transactions, including 505 items for which the sampling results were extrapolated.
- The sample selection methodology used by AMS was the Poisson Distribution Method which a common probability-proportional-to-size ('PPS') sampling to determine statistical samples where the population is greater than 1,000 records.

AMS had initially conducted an original sample using a 99% confidence level, 5% Upper Error Limit, and an Expected Error Rate (ERR) of 2%, the resultant was an initial sample size of 292 transactions. Upon further review of the transactions, AMS determined that an individual can work and be billed to more than one job number on any given service date and the number of transactions tested was expanded to verify the accuracy of each job billed for individuals randomly chosen on the designated dates of service.

As a result of this complexity, AMS revised its sample size to 338 due to additional stratification of multiple billings. Consequently, once AMS testing commenced additional related transactions were identified when underlying documentation disclosed discrepancies between persons on duty and those actually billed, AMS chose to include an additional 167 related transactions resulting in a total sample size to 505.

The error rate from the initial random sampling of 292 transactions conducted by AMS yielded a 2% ERR as opposed to the ERR of 15.13% based on a sampling of 505 transactions. According to the AMS Audit, the sample size of 505 was statistically derived and represented 0.25% of the hours and dollars billed over a three year period. AMS extrapolated the error rate to the \$39.2 million invoiced, which yielded \$5.93 million in questioned billings. Additional monies were disallowed after Wackenhut was unable to produce applicable Log Books and/or Activity Reports (LB/AR) to support billed hours.

Most of the transactions that were questioned by AMS were a result of discrepancies between invoiced hours and hours worked per the LB/AR and LB/AR were not available to corroborate invoiced hours. AMS admits that Wackenhut and MDT historically have relied solely on Sign-in Registers to prove billing accuracy. **AMS however concluded that these documents alone are not reliable because they do not reflect the frequency of movement for officers who sign in and sign out between stations as do the LB/AR.**

AMS's LB/AR review further revealed the following billing anomalies:

- Officers not at their assigned Post for entirety of hours billed, replacement officers came from other locations to cover the Post and County was billed as though both positions were filled;
- Rail Patrol Officers were frequently used to cover unmanned Static Posts without a replacement to backfill their Posts and the County was billed for both Posts covered;
- Relieving officers continued entries on behalf of scheduled officers, acting as if patrols were being performed throughout the end of the shift reflecting the billing of both Post being manned when they were not;
- Sign In register entries logged out of sequence, not completed raising concerns of the integrity of invoiced transactions;
- Log Books and Supervisor Activity Reports reflecting Supervisors conducting required Post checks while showing invoice for standing guard at open Post at another location;
- Stations requiring two Posts to be manned, AMS encountered instances where one of the two post were unmanned and the County was invoiced reflecting two Posts were manned;
- Sign In Registers reflecting that Officers had worked an entire second shift and paid as such, when the LB/AR reflected otherwise; and

- LB/AR was not available for 25 or 4.95% of the items selected for testing (505 samples).

In addition to the \$5.93 million in questionable billings, AMS also determined liquidated damages totaling \$27,400 for Wackenhut contract violations related to Posts being unmanned.

Wackenhut's Response

Wackenhut has provided a Preliminary and Final Response to the MDT Security Officers Services Contract Audit which were not included as part of the Final Report prepared by AMS due to the collective size of the documents (Copies may be obtained by Wackenhut or AMS).

Wackenhut's Preliminary Response highlights were included in the AMS MDT Security Services Contract Audit that includes the following key points of disagreement:

- Sign In Register in the only contractually required method of recording time and attendance on the Metrorail and MDT facilities, no other method is authorized by contract;
- Wackenhut has taken position of accepting responsibility of substantiated billing errors but objects to paying artificially inflated amounts derived by questionable extrapolation methods relying on LB/AR documents (documents not intended to be used as timekeeping instruments);
- Wackenhut claims that there are other reliable documentation that could be used to verify attendance such as rail patrol dispatch logs and Blue Phone Logs but AMS discounted during the audit;
- Disputes evidence of officers instances of coming on duty and off duty discrepancies using the LB/AR when the practice of opening and closing every station is documented using the Miami-Dade County Blue Phone Logs and Wackenhut Dispatch Logs both documents which AMS chose not to use as reference;
- Expressed concerns over the review of selective portions of deposition testimony obtained from plaintiff's counsel in the Qui Tam Action (2005 Whistleblower case against Wackenhut regarding the overbilling practices by the company on the MDT Security Services Contract) to draw broad conclusions without reviewing the balance of 90 depositions taken;
- Various concerns about the AMS error rate relating to accepting an unreasonable high error rate and extrapolating the rate to billings to derive at an unreasonably high billing amount.

Wackenhut's Final Response to the AMS Audit Report was submitted on August 29, 2008 and included findings of two (2) independent experts who found significant flaws in the sampling methodology, applications and audit conclusions of AMS. The two independent experts used by Wackenhut were James T. McClave, Ph.D, CEO of InfoTech, Inc. and Michael P. Elkin CPA/ABV, CFE, Shareholder of Kaufman, Rossin & Co.

Both independent experts support Wackenhut's conclusions relating to AMS's Audit to include the following:

- Question AMS statistical reliability as "fatally flawed" and statistically unreliable";
- Question AMS's use of sampling, fluctuations of error rate from 1.53% on an initial pilot sampling to a 15.13% error rate from a modified sampling;
- Concern for AMS methodology for extrapolating questionable billings;
- AMS's reliance of using one type of timekeeping instrument (LB/AR) for their audit as opposed to using the standard required by contract for this service (Sign in Registers); and
- Concerns on AMS conclusions drawn when LB/AR records were not available.

Present Settlement

On February 18, 2010, the BCC considered with Agenda Item 12(A)(1) which is a resolution to approve a Settlement Agreement Between Michelle Trimble (Plaintiff in Whistleblower Case relating to MDT Security Services Contract), Mark Veith (Attorney for Trimble), Josephs Jack, P.A., The Wackenhut Corporation and Miami-Dade County. The proposed settlement agreement releases all claims between and among the parties, with Wackenhut agreeing to pay \$7.5 million to be distributed among the County (\$3 million), Michelle Trimble (\$1.25 million) and Plaintiff's Attorneys from the Qui Tam Case (\$3.25 million).